



Tax Laws Amendment (Election Commitments No. 1) Act 2008

No. 32, 2008

**An Act to amend the law relating to taxation, and
for related purposes**

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Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Distributions of managed investment trust income to foreign residents		3
Part 1—Amendment of the Taxation Administration Act 1953		3
Part 2—Amendment of the Income Tax Assessment Act 1997		15
Part 3—Consequential amendments		20
<i>Income Tax Act 1986</i>		20
<i>Income Tax Assessment Act 1936</i>		20
<i>Income Tax Assessment Act 1997</i>		21
<i>Income Tax (Transitional Provisions) Act 1997</i>		23
<i>Taxation Administration Act 1953</i>		24
Part 4—Application		31
Schedule 2—Prime Minister’s Literary Awards		32
<i>Income Tax Assessment Act 1997</i>		32



Tax Laws Amendment (Election Commitments No. 1) Act 2008

No. 32, 2008

An Act to amend the law relating to taxation, and for related purposes

[Assented to 23 June 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Election Commitments No. 1) Act 2008*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Distributions of managed investment trust income to foreign residents

Part 1—Amendment of the Taxation Administration Act 1953

1 Subdivision 12-H in Schedule 1

Repeal the Subdivision, substitute:

Subdivision 12-H—Distributions of managed investment trust income

Guide to Subdivision 12-H

12-375 What this Subdivision is about

A managed investment trust may be required to withhold an amount from a payment of its Australian sourced net income (other than dividends, interest and royalties) if the payment is made to an entity whose address, or place for payment, is outside Australia. If the payment is made to another entity, the managed investment trust is required to make information available to the recipient outlining certain details in relation to the payment.

If a custodian receives a payment that is covered by that information, it is required to withhold an amount from any related later payment to an entity whose address, or place for payment, is outside Australia. If the later payment is made to another entity, the custodian is required to make information available in relation to that later payment.

If an entity that is not a custodian receives a payment that is covered by that information, it is required to withhold an amount from that payment if a foreign resident becomes entitled to that payment. If a resident becomes entitled to the payment, the entity must make information available in relation to that payment.

Where there is an obligation to withhold, the applicable withholding rate is determined by the nature of the country or territory in which the recipient's address, place for payment or residency is located.

Table of sections

Operative provisions

12-385	Withholding by managed investment trusts
12-390	Withholding by custodians and other entities
12-395	Requirement to give notice or make information available
12-400	Meaning of <i>managed investment trust</i>
12-405	Meaning of <i>fund payment</i>
12-410	Entity to whom payment is made
12-415	Failure to give notice or make information available: administrative penalty
12-420	Agency rules

Operative provisions

12-385 Withholding by managed investment trusts

- (1) A trustee of a trust that is a *managed investment trust in relation to an income year that makes a *fund payment in relation to that income year to an entity covered by section 12-410 must withhold an amount from the payment.

Note 1: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

Note 2: If the payment is made to a recipient not covered by section 12-410, the trustee is required to give a notice to the recipient or publish information on a website setting out certain details about the payment: see section 12-395.

- (2) The amount the trustee must withhold is:

*Fund payment × Rate applicable under subsection (3)

- (3) The rate is:

- (a) if the address or place for payment of the recipient is in an *information exchange country:

- (i) 22.5% for *fund payments in relation to the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent; or
 - (ii) 15% for fund payments in relation to the following income year; or
 - (iii) 7.5% for fund payments in relation to later income years; or
- (b) otherwise—30%.
- (4) An **information exchange country** is a foreign country or foreign territory specified in the regulations for the purposes of this section.
- (5) This section does not apply to an amount paid by a *managed investment trust to the extent that no *managed investment trust withholding tax is payable in respect of the payment or an amount reasonably attributable to the payment.

12-390 Withholding by custodians and other entities

Withholding by custodians

- (1) A *custodian must withhold an amount from a payment (the **later payment**) it makes if:
- (a) all or some of the later payment (the **covered part**) is reasonably attributable to the part of an earlier payment received by the custodian that was covered by a notice or information under section 12-395; and
 - (b) the later payment is made to an entity covered by section 12-410.

Note 1: The covered part referred to in paragraph (1)(a) is attributable to a fund payment made by a managed investment trust, or 2 or more fund payments made by one or more managed investment trusts.

Note 2: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

Note 3: If the payment is made to a recipient not covered by section 12-410, the custodian is required to give a notice to the recipient or publish information on a website setting out certain details about the payment: see section 12-395.

