

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Tax Laws Amendment (Investment
Manager Regime) Bill 2012**

No. , 2012

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
Schedule 1—Investment manager regime		4
	<i>Income Tax Assessment Act 1997</i>	4
	<i>Tax Laws Amendment (Cross-Border Transfer Pricing) Act (No. 1)</i> <i>2012</i>	23
Schedule 2—FIN 48		24
	<i>Income Tax (Transitional Provisions) Act 1997</i>	24

1 **A Bill for an Act to amend the law relating to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Tax Laws Amendment (Investment*
6 *Manager Regime) Act 2012.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, item 1	The day this Act receives the Royal Assent.	
3. Schedule 1, item 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the time item 10 of Schedule 1 to the <i>Tax Laws Amendment (Cross-Border Transfer Pricing) Act (No. 1) 2012</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 1, item 3	The day this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 9 of Schedule 1 to the <i>Tax Laws Amendment (Cross-Border Transfer Pricing) Act (No. 1) 2012</i> commences on or before that day.	
5. Schedule 1, items 4 to 15	The day this Act receives the Royal Assent.	
6. Schedule 1, item 16	Immediately after the commencement of item 9 of Schedule 1 to the <i>Tax Laws Amendment (Cross-Border Transfer Pricing) Act (No. 1) 2012</i> . However, the provision(s) do not commence at all if that item 9 commences on or before the day this Act receives the Royal Assent.	
7. Schedule 1, item 17	The day this Act receives the Royal Assent.	
8. Schedule 2	The day this Act receives the Royal Assent.	

1
2
3
4
5
6
7
8
9
10
11
12

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2

Schedule 1—Investment manager regime

3

Income Tax Assessment Act 1997

4

1 At the end of Division 842

5

Add:

6

Subdivision 842-I—Investment manager regime

7

Guide to Subdivision 842-I

8

842-200 What this Subdivision is about

9

10

11

12

13

This Subdivision includes rules about the taxation of certain foreign funds with investment income or losses which are treated as being attributable to a permanent establishment in Australia solely because the fund retains the services of an Australian based agent, manager or service provider.

14

Where the conditions in this Subdivision are satisfied:

15

16

17

- returns or gains relating to financial arrangements (known as IMR income) are non-assessable non-exempt income or disregarded; and

18

19

- deductions and losses relating to financial arrangements (known as IMR deductions) are disregarded; and

20

21

- capital gains relating to financial arrangements (known as IMR capital gains) are disregarded; and

22

23

- capital losses relating to financial arrangements (known as IMR capital losses) are disregarded.

24

25

26

27

These amounts are also disregarded if a foreign resident beneficiary of a trust, or a foreign resident partner in a partnership, receives them (or amounts attributable to them) through one or more interposed trusts or partnerships.

Table of sections
Operative provisions

842-205	Objects of this Subdivision
842-210	Treatment of IMR foreign fund that is a corporate tax entity
842-215	Treatment of foreign resident beneficiary that is not a trust or partnership
842-220	Treatment of foreign resident partner that is not a trust or partnership
842-225	Treatment of trustee of an IMR foreign fund
842-230	<i>IMR foreign fund</i>
842-235	Wind-down phases
842-240	Widely held test and concentration test
842-245	Financial arrangements
842-250	<i>IMR income</i> and <i>IMR deduction</i>
842-255	<i>IMR capital gain</i> and <i>IMR capital loss</i>
842-260	<i>Non-IMR net income, non-IMR Division 6E net income</i> and <i>non-IMR net capital gain</i>
842-265	<i>Non-IMR partnership net income</i> and <i>non-IMR partnership loss</i>
842-270	<i>Pre-2012 IMR income</i> and <i>pre-2012 IMR capital gain</i>

Operative provisions**842-205 Objects of this Subdivision**

- (1) The objects of this Subdivision are to ensure that:
- (a) foreign funds are not subject to Australian income tax in respect of certain *financial arrangements solely because they engage the services of an Australian based agent, manager or service provider; and
 - (b) Australian resident taxpayers continue to be subject to tax on their worldwide income; and
 - (c) the benefits of the tax concessions in this Subdivision are only available where foreign funds are widely held and are not owned by a small group of investors.
- (2) This is achieved by:
- (a) treating certain *ordinary income and *statutory income as *non-assessable non-exempt income; and
 - (b) disregarding certain deductions; and
 - (c) disregarding certain *capital gains and *capital losses; and
 - (d) requiring foreign funds that seek to benefit from the tax concessions in this Subdivision to pass a widely held test and

1 a concentration test to show that they are not controlled by a
2 small group of investors.

3 **842-210 Treatment of IMR foreign fund that is a corporate tax**
4 **entity**

5 *Objects*

- 6 (1) The objects of this section are to ensure that:
- 7 (a) a *corporate tax entity that is an *IMR foreign fund in relation
8 to an income year is not subject to any Australian income tax
9 in respect of its *IMR income and *IMR capital gain for that
10 income year; and
- 11 (b) the corporate tax entity's *IMR deduction or *IMR capital
12 loss in relation to an income year cannot be applied against
13 the corporate tax entity's other income and gains; and
- 14 (c) this section does not provide any tax concession to an
15 Australian resident who invests in the corporate tax entity
16 (whether directly or indirectly through one or more
17 interposed entities).

18 *Application*

- 19 (2) This section applies to a *corporate tax entity that is an *IMR
20 foreign fund in relation to an income year.

21 *Certain amounts disregarded*

- 22 (3) In working out the *corporate tax entity's taxable income, *tax loss
23 or *net capital loss for the income year:
- 24 (a) treat its *IMR income in relation to the income year as
25 *non-assessable non-exempt income; and
- 26 (b) disregard its *IMR deduction in relation to the income year;
27 and
- 28 (c) disregard its *IMR capital gain in relation to the income year;
29 and
- 30 (d) disregard its *IMR capital loss in relation to the income year.

31 *Certain losses disregarded*

- 32 (4) The *corporate tax entity cannot *utilise a *tax loss or *net capital
33 loss in relation to the income year, or in any future income year, to

1 the extent the loss is attributable to *IMR income, an *IMR capital
2 gain, an *IMR deduction or an *IMR capital loss.

3 **842-215 Treatment of foreign resident beneficiary that is not a trust**
4 **or partnership**

5 *Objects*

- 6 (1) The objects of this section are to ensure that:
- 7 (a) a foreign resident beneficiary of an *IMR foreign fund in
8 relation to an income year is not subject to Australian income
9 tax in respect of *IMR income or an *IMR capital gain of the
10 fund (or in respect of an amount that is referable to IMR
11 income or an IMR capital gain of the fund) for the income
12 year; and
- 13 (b) the foreign resident beneficiary of the fund is not able to
14 claim a deduction or *utilise a *tax loss in relation to the
15 income year to the extent that the deduction or tax loss was
16 incurred or made in respect of an amount that is:
- 17 (i) IMR income of the fund (or referable to IMR income of
18 the fund); or
- 19 (ii) an IMR capital gain of the fund (or referable to an IMR
20 capital gain of the fund); and
- 21 (c) this section does not provide any tax concession to an
22 Australian resident that invests in the fund (whether directly
23 or indirectly through one or more interposed entities).

24 *Application*

- 25 (2) This section applies to a beneficiary of a trust in relation to an
26 income year if the beneficiary:
- 27 (a) is not a resident of Australia at any time during the income
28 year; and
- 29 (b) is not a trust or partnership at any time during the income
30 year (other than a *foreign superannuation fund).

