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New Australian IMR legislation offers capital gains tax exemption to foreign investment funds

The new Australian Investment Manager Regime legislation (IMR 3), which was enacted on June 25, will make it easier for foreign investment funds to benefit from capital gains tax exemption.

Previous versions of the legislation had allowed certain foreign investment funds to qualify for an exemption on capital gains. However, the legislation was written in such a way that made it rather difficult for a typical master fund structure to actually qualify for the exemption.

This uncertainty proved to be a significant issue for investment funds as gains realized in Australia were potentially taxable at a 30% tax rate (on net annual gains).

The new test eliminates much of this uncertainty by significantly simplifying the so-called “widely held” and “concentration” tests. For example, the new “widely held” test provides that to qualify for the exemption an investment fund must satisfy any of the following tests:

- No one investor in the investment fund may have an interest of 20% or more; or
- Five (or fewer) investors in the investment fund may not, in aggregate, own 50% or more of the fund.

The new legislation also expands and clarifies:

- The types of entities that automatically qualify as “widely held” (e.g., insurance companies, certain foreign pension funds)
- The treatment of affiliates of an entity as being one entity under the “widely held” test; and
- It includes a “look through” rule that allows for the two tests to be applied through intermediary non-qualifying entities.

Effective date: The new legislation applies to the 2015–16 and future fiscal years.

Contact Information

For more information on this Alert, or for help in determining whether your investment fund may qualify for the capital gains exemption, please contact [Carles Farre](#) or one of our AI tax professionals:

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