- (2) The amount the *custodian must withhold is:
-

Covered part × Rate applicable under subsection (3)

(3) The rate is:

- (a) if the address or place for payment of the recipient is in an *information exchange country:
 - (i) 22.5% for *fund payments in relation to the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent; or
 - (ii) 15% for fund payments in relation to the following income year; or
 - (iii) 7.5% for fund payments in relation to later income years; or
- (b) otherwise—30%.

Withholding by other entities

- (4) An entity that is not a *managed investment trust or a *custodian must withhold an amount from a payment it receives if:
- (a) the payment or part of it (the **covered part**) was covered by a notice or information under section 12-395; and
 - (b) a foreign resident (the **recipient**) is or becomes entitled:
 - (i) to receive from the entity; or
 - (ii) to have the entity credit to the recipient, or otherwise deal with on the recipient's behalf or as the recipient directs;
- an amount (the **attributable amount**) reasonably attributable to the covered part.

Note: If the recipient not a foreign resident, the entity is required to give a notice to the recipient or publish information on a website setting out certain details about the payment: see section 12-395.

(5) The amount the entity must withhold is:

Attributable amount × Rate applicable under subsection (6)

(6) The rate is:

- (a) if the recipient is a resident of an *information exchange country:
 - (i) 22.5% for *fund payments in relation to the first income year starting on or after the first 1 July after the day on

which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent; or

- (ii) 15% for fund payments in relation to the following income year; or
 - (iii) 7.5% for fund payments in relation to later income years; or
- (b) otherwise—30%.
- (7) An entity is a resident of an *information exchange country if:
- (a) the entity is a resident of that country for the purposes of the taxation laws of that country; or
 - (b) if there are no taxation laws of that country applicable to the entity or the entity's residency status cannot be determined under those laws:
 - (i) for an individual—the individual is ordinarily resident in that country; or
 - (ii) for another entity—the entity is incorporated or formed in that country and is carrying on a business in that country.
- (8) An amount required to be withheld under subsection (4) must be withheld:
- (a) if the recipient is so entitled when the entity receives the payment—immediately after receipt; or
 - (b) if the recipient becomes so entitled at a later time—immediately after the later time.

Meaning of custodian

- (9) An entity is a **custodian** if the entity is *carrying on a *business that consists predominantly of providing a custodial or depository service (as defined by section 766E of the *Corporations Act 2001*) pursuant to an *Australian financial services licence.

Exceptions

- (10) This section does not apply:
- (a) to a company unless the company would, apart from section 12-420, be acting in the capacity as *agent for the recipient; or

- (b) to an amount paid or received by an entity to the extent that no *managed investment trust withholding tax is payable in respect of the amount or an amount reasonably attributable to the amount.

12-395 Requirement to give notice or make information available

Managed investment trusts and custodians

- (1) An entity that is a *managed investment trust or a *custodian must comply with subsection (2) if:
 - (a) the entity makes a payment to another entity (the *recipient*) from which an amount would have been required to be withheld under section 12-385 or subsection 12-390(1) if the payment had been made to an entity covered by section 12-410; and
 - (b) an amount is not required to be withheld from the payment because the recipient is not an entity covered by section 12-410.

Note: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

- (2) The entity must:
 - (a) give to the recipient a written notice containing the details specified in subsection (3); or
 - (b) make those details available on a website in a way that the details are readily accessible to the recipient for not less than 5 continuous years.
- (3) The notice must be given, or the details must be made available on a website, before or at the time when the payment is made and:
 - (a) must specify the part of the payment from which an amount would have been so required to have been withheld; and
 - (b) must specify the income year of the *managed investment trust to which that part relates.

Note: Failure to give the notice or make the details available as required by this section incurs an administrative penalty: see section 12-415.

Other entities

- (4) An entity that is not a *managed investment trust or a *custodian must comply with subsection (5) if:
- (a) the entity receives a payment; and
 - (b) another entity (also the *recipient*) is or becomes entitled:
 - (i) to receive from the entity; or
 - (ii) to have the entity credit to the recipient, or otherwise deal with on the recipient's behalf or as the recipient directs;
an amount attributable to the payment; and
 - (c) the entity would have been required to withhold an amount from the payment under subsection 12-390(4) if the recipient had been a foreign resident; and
 - (d) an amount is not required to be withheld from the payment because the recipient is not a foreign resident.
- (5) The entity must:
- (a) give to the recipient a written notice containing the details specified in subsection (6); or
 - (b) make those details available on a website in a way that the details are readily accessible to the recipient for not less than 5 continuous years.
- (6) The notice must be given, or the details must be made available on a website, before or at the time when the amount is paid or credited to the recipient, or is dealt with on the recipient's behalf or as the recipient directs, and:
- (a) must specify the part of the payment referred to in paragraph (4)(a) from which an amount would have been so required to have been withheld; and
 - (b) must specify the income year of the *managed investment trust to which that part relates.