31 Note: A trust that is an IMR foreign fund is subject to the general tax rules
32 that apply to trusts, subject to the modifications in this Subdivision:
33 see Division 6 of Part III of the *Income Tax Assessment Act 1936*.
34 Also see section 842-225 of this Act, which deals with trustees of
35 IMR foreign funds.

1 *Adjustments to calculation of taxable income, tax loss or net*
2 *capital loss*

- 3 (3) In working out the beneficiary's taxable income, *tax loss or *net
4 capital loss for the income year:
- 5 (a) for the purposes of applying Division 6 of Part III of the
6 *Income Tax Assessment Act 1936* to the beneficiary, replace
7 the references in that Division to share of the net income with
8 references to share of the non-IMR net income (within the
9 meaning of subsection 842-260(1) of the *Income Tax*
10 *Assessment Act 1997*); and
 - 11 (b) for the purposes of applying subsections 98A(1) and (3) of
12 Division 6 of Part III of the *Income Tax Assessment Act 1936*
13 to the beneficiary, replace the references in those subsections
14 to individual interest of the beneficiary in the net income
15 with references to individual interest of the beneficiary in the
16 non-IMR net income (within the meaning of subsection
17 842-260(1) of the *Income Tax Assessment Act 1997*); and
 - 18 (c) for the purposes of applying Division 6E of Part III of the
19 *Income Tax Assessment Act 1936* to the beneficiary, replace
20 the references in that Division to Division 6E net income
21 with references to non-IMR Division 6E net income (within
22 the meaning of subsection 842-260(2) of the *Income Tax*
23 *Assessment Act 1997*); and
 - 24 (d) for the purposes of applying subsection 115-215(3) to the
25 beneficiary, replace the reference in that subsection to each
26 *capital gain of the trust estate with a reference to each
27 capital gain of the trust estate that is a *non-IMR net capital
28 gain (or is referable to a non-IMR net capital gain of the trust
29 estate); and
 - 30 (e) for the purposes of applying section 115-225 to the
31 beneficiary:
 - 32 (i) replace references in that section to net income of the
33 trust estate with references to *non-IMR net income of
34 the trust estate; and
 - 35 (ii) replace the reference in that section to *net capital gain
36 (if any) with a reference to *non-IMR net capital gain (if
37 any).
- 38 (4) For the purposes of applying paragraph 115-225(1)(a) to the
39 beneficiary:
-

-
- 1 (a) disregard a *capital gain of the *IMR foreign fund to the
2 extent the capital gain is an *IMR capital gain; and
3 (b) disregard an *IMR capital loss of the IMR foreign fund for
4 the purposes of determining the amount of the capital gain
5 remaining after applying steps 1 to 4 of the method statement
6 in subsection 102-5(1); and
7 (c) disregard a *net capital loss of the IMR foreign fund to the
8 extent that it is attributable to an IMR capital loss for the
9 purposes of determining the amount of the capital gain
10 remaining after applying steps 1 to 4 of the method statement
11 in subsection 102-5(1).

12 **842-220 Treatment of foreign resident partner that is not a trust or**
13 **partnership**

14 *Objects*

- 15 (1) The objects of this section are to ensure that:
- 16 (a) a foreign resident partner of an *IMR foreign fund in relation
17 to an income year is not subject to any Australian income tax
18 in respect of *IMR income or an *IMR capital gain (or in
19 respect of an amount that is referable to IMR income or an
20 IMR capital gain) for the income year; and
21 (b) the foreign resident partner of the fund is not able to claim a
22 deduction or *utilise a *tax loss in relation to the income year
23 to the extent that the deduction or tax loss was incurred or
24 made in respect of an amount that is:
- 25 (i) IMR income of the fund (or referable to IMR income of
26 the fund); or
27 (ii) an IMR capital gain (or referable to an IMR capital
28 gain); and
29 (c) this section does not provide any tax concession to an
30 Australian resident that invests in the fund (whether directly
31 or indirectly through one or more interposed entities).

32 *Application*

- 33 (2) This section applies to a partner in a partnership in relation to an
34 income year if the partner:
- 35 (a) is not an Australian resident at any time during the income
36 year; and

1 (b) is not a trust or a partnership at any time during the income
2 year (other than a *foreign superannuation fund).

3 Note: A partnership that is an IMR foreign fund is subject to the general tax
4 rules that apply to partnerships, subject to the modifications set out in
5 this Subdivision: see Division 5 of Part III of the *Income Tax*
6 *Assessment Act 1936*.

7 *Adjustments to calculation of taxable income, tax loss or net*
8 *capital loss*

9 (3) In working out the partner's taxable income, *tax loss or *net
10 capital loss for the income year:

11 (a) for the purposes of applying Division 5 of Part III of the
12 *Income Tax Assessment Act 1936* to the partner, replace the
13 references in that Division to the individual interest of the
14 partner in the net income of the partnership with references to
15 the individual interest of the partner in the non-IMR
16 partnership net income (within the meaning of
17 section 842-265 of the *Income Tax Assessment Act 1997*) of
18 the partnership; and

19 (b) for the purposes of applying Division 5 of Part III of the
20 *Income Tax Assessment Act 1936* to the partner, replace the
21 references in that Division to the individual interest of the
22 partner in the partnership loss with references to the
23 individual interest of the partner in the non-IMR partnership
24 loss (within the meaning of section 842-265 of the *Income*
25 *Tax Assessment Act 1997*); and

26 (c) disregard an amount to the extent that it is referable to an
27 *IMR capital gain or an *IMR capital loss.

28 **842-225 Treatment of trustee of an IMR foreign fund**

29 *Objects*

30 (1) The object of this section is to ensure that the following provisions
31 interact appropriately with the tax concessions mentioned in
32 paragraphs 842-210(1)(a) and (b), paragraphs 842-215(1)(a) and
33 (b) and paragraphs 842-220(1)(a) and (b):

34 (a) subsection 115-220(2);

35 (b) section 115-225;

36 (c) section 98 of the *Income Tax Assessment Act 1936*;

37 (d) section 99E of the *Income Tax Assessment Act 1936*.

Note: Division 6 of Part III of the *Income Tax Assessment Act 1936*, Division 115 of Part 3-1 of this Act, and all other provisions of those Acts apply to the trustee of an IMR foreign fund, subject to the modifications in this section.

Applying subsection 115-220(2)

- (2) For the purposes of applying subsection 115-220(2) to the beneficiary:
- (a) disregard a *capital gain of the *IMR foreign fund to the extent the capital gain is an *IMR capital gain; and
 - (b) disregard an *IMR capital loss of the IMR foreign fund for the purposes of determining the amount of the capital gain remaining after applying steps 1 to 4 of the method statement in subsection 102-5(1); and
 - (c) disregard a *net capital loss of the IMR foreign fund to the extent that it is attributable to an IMR capital loss for the purposes of determining how much of a capital gain that is not an IMR capital gain remains after applying steps 1 to 4 of the method statement in subsection 102-5(1).

Note: The effect of this subsection is that the increase to the assessable amount which occurs as a result of section 115-220 is calculated with reference to the capital gains of the IMR foreign fund that are not IMR capital gains or amounts referable to IMR capital gains (rather than by calculating the increase with reference to *all* capital gains of the fund).

Modifications to section 115-225

- (3) For the purposes of applying section 115-225 in respect of section 115-220, make the following assumptions:
- (a) replace the references in section 115-225 to the net income of the trust estate with references to the *non-IMR net income of the trust estate;
 - (b) replace the reference in section 115-225 to net capital gain (if any) with a reference to *non-IMR net capital gain (if any).