Note: Failure to give the notice or make the details available as required by this section incurs an administrative penalty: see section 12-415.

12-400 Meaning of *managed investment trust*

- (1) A trust is a *managed investment trust* in relation to an income year if:

Schedule 1 Distributions of managed investment trust income to foreign residents
Part 1 Amendment of the Taxation Administration Act 1953

- (a) the trustee of the trust makes the first *fund payment in relation to the income year; and
- (b) the conditions in this table are satisfied.

Conditions to be satisfied

Item Condition

- | | |
|---|--|
| 1 | At the time the payment is made, or at an earlier time in the income year:
(a) a trustee was an Australian resident; or
(b) the central management and control of the trust was in Australia. |
| 2 | At the time the payment is made, the trust is a managed investment scheme (as defined by section 9 of the <i>Corporations Act 2001</i>) and is operated by a financial services licensee (as defined by section 761A of that Act) whose licence covers operating such a managed investment scheme. |
| 3 | At the time the payment is made:
(a) units in the trust are listed for quotation in the official list of an *approved stock exchange in Australia; or
(b) the trust has at least 50 *members (ignoring objects of a trust); or
(c) one of the entities covered by a paragraph of subsection (2) is a member of the trust. |
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(2) These are the entities:

- (a) a *life insurance company;
- (b) a *complying superannuation fund, a *complying approved deposit fund or a *foreign superannuation fund, being a fund that has at least 50 *members;
- (c) a trust for which the conditions in table items 1 and 2 in subsection (1), and the condition in paragraph (a) or (b) of table item 3, are satisfied;
- (d) an entity that is recognised, under a *foreign law relating to corporate regulation, as an entity with a similar status to a managed investment scheme and that has at least 50 members;
- (e) a trust:
 - (i) interests in which are owned directly by an entity covered by an earlier paragraph; or

- (ii) interests in which are held indirectly by an entity covered by an earlier paragraph through a *chain of trusts;

where the conditions in table items 1 and 2 in subsection (1) are satisfied for the trust, or for each trust in the chain.

Exception: foreign resident individual having a substantial interest

- (3) The condition in table item 3 in subsection (1) is not satisfied for a trust at a time if, at that time, one foreign resident individual, directly or indirectly:
 - (a) held, or had the right to acquire, interests representing 10% or more of the value of the interests in the trust; or
 - (b) had the control of, or the ability to control, 10% or more of the rights attaching to *membership interests in the trust; or
 - (c) had the right to receive 10% or more of any distribution of income that the trustee may make.

Start-up phase

- (4) A trust that is created during an income year is a **managed investment trust** in relation to the income year if, at the time the trustee of the trust makes the first *fund payment in relation to the income year, the conditions in table items 1 and 2 in subsection (1) are satisfied for the trust.

Wind-up phase

- (5) A trust that ceases to exist during an income year is a **managed investment trust** in relation to the income year if:
 - (a) at the time the trustee makes the first *fund payment in relation to the income year, the conditions in table items 1 and 2 in subsection (1) are satisfied for the trust; and
 - (b) the trust was a *managed investment trust in relation to the previous income year otherwise than because of subsection (4).

12-405 Meaning of *fund payment*

- (1) The object of this section is to ensure that the total of the *fund payments that the trustee of a trust makes in relation to an income

year equals, as nearly as practicable, the net income of the trust for the income year, disregarding these amounts (*excluded amounts*):

- (a) a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F;
 - (b) interest (as so defined) that is subject to, or exempted from, such a requirement;
 - (c) a *royalty that is subject to, or exempted from, such a requirement;
 - (d) a *capital gain or *capital loss from a *CGT event that happens in relation to a *CGT asset that is not *taxable Australian property;
 - (e) amounts that are not from an *Australian source;
- and disregarding deductions relating to excluded amounts.
- (2) Work out as follows how much of a payment (the *actual payment*) made by the trustee of a trust in relation to an income year is a *fund payment* in relation to that year:

Method statement

- Step 1. Reduce the actual payment by so much of it that is attributable to excluded amounts.
- Step 2. Work out what it is reasonable to expect will be the *net income of the trust for the income year:
- (a) disregarding excluded amounts, expected excluded amounts and deductions relating to those amounts; and
 - (b) on the basis that a *capital gain from *taxable Australian property of the trust that was or would be reduced under step 3 of the method statement in subsection 102-5(1) of the *Income Tax Assessment Act 1997* were double the amount it actually is.
- Step 3. The *fund payment* is so much of the step 2 amount as is reasonable having regard to:

- (a) the object of this section; and
- (b) the step 1 amount; and
- (c) the amounts of any earlier fund payments made by the trustee in relation to the income year; and
- (d) the expected amounts of any later fund payments the trustee expects to make in relation to the income year.

- (3) The expected *net income of the trust and the expected amounts of future *fund payments are to be worked out on the basis of the trustee's knowledge when the actual payment is made.
- (4) However, an amount is not a *fund payment* in relation to the income year unless it is paid:
 - (a) during the income year; or
 - (b) within 3 months after the end of the income year; or
 - (c) within a longer period (starting at the end of the period referred to in paragraph (b) and not exceeding 3 months) allowed by the Commissioner.
- (5) The Commissioner may allow a longer period as mentioned in paragraph (4)(c) only if the Commissioner is of the opinion that the trustee was unable to make the payment during the income year, or within 3 months after the end of the income year, because of circumstances beyond the influence or control of the trustee.

12-410 Entity to whom payment is made

- (1) An entity (the *recipient*) is covered by this section for a payment made to it by another entity (the *payer*) if:
 - (a) according to any record that is in the payer's possession, or is kept or maintained on the payer's behalf, the recipient has an address outside Australia; or
 - (b) the payer is authorised to make the payment to a place outside Australia.
- (2) However, a recipient is not covered by this section for a payment if, at the time the payment was made, a *business the recipient

carries on is carried on at or through an *Australian permanent establishment and the payment is attributable to that establishment.

**12-415 Failure to give notice or make information available:
administrative penalty**

An entity that:

- (a) is required to give a notice, or make details available on a website, under section 12-395 in relation to:
 - (i) a payment made to another entity; or
 - (ii) an amount paid or credited to, or dealt with on behalf of or as directed by, another entity; and
- (b) fails to comply with that section;

is liable to pay to the Commissioner a penalty equal to the amount that would have been required to be withheld under this Subdivision (disregarding subsection 12-385(5) and paragraph 12-390(10)(b)) in relation to amounts attributable to the payment or amount if the notice had been given or the details had been made available.

Note: Division 298 in this Schedule contains machinery provisions for administrative penalties.

12-420 Agency rules

- (1) This section applies to:
 - (a) a payment (the *first payment*) made to an entity (the *first entity*) in the capacity as *agent for another entity; and
 - (b) another payment made by the first entity to the extent that it is reasonably attributable to the first payment.
- (2) This Subdivision has effect as if the first entity were not an *agent in relation to the payments.

Note: As a result of subsection (2), an agent may be required to withhold amounts under this Subdivision.

Part 2—Amendment of the Income Tax Assessment Act 1997

2 After Division 830

Insert:

Division 840—Withholding taxes

Table of Subdivisions

Guide to Division 840

840-M Managed investment trust withholding tax

Guide to Division 840

840-1 What this Division is about

This Division provides the rules to determine if you are liable to pay income tax in respect of certain Australian sourced income paid to you, or which you are entitled to receive.

The rules are relevant for foreign residents and certain other entities.

The income tax payable is a withholding tax. The associated withholding obligations are in the *Taxation Administration Act 1953*.

Amounts on which there is a liability to pay withholding tax are non-assessable non-exempt income.

Subdivision 840-M—Managed investment trust withholding tax

Guide to Subdivision 840-M

840-800 What this Subdivision is about

If you are a foreign resident you may be liable to pay income tax on certain amounts of Australian sourced net income (other than dividends, interest and royalties) of a managed investment trust that are either paid to you or to which you become entitled.

A beneficiary of a trust in the capacity of a trustee of another trust will not be liable to income tax on these amounts.

Amounts on which there is a liability to pay withholding tax are non-assessable non-exempt income.

Table of sections

Operative provisions

840-805	Liability for managed investment trust withholding tax
840-810	When managed investment trust withholding tax is payable
840-815	Certain income is non-assessable non-exempt income
840-820	Agency rules

Operative provisions

840-805 Liability for managed investment trust withholding tax

Liability

- (1) You are liable to pay income tax at the rate declared by the Parliament on the amount identified in subsection (2), (3) or (4) as the fund payment part if that subsection applies to you.

Note 1: The tax, which is called managed investment trust withholding tax, is imposed by the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* and the rate of the tax is set out in that Act.

Note 2: See Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953* for provisions dealing with withholding from fund payments.

Note 3: This subsection does not apply to residents of information exchange countries for the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent. Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997* applies instead.

Payments from managed investment trusts

- (2) This subsection applies to you if:
- (a) you are paid an amount from a trust that is a *managed investment trust in relation to an income year, or an amount is applied or dealt with as you direct by such a trust; and
 - (b) all or part of that amount (the ***fund payment part***) is represented by a payment that is a *fund payment in relation to that year; and
 - (c) you are, in respect of the fund payment part, a beneficiary (but not a beneficiary in the capacity of a trustee of another trust); and
 - (d) you are a foreign resident when you are paid the amount or when the amount is applied or dealt with as you direct.

Payments from custodians

- (3) This subsection applies to you if:
- (a) you are paid an amount from a *custodian, or an amount is applied or dealt with as you direct by a custodian; and
 - (b) all or part of that amount (the ***fund payment part***) is reasonably attributable to a payment that is a *fund payment in relation to an income year by a trust that is a *managed investment trust in relation to that year; and
 - (c) you are, in respect of the fund payment part, a beneficiary (but not a beneficiary in the capacity of a trustee of another trust); and
 - (d) you are a foreign resident when you are paid the amount or when the amount is applied or dealt with as you direct; and
 - (e) either:
 - (i) the custodian is not a company; or
 - (ii) if it is a company, it would be acting in the capacity as your *agent apart from section 840-820.

Entitlements to amounts from other entities

- (4) This subsection applies to you if:
- (a) you are a beneficiary of a trust (that is not a *managed investment trust or a *custodian) and are presently entitled to a share of the income or capital of the trust; and
 - (b) all or part of that share (also the *fund payment part*) is reasonably attributable to a payment that is a *fund payment in relation to an income year made by a trust that is a managed investment trust in relation to that year; and
 - (c) you are not, in respect of that share, a beneficiary in the capacity of a trustee of another trust; and
 - (d) you are a foreign resident at the time (the *entitlement time*) when you became presently entitled.

Entitlement to capital of a trust

- (5) For the purposes of this section, section 95A of the *Income Tax Assessment Act 1936* applies in relation to capital of a trust in the same way as it applies to income of the trust.

Exception

- (6) This section does not apply to you if:
- (a) you are paid the fund payment part, or it is applied or dealt with as you direct; or
 - (b) you become presently entitled to it;
- in the course of a *business you carry on at or through an *Australian permanent establishment.

840-810 When managed investment trust withholding tax is payable

- (1) *Managed investment trust withholding tax is due and payable by you at the end of 21 days after:
- (a) if subsection 840-805(2) or (3) applies to you—the end of the month in which the fund payment part is paid, applied or dealt with; or
 - (b) if subsection 840-805(4) applies to you—the end of the month in which the entitlement time occurs.
- (2) If any of the *managed investment trust withholding tax that you are liable to pay remains unpaid after the time by which it is due to

be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day by which the withholding tax was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the withholding tax;
 - (ii) general interest charge on any of the withholding tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

- (3) The Commissioner may give you a notice specifying:
 - (a) the amount of any *managed investment trust withholding tax that the Commissioner has ascertained is payable by you; and
 - (b) the day on which that tax became due and payable.
- (4) The ascertainment of an amount of *managed investment trust withholding tax is not an assessment for the purposes of this Act.
- (5) The production of a notice given under subsection (3), or of a copy of it certified by or on behalf of the Commissioner, is conclusive evidence that the notice was given and of the particulars in it.

840-815 Certain income is non-assessable non-exempt income

An amount on which *managed investment trust withholding tax is payable is not assessable income and is not *exempt income of an entity.

840-820 Agency rules

- (1) This section applies to:
 - (a) a payment (the *first payment*) made to a *custodian in the capacity as *agent for another entity; and
 - (b) another payment made by the custodian to the extent that it is reasonably attributable to the first payment.
- (2) This Subdivision has effect as if the *custodian were not an *agent in relation to the payments.