Modifications to section 98 of the Income Tax Assessment Act 1936

- (4) For the purposes of applying section 98 of the *Income Tax Assessment Act 1936*, replace references in that section to net income with references to non-IMR net income (within the meaning of subsection 842-260(1) of the *Income Tax Assessment Act 1997*).

1 Note: The effect of this subsection is that where section 98 of the *Income*
2 *Tax Assessment Act 1936* applies to the trustee of a trust that is an
3 IMR foreign fund, the trustee is only assessed and made liable to pay
4 tax in respect of non-IMR net income of the fund (rather than in
5 respect of *all* net income of the fund to which section 98 would
6 otherwise apply).

7 *Modifications to section 99E of the Income Tax Assessment Act*
8 *1936*

- 9 (5) For the purposes of applying section 99E of the *Income Tax*
10 *Assessment Act 1936*:
- 11 (a) replace the reference in that section to so much of the net
12 income with a reference to so much of the net income or
13 non-IMR net income (within the meaning of subsection
14 842-260(1) of the *Income Tax Assessment Act 1997*) as the
15 case may be; and
- 16 (b) replace the reference in that section to a part of the net
17 income of another trust estate with a reference to a part of the
18 non-IMR net income (within the meaning of subsection
19 842-260(1) of the *Income Tax Assessment Act 1997*) of
20 another trust estate.

21 Note: The effect of this subsection is that the trustee of a trust that receives a
22 distribution of non-IMR net income from another trust is not required
23 to apply section 98, 99 or 99A of the *Income Tax Assessment Act 1936*
24 to those amounts.

25 *Certain losses disregarded*

- 26 (6) The trust cannot *utilise a *tax loss or *net capital loss in relation to
27 an income year, or any future income year, to the extent the loss is
28 attributable to *IMR income, an *IMR capital gain, an *IMR
29 deduction or an *IMR capital loss.

30 **842-230 IMR foreign fund**

31 An entity is an *IMR foreign fund* in relation to an income year if:

- 32 (a) the entity:
- 33 (i) is not an Australian resident at any time during the
34 income year; and
- 35 (ii) is not a resident trust estate for the purposes of
36 subsection 95(2) of the *Income Tax Assessment Act*
37 *1936* at any time during the income year; and

-
- 1 (b) the entity does not carry on a trading business (within the
2 meaning of section 102M of the *Income Tax Assessment Act*
3 *1936*) at any time during the income year; and
4 (c) subject to section 842-235, the entity:
5 (i) satisfies the widely held test at all times during the
6 income year (see subsection 842-240(1)); and
7 (ii) does *not* breach the concentration test in subsection
8 842-240(4) at any time during the income year.

9 **842-235 Wind-down phases**

10 If:

- 11 (a) the entity ceases to exist during the income year; and
12 (b) the entity was an *IMR foreign fund in relation to the
13 preceding income year;

14 treat the requirements in paragraph 842-230(c) as being satisfied.

15 **842-240 Widely held test and concentration test**

16 *Widely held test*

- 17 (1) The entity satisfies the widely held test for the purposes of
18 subparagraph 842-230(c)(i) if:
19 (a) units or shares in the entity are listed for quotation in the
20 official list of an *approved stock exchange; or
21 (b) the entity has at least 25 *members (ignoring objects of a
22 trust); or
23 (c) one or more of the entities covered by subsection (3) have a
24 *total participation interest in the entity of more than 25%; or
25 (d) all the membership interests in the entity are held, directly or
26 indirectly, by one or more entities that satisfy the
27 requirements in paragraph (a), (b) or (c); or
28 (e) the entity is an entity of a kind specified in the regulations
29 made for the purposes of this paragraph.
- 30 (2) For the purposes of subsection (1):
31 (a) treat the following entities as together being one entity:
32 (i) an individual;
33 (ii) each of his or her relatives;

- 1 (iii) each entity acting in the capacity of nominee of an
2 individual mentioned in subparagraph (i) or (ii); and
3 (b) treat the following entities as together being one entity:
4 (i) an entity that is not an individual;
5 (ii) each entity acting in the capacity of nominee of the
6 entity mentioned in subparagraph (i).

7 *Foreign widely held entities*

- 8 (3) An entity is covered by this subsection if:
9 (a) it is a life insurance company that is not an Australian
10 resident at any time during the income year; or
11 (b) it is a *foreign superannuation fund, being a fund that has at
12 least 50 *members; or
13 (c) it is an entity that is a fund established by an *exempt foreign
14 government agency for the principal purposes of funding
15 pensions (including disability and similar benefits) for the
16 citizens or other contributors of a foreign country.

17 *Concentration test*

- 18 (4) The entity breaches the concentration test if 10 or fewer entities
19 have a *total participation interest in the entity of 50% or more.
20 (5) In determining the number of entities for the purposes of
21 subsection (4), do not count the following:
22 (a) an *IMR foreign fund in relation to the income year;
23 (b) an entity that satisfies the requirement in paragraph (1)(d),
24 (3)(a), (3)(b) or (3)(c);
25 (c) an entity that holds an *indirect participation interest in the
26 entity through one or more entities covered by paragraph (a)
27 or (b) of this subsection.

28 **842-245 Financial arrangements covered by this section**

- 29 (1) A *financial arrangement is covered by this section unless
30 subsection (2), (3) or (4) applies.
31 (2) A *financial arrangement is not covered by this section if:
32 (a) the *IMR foreign fund has a *total participation interest in
33 another entity of 10% or more; and

-
- 1 (b) the financial arrangement is:
- 2 (i) a *debt interest or an *equity interest in the entity; or
- 3 (ii) the result of a *financing arrangement for the entity that
- 4 is neither a debt interest nor an equity interest; or
- 5 (iii) a *derivative financial arrangement that relates to a
- 6 financial arrangement to which subparagraph (i) or (ii)
- 7 applies.
- 8 (3) A *financial arrangement is *not* covered by this section if:
- 9 (a) the financial arrangement is a *derivative financial
- 10 arrangement that relates to a *CGT asset; and
- 11 (b) the CGT asset is:
- 12 (i) *taxable Australian real property (see section 855-20);
- 13 or
- 14 (ii) an *indirect Australian real property interest (see
- 15 section 855-25).
- 16 (4) A *financial arrangement is *not* covered by this section if its terms
- 17 allow the *IMR foreign fund to:
- 18 (a) vote at a meeting of the Board of Directors (or other
- 19 governing body) of the issuer of the financial arrangement; or
- 20 (b) participate in making financial, operating or policy decisions
- 21 in respect of the operation of the issuer of the financial
- 22 arrangement; or
- 23 (c) deal with the assets of the issuer of the financial arrangement.
- 24 (5) Subsection (4) does not apply if that subsection applies solely
- 25 because the issuer of the *financial arrangement breached a term of
- 26 the financial arrangement.

27 **842-250 *IMR income and IMR deduction***

28 *IMR income*

- 29 (1) The ***IMR income*** for an income year of an *IMR foreign fund in
- 30 relation to the income year is the sum of the fund's assessable
- 31 income for the income year to the extent that:
- 32 (a) the assessable income is attributable to a return or gain from
- 33 a *financial arrangement covered by section 842-245; and
- 34 (b) the fund has a *permanent establishment in Australia solely
- 35 as a result of engaging an entity that is a resident of Australia

- 1 to habitually exercise a general authority to negotiate and
2 conclude contracts on its behalf; and
- 3 (c) amounts are included in the assessable income of the fund
4 only because:
- 5 (i) in respect of a fund that is resident in a country that has
6 entered into an agreement (within the meaning of the
7 *International Tax Agreements Act 1953*) with Australia
8 containing a *business profits article—amounts included
9 in the assessable income of the fund are treated as
10 having a source in Australia because they are
11 attributable to a permanent establishment of the fund in
12 Australia; or
- 13 (ii) in respect of a fund that is resident in a country that has
14 not entered into an agreement (within the meaning of
15 the *International Tax Agreements Act 1953*) with
16 Australia containing a business profits article—the
17 Commissioner makes a determination under
18 section 136AE of the *Income Tax Assessment Act 1936*;
19 or
- 20 (iii) the financial arrangement is a *CGT asset covered by
21 item 3 of the table in section 855-15; or
- 22 (iv) the financial arrangement is a CGT asset covered by
23 item 4 of the table in section 855-15 because it is an
24 option or right to *acquire a CGT asset covered by
25 item 3 of that table.