Part 3—Consequential amendments

Income Tax Act 1986

3 Subsection 5(2A)

Omit “section 301-175 or 306-15 of the *Income Tax Assessment Act 1997*”, substitute “section 301-175 or 306-15, or Division 840, of the *Income Tax Assessment Act 1997* or Division 840 of the *Income Tax (Transitional Provisions) Act 1997*”.

Income Tax Assessment Act 1936

4 Subsection 6(1) (definition of *intermediary*)

Repeal the definition.

5 Section 99F

Repeal the section.

6 Section 99G

Repeal the section, substitute:

99G Amounts covered by withholding requirement

Subsection 98(4) does not apply to so much of the net income of a trust estate as represents income to which a beneficiary is presently entitled and gives rise to an amount from which an entity is required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*.

7 Paragraphs 99H(3)(d) and (e)

Repeal the paragraphs, substitute:

- (d) a capital gain or capital loss from a CGT event that happens in relation to a CGT asset that is not taxable Australian property;
- (e) amounts that are not from a source in Australia;

8 Subsection 102L(10)

Omit “or in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except section 12-225)”, substitute “in subsection 840-805(3) of the *Income Tax Assessment Act 1997*, in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except section 12-225) or in subsection 12-390(10) in that Schedule”.

9 Subsection 102L(15)

After “157(3)”, insert “of this Act, Subdivision 840-M of the *Income Tax Assessment Act 1997* or Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*”.

10 Subsection 102T(11)

Omit “or in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except section 12-225)”, substitute “in subsection 840-805(3) of the *Income Tax Assessment Act 1997*, in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except section 12-225) or in subsection 12-390(10) in that Schedule”.

11 Subsection 102T(16)

After “157(3)”, insert “of this Act, Subdivision 840-M of the *Income Tax Assessment Act 1997* or Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*”.

Income Tax Assessment Act 1997

12 Section 11-55 (table item headed “foreign aspects of income taxation”)

Before:

superannuation fund, foreign, interest and dividend income
of **128B(3)(jb)**

insert:

managed investment trust withholding tax, amount subject
to 840-815

13 Subparagraphs 115-215(2)(b)(iii) and (iv)

Repeal the subparagraphs, substitute:

(iii) under section 100 of that Act.

14 Subparagraph 118-12(2)(a)(vii)

Omit “or”.

15 At the end of paragraph 118-12(2)(a)

Add:

- (viii) section 840-815 (foreign residents—final withholding tax on managed investment trust income); or

16 Subsection 995-1(1)

Insert:

custodian has the meaning given by section 12-390 in Schedule 1 to the *Taxation Administration Act 1953*.

17 Subsection 995-1(1) (definition of *fund payment*)

Omit “section 12-400”, substitute “12-405”.

18 Subsection 995-1(1)

Insert:

information exchange country has the meaning given by section 12-385 in Schedule 1 to the *Taxation Administration Act 1953*.

19 Subsection 995-1(1) (definition of *intermediary*)

Repeal the definition.

20 Subsection 995-1(1) (definition of *managed investment trust*)

Omit “section 12-395”, substitute “section 12-400”.

21 Subsection 995-1(1)

Insert:

managed investment trust withholding tax means income tax payable under:

- (a) Subdivision 840-M of this Act; or
- (b) Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997*.

22 Subsection 995-1(1) (paragraph (c) of the definition of *withholding tax*)

Repeal the paragraph, substitute:

- (c) Division 840 (withholding taxes); or
- (d) Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997* (managed investment trust amounts); or
- (e) section 128B of the *Income Tax Assessment Act 1936* (dividends, interest and royalties).

Income Tax (Transitional Provisions) Act 1997

23 After Division 830

Insert:

Division 840—Withholding taxes

Table of Subdivisions

840-M Managed investment trust amounts

Subdivision 840-M—Managed investment trust amounts

Table of sections

840-805 Managed investment trust amounts
840-810 Payment of tax under section 840-805

840-805 Managed investment trust amounts

- (1) This section has effect for amounts represented by or reasonably attributable to fund payments made in relation to the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent by a trust that is a managed investment trust in relation to that year.
- (2) If you are a resident of an information exchange country, subsection 840-805(1) of the *Income Tax Assessment Act 1997* does not apply to the amounts to the extent that it would otherwise apply to you.