26 *IMR deduction*

- 27 (2) The **IMR deduction** for an income year of an *IMR foreign fund in
28 relation to the income year is the sum of the fund's deductions for
29 the income year to the extent to which they are attributable to
30 gaining *IMR income, an *IMR capital gain, *pre-2012 IMR
31 income or a *pre-2012 IMR capital gain.
- 32 (3) Disregard the following provisions for the purposes of calculating
33 an *IMR foreign fund's *IMR income or *IMR deduction:
- 34 (a) subsection 842-210(3) (which is about certain amounts of an
35 IMR foreign fund being disregarded);
- 36 (b) paragraph 842-260(1)(a) (which is about non-IMR net
37 income);

-
- 1 (c) section 842-265 (which is about non-IMR partnership net
2 income and non-IMR partnership loss).

3 **842-255 *IMR capital gain and IMR capital loss***

4 *IMR capital gain*

- 5 (1) The ***IMR capital gain*** for an income year of an *IMR foreign fund
6 in relation to the income year is the sum of the fund's *capital gains
7 made in the income year to the extent that:
- 8 (a) the fund has a *permanent establishment in Australia solely
9 as a result of engaging an entity that is a resident of Australia
10 to habitually exercise a general authority to negotiate and
11 conclude contracts on its behalf; and
- 12 (b) the capital gains are made in respect of *CGT assets covered
13 by subsection (3) which are also *financial arrangements
14 covered by section 842-245.

15 *IMR capital loss*

- 16 (2) The ***IMR capital loss*** for an income year of an *IMR foreign fund
17 for an income year is the sum of the fund's *capital losses made in
18 relation to the income year to the extent that:
- 19 (a) the fund has a *permanent establishment in Australia solely
20 as a result of engaging an entity that is a resident of Australia
21 to habitually exercise a general authority to negotiate and
22 conclude contracts on its behalf; and
- 23 (b) the capital losses are made in respect of *CGT assets covered
24 by subsection (3) which are also *financial arrangements
25 covered by section 842-245.
- 26 (3) A *CGT asset of an *IMR foreign fund is covered by this
27 subsection if:
- 28 (a) it is covered by item 3 of the table in section 855-15 in
29 relation to the fund; or
- 30 (b) it is covered by item 4 of the table in section 855-15 in
31 relation to the fund because it is an option or right to *acquire
32 a CGT asset covered by item 3 of that table in relation to the
33 fund.

1 *Partner's IMR capital gain or IMR capital loss*

- 2 (4) Where the *IMR foreign fund is a partnership, a *capital gain or
3 *capital loss of a partner that arises in respect of the partner's
4 interest in the fund is treated as an *IMR capital gain or an *IMR
5 capital loss (as the case may be) to the extent that the capital gain
6 or capital loss is made in respect of *CGT assets covered by
7 subsection (3) which are also *financial arrangements covered by
8 section 842-245.

9 **842-260 *Non-IMR net income, non-IMR Division 6E net income and***
10 ***non-IMR net capital gain***

- 11 (1) A trust's ***non-IMR net income*** in relation to an income year is
12 determined by calculating the *net income of the trust as follows:
- 13 (a) disregard the *IMR income and *IMR deduction of the trust
14 for the income year;
- 15 (b) disregard any amount that is included in the trust's assessable
16 income under subsection 207-35(1) to the extent that the
17 amount is attributable to IMR income of the trust for the
18 income year;
- 19 (c) if the trust is a beneficiary of another trust—then:
- 20 (i) for the purposes of applying Division 6 of Part III of the
21 *Income Tax Assessment Act 1936* to the beneficiary,
22 replace the references in that Division to share of the net
23 income with references to share of the non-IMR net
24 income (within the meaning of subsection 842-260(1) of
25 the *Income Tax Assessment Act 1997*); and
- 26 (ii) for the purposes of applying Division 6E of Part III of
27 the *Income Tax Assessment Act 1936* to the beneficiary,
28 replace references in that Division to Division 6E net
29 income with references to non-IMR Division 6E net
30 income (within the meaning of subsection 842-260(2) of
31 the *Income Tax Assessment Act 1997*);
- 32 (d) if the trust is a partner in a partnership—for the purposes of
33 applying Division 5 of Part III of the *Income Tax Assessment*
34 *Act 1936* to the partner, replace references in that Division to
35 the individual interest of the partner in the partnership net
36 income or partnership loss with references to the individual
37 interest of the partner in the non-IMR partnership net income
38 or non-IMR partnership loss (within the meaning of those

1 terms in section 842-265 of the *Income Tax Assessment Act*
 2 *1997*).

3 Note: The net income of a trust may include a share of the net income of
 4 another trust. Where there is a chain of trusts these calculations are
 5 applied to each trust in the chain.

6 *Non-IMR Division 6E net income*

7 (2) A trust's *non-IMR Division 6E net income* in relation to an
 8 income year is determined by calculating the Division 6E net
 9 income (within the meaning of subsection 102UY(3) of the *Income*
 10 *Tax Assessment Act 1936*) of the trust as follows:

- 11 (a) disregard the *IMR income and *IMR deduction of the trust
 12 in relation to the income year;
 13 (b) disregard the things mentioned in subparagraphs
 14 102UW(b)(i) to (iii) of the *Income Tax Assessment Act 1936*
 15 (which are about adjustments of Division 6 assessable
 16 amounts) in relation to the income year.

17 *Non-IMR net capital gain*

18 (3) A trust's *non-IMR net capital gain* in relation to an income year is
 19 determined by calculating the *net capital gain of the trust as
 20 follows:

- 21 (a) disregard the trust's *IMR capital gain and *IMR capital loss
 22 in relation to the income year;
 23 (b) disregard any capital gain of the trust that is referable to an
 24 IMR capital gain of another *IMR foreign fund that is a trust.

25 **842-265 *Non-IMR partnership net income and non-IMR partnership***
 26 ***loss***

27 A partnership's *non-IMR partnership net income* or *non-IMR*
 28 *partnership loss* in relation to an income year is determined by
 29 calculating the *net income or *partnership loss of the partnership
 30 as follows:

- 31 (a) disregard the *IMR income and *IMR deduction of the
 32 partnership for the income year;
 33 (b) disregard any amount included in the partnership's assessable
 34 income under subsection 207-35(1) to the extent that the
 35 amount is attributable to IMR income of the partnership for
 36 the income year;

- 1 (c) if the partnership is a beneficiary of a trust—then:
- 2 (i) for the purposes of applying Division 6 of Part III of the
- 3 *Income Tax Assessment Act 1936* to the beneficiary,
- 4 replace the references in that Division to share of the net
- 5 income with references to share of the non-IMR net
- 6 income (within the meaning of subsection 842-260(1) of
- 7 the *Income Tax Assessment Act 1997*); and
- 8 (ii) for the purposes of applying Division 6E of Part III of
- 9 the *Income Tax Assessment Act 1936* to the beneficiary,
- 10 replace references in that Division to Division 6E net
- 11 income with references to non-IMR Division 6E net
- 12 income (within the meaning of subsection 842-260(2) of
- 13 the *Income Tax Assessment Act 1997*);
- 14 (d) if the partnership is a partner in another partnership—for the
- 15 purposes of applying Division 5 of Part III of the *Income Tax*
- 16 *Assessment Act 1936* to the partnership that is a partner,
- 17 replace the references in that Division to the individual
- 18 interest of the partner in the partnership net income or
- 19 partnership loss with references to the individual interest of
- 20 the partner in the non-IMR partnership net income or
- 21 non-IMR partnership loss (within the meaning of those terms
- 22 in section 842-265 of the *Income Tax Assessment Act 1997*).

23 Note: The net income of a partnership may include a share of the net income

24 of another partnership. Where there is a chain of partnerships, these

25 calculations are applied to each partnership in the chain.

26 **842-270 Pre-2012 IMR income and pre-2012 IMR capital gain**

27 *Pre-2012 IMR income*

- 28 (1) The **pre-2012 IMR income** for an income year that is the 2010-11
- 29 income year or an earlier income year of an *IMR foreign fund is
- 30 the sum of the fund's assessable income made in the income year
- 31 in respect of *financial arrangements covered by section 842-245.
- 32 (2) Disregard subsection 842-210(3) (which is about certain amounts
- 33 of an IMR foreign fund being disregarded) for the purposes of
- 34 determining the *pre-2012 IMR income of the fund.

1 *Pre-2012 IMR capital gain*

- 2 (3) The *pre-2012 IMR capital gain* for an income year that is the
3 2010-11 income year or an earlier income year of an *IMR foreign
4 fund is the sum of the fund's *capital gains made in the income
5 year in respect of *CGT assets that are *financial arrangements
6 covered by section 842-245.

7 **2 Subparagraphs 842-250(1)(c)(i) and (ii)**

8 Repeal the subparagraphs, substitute:

- 9 (i) in respect of an entity that is resident in a country that
10 has entered into an *international tax agreement with
11 Australia containing a *business profits article—
12 amounts included in the assessable income of the fund
13 are treated as having a source in Australia because they
14 are attributable to a permanent establishment of the fund
15 in Australia; or
16 (ii) in respect of an entity that has not entered into an
17 international tax agreement with Australia—the
18 Commissioner makes a determination under
19 section 136AE of the *Income Tax Assessment Act 1936*;
20 or

21 **3 Subsection 995-1(1)**

22 Insert:

23 *business profits article* means:

- 24 (a) Article 7 of the United Kingdom convention (within the
25 meaning of the *International Tax Agreements Act 1953*); or
26 (b) a corresponding provision of another agreement (within the
27 meaning of that Act).

28 **4 Subsection 995-1(1)**

29 Insert:

30 *IMR capital gain* has the meaning given by subsection 842-255(1).

31 **5 Subsection 995-1(1)**

32 Insert:

33 *IMR capital loss* has the meaning given by subsection 842-255(2).

1 **6 Subsection 995-1(1)**

2 Insert:

3 *IMR deduction* has the meaning given by subsection 842-250(2).

4 **7 Subsection 995-1(1)**

5 Insert:

6 *IMR foreign fund* has the meaning given by section 842-230.

7 **8 Subsection 995-1(1)**

8 Insert:

9 *IMR income* has the meaning given by subsection 842-250(1).

10 **9 Subsection 995-1(1)**

11 Insert:

12 *non-IMR Division 6E net income* has the meaning given by
13 subsection 842-260(2).

14 **10 Subsection 995-1(1)**

15 Insert:

16 *non-IMR net capital gain* has the meaning given by subsection
17 842-260(3).

18 **11 Subsection 995-1(1)**

19 Insert:

20 *non-IMR net income* has the meaning given by subsection
21 842-260(1).

22 **12 Subsection 995-1(1)**

23 Insert:

24 *non-IMR partnership loss* has the meaning given by
25 section 842-265.

26 **13 Subsection 995-1(1)**

27 Insert:

1 *non-IMR partnership net income* has the meaning given by
2 section 842-265.

3 **14 Subsection 995-1(1)**

4 Insert:

5 *pre-2012 IMR capital gain* has the meaning given by subsection
6 842-270(3).

7 **15 Subsection 995-1(1)**

8 Insert:

9 *pre-2012 IMR income* has the meaning given by subsections
10 842-270(1) and (2).

11 ***Tax Laws Amendment (Cross-Border Transfer Pricing) Act***
12 ***(No. 1) 2012***

13 **16 Item 9 of Schedule 1**

14 Repeal the item, substitute:

15 **9 Subsection 995-1(1) (definition of *business profits article*)**

16 Repeal the definition, substitute:

17 *business profits article* has the meaning given by subsection
18 815-15(6).

19 **17 Application**

- 20 (1) The amendments made by this Schedule apply to assessments for the
21 2010-11 income year and later income years.
- 22 (2) In addition, sections 842-230 to 842-270 of the *Income Tax Assessment*
23 *Act 1997* (inserted by this Schedule) apply in relation to another
24 amendment (the *primary amendment*) made by this Act in the same
25 way as the primary amendment applies.
26

1 **Schedule 2—FIN 48**
2

3 ***Income Tax (Transitional Provisions) Act 1997***

4 **1 At the end of Part 4-5:**

5 Add:

6 **Division 842—Exempt Australian source income and gains**
7 **of foreign residents**

8 **Subdivision 842-I—Investment manager regime**

9 **Table of sections**

10 **Operative provisions**

11	842-210	Treatment of IMR foreign fund that is a corporate tax entity
12	842-215	Treatment of foreign resident beneficiary that is not a trust or partnership
13	842-220	Treatment of foreign resident partner that is not a trust or partnership
14	842-225	Treatment of trustee of an IMR foreign fund
15	842-230	<i>Pre-2012 IMR deduction</i>
16	842-235	<i>Pre-2012 IMR capital loss</i>
17	842-240	<i>Pre-2012 non-IMR net income, pre-2012 non-IMR Division 6E net</i>
18		<i>income and pre-2012 non-IMR net capital gain</i>
19	842-245	<i>Pre-2012 non-IMR partnership net income and pre-2012 non-IMR</i>
20		<i>partnership loss</i>

21 **842-210 Treatment of IMR foreign fund that is a corporate tax**
22 **entity**

23 *Objects*

- 24 (1) The object of this section is to disregard, for the purpose of
25 calculating the assessable income of a corporate tax entity that is
26 an IMR foreign fund, certain gains and losses that arise in the
27 2010-11 income year, or an earlier income year, in respect of
28 certain kinds of financial arrangements.

Application

- 1
- 2 (2) This section applies to a corporate tax entity that is an IMR foreign
3 fund in relation to an income year if:
- 4 (a) the income year is the 2010-11 income year or an earlier
5 income year; and
- 6 (b) the corporate tax entity has pre-2012 IMR income, a
7 pre-2012 IMR deduction, a pre-2012 IMR capital gain or a
8 pre-2012 IMR capital loss in relation to the income year; and
- 9 (c) the corporate tax entity has not lodged an income tax return
10 in relation to the 2010-11 income year, or any earlier income
11 year, before the day that item 1 of Schedule 1 to the *Tax*
12 *Laws Amendment (Investment Manager Regime) Act 2012*
13 commences; and
- 14 (d) the Commissioner did not, before 18 December 2010, make
15 an assessment of the taxable income of the corporate tax
16 entity for any income year.