- (3) An entity is a resident of an information exchange country if:
- (a) the entity is a resident of that country for the purposes of the taxation laws of that country; or
 - (b) if there are no taxation laws of that country applicable to the entity or the entity's residency status cannot be determined under those laws:
 - (i) for an individual—the individual is ordinarily resident in that country; or
 - (ii) for another entity—the entity is incorporated or formed in that country and is carrying on a business in that country.
- (4) Instead, you are liable to pay income tax on the amounts (reduced as mentioned in subsection (5)) at the rate declared by the Parliament.
- Note: The tax is imposed by the *Income Tax (Managed Investment Trust Transitional) Act 2008*.
- (5) The amounts are reduced by any loss or outgoing of yours to the extent that:
- (a) it is incurred in gaining or producing the amounts; or
 - (b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing the amounts.

840-810 Payment of tax under section 840-805

- (1) Income tax under section 840-805 is due and payable by you at the end of 21 days after:
- (a) if subsection 840-805(2) or (3) of the *Income Tax Assessment Act 1997* would apply to you apart from section 840-805 of this Act—the end of the month in which the relevant amount is paid, applied or dealt with; or
 - (b) if subsection 840-805(4) of that Act would so apply to you—the end of the month in which you become presently entitled to the relevant amount.
- (2) Subsections 840-810(2) to (5) of the *Income Tax Assessment Act 1997* apply to income tax payable under this section.

Taxation Administration Act 1953

24 Subsection 8AAB(5) (before table item 3)

Insert:

2D 840-810 *Income Tax Assessment Act 1997*

25 Subsection 10-5(1) in Schedule 1 (note)

Repeal the note, substitute:

Note: The obligation to pay an amount to the Commissioner is imposed on the entity making the withholding payment (except for items 17, 19 and 22, and 26 (to the extent that it covers subsection 12-390(4))).

26 Subsection 10-5(1) in Schedule 1 (table item 26)

Omit “an intermediary”, substitute “a *custodian or other entity”.

27 Subparagraph 12-315(1)(c)(vi) in Schedule 1

Repeal the subparagraph, substitute:

- (vi) a *mining payment; or
- (vii) an amount represented by or reasonably attributable to a *fund payment; and

28 At the end of section 15-10 in Schedule 1

Add:

- (3) The amount that Subdivision 12-H requires to be withheld from a payment or receipt is worked out under subsection 12-385(2), 12-390(2) or 12-390(5).

29 Subsection 15-15(1) in Schedule 1 (note)

Omit “Subdivision 12-H is about distributions to foreign residents from managed investment trusts (except dividends, interest and royalties)”, substitute “Subdivision 12-H is about distributions of managed investment trust income”.

30 Subsection 15-35(1) in Schedule 1

Omit “, 12-385 or 12-390”.

31 Section 16-5 in Schedule 1 (note 2)

After “or 12-285”, insert “, or subsection 12-390(4),”.

32 Subsection 16-153(4) in Schedule 1 (note)

Repeal the note, substitute:

Note: The entity may be the managed investment trust itself or a custodian or other entity.

33 Subsection 16-157(1) in Schedule 1 (note)

Repeal the note, substitute:

Note: The entity may be the managed investment trust itself or a custodian or other entity.

34 Subdivision 16-D in Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision 16-D—Additional rights and obligations of entity that makes a payment

35 Section 16-195 in Schedule 1 (heading)

Repeal the heading, substitute:

16-195 Payer’s right to recover amounts of penalty: certain withholding taxes

36 Section 16-195 in Schedule 1

Before “An entity”, insert “(1)”.

37 Paragraph 16-195(b) in Schedule 1

Repeal the paragraph, substitute:

(b) section 12-320 (about a mining payment); or

(c) Subdivision 12-H (about distributions of managed investment trust income);

38 At the end of section 16-195 in Schedule 1

Add:

(2) Subsection (3) applies if an entity has paid an amount of penalty under section 12-415 to the Commissioner for a failure to give a notice, or to make details available on a website, as required by section 12-395 in relation to an amount (the *relevant amount*).

- (3) The entity may recover from another entity that is liable to pay
*managed investment trust withholding tax in relation to an amount
attributable to the relevant amount the lesser of:
- (a) an amount equal to the amount of that tax that the other entity
is liable to pay; and
 - (b) the amount of the penalty.

39 Section 18-1 in Schedule 1

Omit:

- that receives a withholding payment (except one covered by
section 12-215, 12-250 or 12-285); or
- that is the foreign resident for which a withholding payment
covered by section 12-215, 12-250 or 12-285 (or a part of it) is
received;

substitute:

- that receives a withholding payment (except one covered by
section 12-215, 12-250 or 12-285, or subsection 12-390(4));
or
- that is the foreign resident for which a withholding payment
covered by section 12-215, 12-250 or 12-285, or subsection
12-390(4), (or a part of it) is received;

40 Subsection 18-10(1) in Schedule 1

After “(about mining payments)”, insert “, Subdivision 12-H (about
distributions of managed investment trust income)”.

41 Subsection 18-15(3) in Schedule 1

Repeal the subsection.

42 Subsection 18-25(9) in Schedule 1

Repeal the subsection.

43 Group heading before section 18-30 in Schedule 1

Repeal the heading, substitute:

Entitlement to credits: dividend, interest or royalty or amount attributable to fund payment

44 After section 18-30 in Schedule 1

Insert:

18-32 Credit: amount attributable to fund payment

- (1) An entity is entitled to a credit if:
 - (a) the entity's *ordinary income or *statutory income includes an amount that is represented by or reasonably attributable to a *fund payment; and
 - (b) the entity has borne all or part of an *amount withheld from the payment under Subdivision 12-H.
- (2) The amount of the credit is that amount or part.

45 Section 18-35 in Schedule 1 (heading)

Repeal the heading, substitute:

18-35 Credit: penalty under section 12-415, 16-30 or 16-40 or related general interest charge

46 Paragraph 18-35(1)(a) in Schedule 1

After "Subdivision 12-F", insert "or 12-H".

47 After subsection 18-35(1) in Schedule 1

Insert:

- (1A) If an entity has paid:
 - (a) an amount of penalty under section 12-415 to the Commissioner for a failure to give a notice, or to make details available on a website, as required by section 12-395; or
 - (b) an amount of *general interest charge under section 298-25 for the penalty;the entity liable to pay the *managed investment trust withholding tax in relation to the amount (the *relevant amount*) giving rise to the penalty is entitled to a credit equal to the lesser of:

- (d) the amount of penalty, or general interest charge, as appropriate; and
- (e) the amount of managed investment trust withholding tax (and any general interest charge under section 840-810 of the *Income Tax Assessment Act 1997*) in relation to the relevant amount.

48 Paragraph 18-35(2)(a) in Schedule 1

After “paragraph (1)(a)”, insert “or (1A)(a)”.

49 Paragraph 18-35(2)(c) in Schedule 1

After “subsection (1)”, insert “or (1A)”.

50 Paragraph 18-35(3)(a) in Schedule 1

After “paragraph (1)(b)”, insert “or (1A)(b)”.

51 Paragraph 18-35(3)(c) in Schedule 1

After “subsection (1)”, insert “or (1A)”.

52 Section 18-50 in Schedule 1

Repeal the section.

53 Paragraphs 20-35(2)(a) and (b) in Schedule 1

After “12-317”, insert “, or subsection 12-390(4)”.

54 At the end of subsection 45-120(3) in Schedule 1

Add:

; and (c) which a penalty is applicable under section 12-415.

55 Subsection 250-10(2) in Schedule 1 (after table item 39)

Insert:

39A	managed investment trust withholding tax	840-810(1)	<i>Income Tax Assessment Act 1997</i>
39B	managed investment trust withholding tax	840-810(1)	<i>Income Tax (Transitional Provisions) Act 1997</i>

56 Paragraph 298-5(c) in Schedule 1

Before “Division 16”, insert “Subdivision 12-H or”.

57 Subsection 340-10(2) in Schedule 1 (table item 6)

Repeal the item, substitute:

6 *tax

- (a) section 128B of the *Income Tax Assessment Act 1936*; or
- (b) section 128V of the *Income Tax Assessment Act 1936*; or
- (c) section 4-1 of the *Income Tax Assessment Act 1997*; or
- (d) section 840-805 of the *Income Tax Assessment Act 1997*; or
- (e) section 840-805 of the *Income Tax (Transitional Provisions) Act 1997*

Part 4—Application

58 Application

The amendments made by this Schedule apply to fund payments made in relation to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent and later income years.

Schedule 2—Prime Minister's Literary Awards

Income Tax Assessment Act 1997

1 Section 11-10 (at the end of table item headed "prizes")

Add:

Prime Minister's Literary Awards 51-60

2 At the end of section 51-60

Add:

- (3) To the extent that a Prime Minister's Literary Award would otherwise be assessable income, it is exempt from income tax.

3 Application

The amendments made by this Schedule apply to assessments for the 2007-08 income year and later income years.

*[Minister's second reading speech made in—
House of Representatives on 4 June 2008
Senate on 18 June 2008]*

(125/08)