17 Note 1: For the purposes of this Act, **pre-2012 IMR income** is defined in
18 subsections 842-270(1) and (2) of the *Income Tax Assessment Act*
19 *1997* and **pre-2012 IMR capital gain** is defined in subsection
20 842-270(3) of that Act.

21 Note 2: **Pre-2012 IMR deduction** is defined in subsections 842-230(1) and (2)
22 of this Act and **pre-2012 IMR capital loss** is defined in
23 section 842-235 of this Act.

24 *Certain amounts disregarded*

- 25 (3) In working out the corporate tax entity's taxable income, tax loss
26 or net capital loss for the income year:
- 27 (a) treat the corporate tax entity's pre-2012 IMR income for the
28 income year as non-assessable non-exempt income; and
- 29 (b) disregard the corporate tax entity's pre-2012 IMR deduction
30 for the income year; and
- 31 (c) disregard the corporate tax entity's pre-2012 IMR capital
32 gain for the income year; and
- 33 (d) disregard the corporate tax entity's pre-2012 IMR capital loss
34 for the income year.

1 *Fraud*

- 2 (4) Subsection (3) does not apply if the Commissioner has reason to
3 believe that there has been fraud by the corporate tax entity in
4 relation to any income year.

5 *Audit or compliance review*

- 6 (5) Subsection (3) does not apply if before 18 December 2010 the
7 Commissioner notified the corporate tax entity that an audit or
8 compliance review would be undertaken in relation to any income
9 year.

10 **842-215 Treatment of foreign resident beneficiary that is not a trust**
11 **or partnership**

12 *Objects*

- 13 (1) The objects of this section are to ensure that:
14 (a) a foreign resident beneficiary of an IMR foreign fund in
15 relation to the 2010-11 income year or an earlier income year
16 is not subject to Australian income tax in respect of pre-2012
17 IMR income or a pre-2012 IMR capital gain of the fund (or
18 in respect of an amount that is referable to pre-2012 IMR
19 income or a pre-2012 IMR capital gain of the fund) for the
20 income year; and
21 (b) the foreign resident beneficiary of the fund is not able to
22 claim a deduction or utilise a tax loss in relation to the
23 income year to the extent that the deduction or tax loss was
24 incurred or made in respect of an amount that is:
25 (i) pre-2012 IMR income of the fund (or referable to
26 pre-2012 IMR income of the fund); or
27 (ii) a pre-2012 IMR capital gain of the fund (or referable to
28 a pre-2012 IMR capital gain of the fund); and
29 (c) this section does not provide any tax concession to an
30 Australian resident that invests in the fund (whether directly
31 or indirectly through one or more interposed entities).

32 *Application*

- 33 (2) This section applies to a beneficiary of a trust in relation to the
34 2010-11 income year, or an earlier income year, if:

- 1 (a) the beneficiary is not a resident of Australia at any time
2 during the income year; and
- 3 (b) the beneficiary is not a trust or partnership at any time during
4 the income year (other than a foreign superannuation fund);
5 and
- 6 (c) neither the trust nor the beneficiary has lodged an income tax
7 return in relation to the 2010-11 income year, or any earlier
8 income year, before the day that item 1 of Schedule 1 to the
9 *Tax Laws Amendment (Investment Manager Regime) Act*
10 *2012* commences; and
- 11 (d) the Commissioner did not, before 18 December 2010, make
12 an assessment of the beneficiary for any income year.

13 Note: A trust that is an IMR foreign fund is generally subject to the general
14 tax rules that apply to trusts, subject to the modifications in this
15 Subdivision: see Division 6 of Part III of the *Income Tax Assessment*
16 *Act 1936*. Also see section 842-225 of this Act, which deals with
17 trustees of IMR foreign funds.

18 *Adjustments to calculation of taxable income, tax loss or net*
19 *capital loss*

- 20 (3) In working out the beneficiary's taxable income, tax loss or net
21 capital loss for the income year:
- 22 (a) for the purposes of applying Division 6 of Part III of the
23 *Income Tax Assessment Act 1936* to the beneficiary, replace
24 the references in that Division to share of the net income with
25 references to share of the pre-2012 non-IMR net income
26 (within the meaning of subsection 842-240(1) of the *Income*
27 *Tax (Transitional Provisions) Act 1997*); and
- 28 (b) for the purposes of applying subsections 98A(1) and (3) of
29 Division 6 of Part III of the *Income Tax Assessment Act 1936*
30 to the beneficiary, replace the references in those subsections
31 to individual interest of the beneficiary in the net income
32 with references to individual interest of the beneficiary in the
33 pre-2012 non-IMR net income (within the meaning of
34 subsection 842-240(1) of the *Income Tax (Transitional*
35 *Provisions) Act 1997*); and
- 36 (c) for the purposes of applying Division 6E of Part III of the
37 *Income Tax Assessment Act 1936* to the beneficiary, replace
38 the references in that Division to Division 6E net income
39 with references to pre-2012 non-IMR Division 6E net income

- 1 (within the meaning of subsection 842-240(2) of the *Income*
2 *Tax (Transitional Provisions) Act 1997*); and
- 3 (d) in applying subsection 115-215(3) of the *Income Tax*
4 *Assessment Act 1997* to the beneficiary, replace the reference
5 in that subsection to each capital gain of the trust estate with
6 a reference to each capital gain of the trust estate that is a
7 pre-2012 non-IMR net capital gain (or is referable to a
8 pre-2012 non-IMR net capital gain of the trust estate) (within
9 the meaning of subsection 842-240(3) of the *Income Tax*
10 *(Transitional Provisions) Act 1997*); and
- 11 (e) in applying section 115-225 of the *Income Tax Assessment*
12 *Act 1997* to the beneficiary:
- 13 (i) replace references in that section to net income of the
14 trust estate with references to pre-2012 non-IMR net
15 income of the trust estate (within the meaning of
16 subsection 842-240(1) of the *Income Tax (Transitional*
17 *Provisions) Act 1997*); and
- 18 (ii) replace the reference in that section to net capital gain
19 (if any) with a reference to pre-2012 non-IMR net
20 capital gain (if any) (within the meaning of subsection
21 842-240(3) of the *Income Tax (Transitional Provisions)*
22 *Act 1997*).
- 23 (4) For the purposes of applying paragraph 115-225(1)(a) of the
24 *Income Tax Assessment Act 1997* to the beneficiary in respect of
25 the income year:
- 26 (a) disregard a capital gain of the trust to the extent the capital
27 gain is a pre-2012 IMR capital gain (or is referable to a
28 pre-2012 IMR capital gain of the fund); and
- 29 (b) disregard a pre-2012 IMR capital loss of the trust for the
30 purposes of determining the amount of the capital gain
31 remaining after applying steps 1 to 4 of the method statement
32 in subsection 102-5(1) of that Act; and
- 33 (c) disregard a net capital loss of the trust to the extent that it is
34 attributable to a pre-2012 IMR capital loss for the purposes
35 of determining the amount of the capital gain remaining after
36 applying steps 1 to 4 of the method statement in subsection
37 102-5(1).

Fraud

- (5) Subsections (3) and (4) do not apply if the Commissioner has reason to believe that there has been fraud by the trust in relation to any income year.

Audit or compliance review

- (6) Subsections (3) and (4) do not apply if before 18 December 2010 the Commissioner notified the trust that an audit or compliance review would be undertaken in relation to any income year.

842-220 Treatment of foreign resident partner that is not a trust or partnership

Objects

- (1) The objects of this section are to ensure that:
- (a) a foreign resident partner of an IMR foreign fund in relation to the 2010-11 income year, or an earlier income year, is not subject to any Australian income tax in respect of pre-2012 IMR income or a pre-2012 IMR capital gain (or in respect of an amount that is referable to pre-2012 IMR income or a pre-2012 IMR capital gain) for the income year; and
 - (b) the foreign resident partner of the fund is not able to claim a deduction or utilise a tax loss in relation to the income year to the extent that the deduction or tax loss was incurred or made in respect of an amount that is:
 - (i) pre-2012 IMR income of the fund (or referable to pre-2012 IMR income of the fund); or
 - (ii) a pre-2012 IMR capital gain (or referable to a pre-2012 IMR capital gain); and
 - (c) this section does not provide any tax concession to an Australian resident that invests in the fund (whether directly or indirectly through one or more interposed entities).

Application

- (2) This section applies to a partner in a partnership in relation to the 2010-11 income year, or an earlier income year, if:
- (a) the partner is not an Australian resident at any time during the income year; and

- 1 (b) the partner is not a trust or a partnership at any time during
2 the income year (other than a foreign superannuation fund);
3 and
4 (c) neither the partnership nor the partner has lodged an income
5 tax return in relation to the 2010-11 income year, or any
6 earlier income year, before the day that item 1 of Schedule 1
7 to the *Tax Laws Amendment (Investment Manager Regime)*
8 *Act 2012* commences; and
9 (d) the Commissioner did not, before 18 December 2010, make
10 an assessment of the taxable income of the partner for any
11 income year.

12 Note: A partnership that is an IMR foreign fund is generally subject to the
13 general tax rules that apply to partnerships, subject to the
14 modifications set out in this Subdivision: see Division 5 of Part III of
15 the *Income Tax Assessment Act 1936*.

16 *Adjustments to calculation of taxable income, tax loss or net*
17 *capital loss*

- 18 (3) In working out the partner's taxable income, tax loss or net capital
19 loss for the income year:
20 (a) for the purposes of applying Division 5 of Part III of the
21 *Income Tax Assessment Act 1936* to the partner, replace the
22 references in that Division to the individual interest of the
23 partner in the net income of the partnership with references to
24 the individual interest of the partner in the pre-2012 non-IMR
25 partnership net income (within the meaning of
26 section 842-245 of the *Income Tax (Transitional Provisions)*
27 *Act 1997*); and
28 (b) for the purposes of applying Division 5 of Part III of the
29 *Income Tax Assessment Act 1936* to the partner, replace the
30 references in that Division to the individual interest of the
31 partner in the partnership loss with references to the
32 individual interest of the partner in the pre-2012 non-IMR
33 partnership loss (within the meaning of section 842-245 of
34 the *Income Tax (Transitional Provisions) Act 1997*); and
35 (c) disregard the partner's pre-2012 IMR capital gain or an
36 amount that is referable to a pre-2012 IMR capital gain
37 (within the meaning of subsection 842-270(3) of the *Income*
38 *Tax Assessment Act 1997*) or pre-2012 IMR capital loss or an
39 amount that is referable to a pre-2012 IMR capital loss

1 (within the meaning of that term in section 842-235 of this
2 Act).

3 *Fraud*

4 (4) Subsection (3) does not apply if the Commissioner has reason to
5 believe that there has been fraud by the partnership in relation to
6 any income year.

7 *Audit or compliance review*

8 (5) Subsection (3) does not apply if before 18 December 2010 the
9 Commissioner notified the partnership that an audit or compliance
10 review would be undertaken in relation to any income year.

11 **842-225 Treatment of trustee of an IMR foreign fund**

12 *Objects*

13 (1) The object of this section is to ensure that the following provisions
14 interact appropriately with the tax concessions mentioned in
15 subsection 842-210(1), paragraphs 842-215(1)(a) and (b) and
16 paragraphs 842-220(1)(a) and (b) in respect of the 2010-11 income
17 year or an earlier income year:

18 (a) subsection 115-220(2) of the *Income Tax Assessment Act*
19 *1997*;

20 (b) section 115-225 of the *Income Tax Assessment Act 1997*;

21 (c) section 98 of the *Income Tax Assessment Act 1936*;

22 (d) section 99E of the *Income Tax Assessment Act 1936*.

23 Note: Division 6 of Part III of the *Income Tax Assessment Act 1936*,
24 Division 115 of the *Income Tax Assessment Act 1997*, and all other
25 provisions of those Acts apply to the trustee of an IMR foreign fund,
26 subject to the modifications in this section.

27 *Application*

28 (2) This section applies to the 2010-11 income year or an earlier
29 income year of a trustee of a trust that is an IMR foreign fund in
30 relation to that income year.

1 *Applying subsection 115-220(2) of the Income Tax Assessment Act*
2 *1997*

- 3 (3) For the purposes of applying subsection 115-220(2) of the *Income*
4 *Tax Assessment Act 1997* to the beneficiary:
- 5 (a) disregard a capital gain of the IMR foreign fund to the extent
6 that the capital gain is a pre-2012 IMR capital gain; and
 - 7 (b) disregard a pre-2012 IMR capital loss of the IMR foreign
8 fund for the purposes of determining the amount of the
9 capital gain remaining after applying steps 1 to 4 of the
10 method statement in subsection 102-5(1); and
 - 11 (c) disregard a net capital loss of the IMR foreign fund to the
12 extent that it is attributable to a pre-2012 IMR capital loss for
13 the purposes of determining how much of a capital gain that
14 is not a pre-2012 IMR capital gain remains after applying
15 steps 1 to 4 of the method statement in subsection 102-5(1).

16 Note: The effect of this subsection is that the increase to the assessable
17 amount which occurs as a result of section 115-220 of the *Income Tax*
18 *Assessment Act 1997* is calculated with reference to the capital gains
19 of the IMR foreign fund that are not IMR capital gains or amounts
20 referable to IMR capital gains (rather than by calculating the increase
21 with reference to *all* capital gains of the fund).

22 *Modifications to section 115-225 of the Income Tax Assessment*
23 *Act 1997*

- 24 (4) For the purposes of applying section 115-225 of the *Income Tax*
25 *Assessment Act 1997* in respect of section 115-220, make the
26 following assumptions:
- 27 (a) replace the references in section 115-225 to the net income of
28 the trust estate with references to the pre-2012 non-IMR net
29 income (within the meaning of subsection 842-240(1) of the
30 *Income Tax (Transitional Provisions) Act 1997*) of the trust
31 estate;
 - 32 (b) replace the references in section 115-225 to net capital gain
33 (if any) with a reference to pre-2012 non-IMR net capital
34 gain (if any) (within the meaning of subsection 842-240(3) of
35 the *Income Tax (Transitional Provisions) Act 1997*).

36 *Modifications to section 98 of the Income Tax Assessment Act 1936*

- 37 (5) For the purposes of applying section 98 of the *Income Tax*
38 *Assessment Act 1936* in respect of an income year that is the

2010-11 income year or an earlier income year, replace references in that section to net income with references to pre-2012 non-IMR net income (within the meaning of subsection 842-240(1) of the *Income Tax (Transitional Provisions) Act 1997*).

Note: The effect of this subsection is that where section 98 of the *Income Tax Assessment Act 1936* applies to the trustee of a trust that is an IMR foreign fund, the trustee is only assessed and made liable to pay tax in respect of pre-2012 non-IMR net income of the fund (rather than in respect of *all* net income of the fund to which section 98 would otherwise apply).

Modifications to section 99E of the Income Tax Assessment Act 1936

- (6) For the purposes of applying section 99E of the *Income Tax Assessment Act 1936* in respect of an income year that is the 2010-11 income year or an earlier income year:
- (a) replace the reference to so much of the net income with a reference to so much of the net income or pre-2012 non-IMR net income (within the meaning of subsection 842-240(1) of the *Income Tax (Transitional Provisions) Act 1997*) as the case may be; and
 - (b) replace the reference to a part of the net income of another trust estate with a reference to a part of the pre-2012 non-IMR net income (within the meaning of subsection 842-240(1) of the *Income Tax (Transitional Provisions) Act 1997*) of another trust estate.

Note: The effect of this subsection is that the trustee of a trust that receives a distribution of pre-2012 non-IMR net income from another trust is not required to apply section 98, 99 or 99A of the *Income Tax Assessment Act 1936* to those amounts.

Certain losses disregarded

- (7) The IMR foreign fund cannot utilise a tax loss or net capital loss in relation to the income year, or in any future income year, to the extent the loss is attributable to pre-2012 IMR income, a pre-2012 IMR capital gain, a pre-2012 IMR deduction or a pre-2012 IMR capital loss.

1 **842-230 *Pre-2012 IMR deduction***

- 2 (1) The *pre-2012 IMR deduction* of an IMR foreign fund for an
3 income year is the amount of the fund's deductions for the income
4 year to the extent to which they:
5 (a) are attributable to gaining the fund's pre-2012 IMR income;
6 and
7 (b) relate to the 2011-12 income year, or an earlier income year.
- 8 (2) Disregard the following provisions for the purposes of determining
9 the pre-2012 IMR deduction of the fund:
10 (a) subsection 842-210(3) (which is about certain amounts of an
11 IMR foreign fund being disregarded);
12 (b) paragraph 842-240(1)(b) (which is about pre-2012 non-IMR
13 net income);
14 (c) paragraph 842-245(a) (which is about pre-2012 non-IMR
15 partnership net income).

16 **842-235 *Pre-2012 IMR capital loss***

17 The *pre-2012 IMR capital loss* of an IMR foreign fund for an
18 income year is the sum of the fund's capital losses made in the
19 income year that are attributable to CGT assets that are financial
20 arrangements covered by section 842-245 of the *Income Tax*
21 *Assessment Act 1997*.

22 **842-240 *Pre-2012 non-IMR net income, pre-2012 non-IMR***
23 ***Division 6E net income and pre-2012 non-IMR net capital***
24 ***gain***

- 25 (1) A trust's *pre-2012 non-IMR net income* in relation to an income
26 year is determined by calculating the net income of the trust as
27 follows:
28 (a) for income years prior to the 2010-11 income year—
29 disregard the pre-2012 IMR capital gain and pre-2012 IMR
30 capital loss;
31 (b) disregard the pre-2012 IMR income and pre-2012 IMR
32 deduction of the trust for the income year;
33 (c) disregard any amount that is included in the trust's assessable
34 income under subsection 207-35(1) to the extent that the

1 amount is attributable to pre-2012 IMR income of the trust
2 for the income year;

3 (d) if the trust is a beneficiary of another trust—then:

4 (i) for the purposes of applying Division 6 of Part III of the
5 *Income Tax Assessment Act 1936* to the trust that is a
6 beneficiary, replace the references in that Division to
7 share of the net income with references to share of the
8 pre-2012 non-IMR net income (within the meaning of
9 subsection 842-240(1) of the *Income Tax (Transitional*
10 *Provisions) Act 1997*); and

11 (ii) for the purposes of applying Division 6E of Part III of
12 the *Income Tax Assessment Act 1936* to the trust that is
13 a beneficiary, replace references in that Division to
14 Division 6E net income with references to pre-2012
15 non-IMR Division 6E net income (within the meaning
16 of subsection 842-240(1) of the *Income Tax*
17 *(Transitional Provisions) Act 1997*);

18 (e) if the trust is a partner in a partnership—for the purposes of
19 applying Division 5 of Part III of the *Income Tax Assessment*
20 *Act 1936* to the partner, replace the references to the
21 individual interest of the partner in the partnership net
22 income or partnership loss with references to the individual
23 interest of the partner in the pre-2012 non-IMR partnership
24 net income or pre-2012 non-IMR partnership loss (within the
25 meaning of subsection 842-240(1) of the *Income Tax*
26 *(Transitional Provisions) Act 1997*).

27 Note: The net income of a trust may include a share of the net income of
28 another trust. Where there is a chain of trusts, these calculations are
29 applied to each trust in the chain.

30 *Pre-2012 non-IMR Division 6E net income*

31 (2) A trust's ***pre-2012 non-IMR Division 6E net income*** in relation to
32 an income year is determined by calculating the Division 6E net
33 income (within the meaning of subsection 102UY(3) of the *Income*
34 *Tax Assessment Act 1936*) of the trust as follows:

35 (a) disregard the pre-2012 IMR income and pre-2012 IMR
36 deduction of the trust in relation to the income year;

37 (b) disregard the things mentioned in subparagraphs
38 102UW(b)(i) to (iii) of the *Income Tax Assessment Act 1936*

1 (which is about adjustments of Division 6 assessable
2 amounts) in relation to the income year.

3 *Pre-2012 non-IMR net capital gain*

4 (3) A trust's *pre-2012 non-IMR net capital gain* in relation to an
5 income year is determined by calculating the net capital gain of the
6 trust as follows:

- 7 (a) disregard the trust's pre-2012 IMR capital gain and pre-2012
8 IMR capital loss in relation to the income year;
9 (b) disregard any capital gain of the trust in relation to the
10 income year that is referable to a pre-2012 IMR capital gain
11 of another IMR foreign fund that is a trust.

12 **842-245 *Pre-2012 non-IMR partnership net income and pre-2012***
13 ***non-IMR partnership loss***

14 A partnership's *pre-2012 non-IMR partnership net income* or
15 *pre-2012 non-IMR partnership loss* in relation to an income year
16 is determined by calculating the net income or partnership loss of
17 the partnership as follows:

- 18 (a) disregard the pre-2012 IMR income and pre-2012 IMR
19 deduction of the partnership for the income year;
20 (b) disregard any amount included in the partnership's assessable
21 income under subsection 207-35(1) to the extent that the
22 amount is attributable to pre-2012 IMR income of the
23 partnership for the income year;
24 (c) if the partnership is a beneficiary of a trust—then:
25 (i) for the purposes of applying Division 6 of Part III of the
26 *Income Tax Assessment Act 1936* to the beneficiary,
27 replace the references in that Division to share of the net
28 income with references to share of the pre-2012
29 non-IMR net income (within the meaning of subsection
30 842-240(1) of the *Income Tax (Transitional Provisions)*
31 *Act 1997*); and
32 (ii) for the purposes of applying Division 6E of Part III of
33 the *Income Tax Assessment Act 1936* to the beneficiary,
34 replace references in that Division to Division 6E net
35 income with references to pre-2012 non-IMR
36 Division 6E net income (within the meaning of

1
2
3
4
5
6
7
8
9
10
11
12
13
14

subsection 842-240(1) of the *Income Tax (Transitional Provisions) Act 1997*;

- (d) if the partnership is a partner in another partnership—for the purposes of applying Division 5 of Part III of the *Income Tax Assessment Act 1936* to the partner, replace the references in that Division to the individual interest of the partner in the partnership net income or partnership loss with references to the individual interest of the partner in the pre-2012 non-IMR partnership net income or pre-2012 non-IMR partnership loss (within the meaning of subsection 842-240(1) of the *Income Tax (Transitional Provisions) Act 1997*).

Note: The net income of a partnership may include a share of the net income of another partnership. Where there is a chain of partnerships, these calculations are applied to each partnership in the chain.