



Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 8 December 2022

David Hurley
Governor-General

By His Excellency's Command

Stephen Jones
Assistant Treasurer
Minister for Financial Services

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1 Name

This instrument is the *Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	9 December 2022

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Income Tax Assessment Act 1936*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Income Tax Assessment (1936 Act) Regulation 2015

1 Section 14 (table item 1, column 2, paragraph (b))

Repeal the paragraph, substitute:

(b) any of the following apply:

- (i) the parties were not dealing with each other at arm's length in relation to the transaction;
- (ii) the transaction results in an amount of \$200,000 or more being included in or allowable as a deduction from the assessable income of any of the parties in respect of the assessment year;
- (iii) the transaction involves one or more CGT events, and the sum of the capital proceeds from the events is \$200,000 or more;

2 Section 14 (table item 1, column 2, paragraph (c))

Repeal the paragraph.

3 Section 14 (after table item 5)

Insert:

5A	(a) Paragraph (f) of item 1; or (b) paragraph (e) of item 2; or (c) paragraph (d) of item 3	The sum of the amounts of assessable income from sources other than an Australian source (within the meaning of the <i>Income Tax Assessment Act 1997</i>) of the following for the assessment year is \$200,000 or more: (a) the assessed entity; (b) an affiliate (within the meaning of that Act) of the assessed entity; (c) an entity that is connected with (within the meaning of that Act) the assessed entity.
5B	(a) Paragraph (e) of item 2; or (b) paragraph (d) of item 3	The assessed entity is, at any time in the assessment year: (a) a foreign controlled Australian entity (within the meaning of the <i>Income Tax Assessment Act 1997</i>); or (b) a non-resident.

4 Section 14 (table item 8, column 2, after paragraph (c))

Insert:

(ca) section 177DA of the Act (schemes that limit a taxable presence in Australia);

5 Section 14 (table item 8, column 2, after paragraph (e))

Insert:

(ea) subsection 177J(1) of the Act (diverted profits tax);

6 Section 14 (at the end of the table)

Add:

10	(a) Paragraph (e) of item 2; or (b) paragraph (d) of item 3	At any time during the assessment year, the total number of entities that are connected with (within the meaning of the <i>Income Tax Assessment Act 1997</i>), or are an affiliate of (within the meaning of that Act), the assessed entity is 10 or more.
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11	(a) Paragraph (e) of item 2; or (b) paragraph (d) of item 3	The assessed entity: (a) has claimed a tax offset under Division 355 of the <i>Income Tax Assessment Act 1997</i> (research and development) for the assessment year; or (b) might be able to deduct an amount under a provision mentioned in subsection 355-105(2) of that Act for the assessment year; or (c) has an amount that might be included in the assessed entity's assessable income for the assessment year under section 355-450 of that Act.
12	(a) Paragraph (f) of item 1; or (b) paragraph (e) of item 2; or (c) paragraph (d) of item 3	Any of the following apply in the assessment year: (a) the assessed entity has chosen to obtain a roll-over under Division 125 of the <i>Income Tax Assessment Act 1997</i> (demerger relief); (b) there is a roll-over under Subdivision 126-B of that Act (companies in the same wholly-owned group) in respect of which the assessed entity is the originating company or the recipient company mentioned in that Subdivision; (c) the assessed entity has chosen, or is taken to have chosen, to obtain a roll-over under Division 615 of that Act (roll-overs for business restructures).
13	(a) Paragraph (f) of item 1; or (b) paragraph (e) of item 2; or (c) paragraph (d) of item 3	The assessed entity disregarded a capital gain or capital loss in relation to the assessment year under section 855-10 of the <i>Income Tax Assessment Act 1997</i> (capital gains and losses of foreign residents).

7 At the end of Part 9

Add:

27 Application of the *Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022*

The amendments made by Schedule 1 to the *Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022* apply in relation to an assessment for an income year if:

- (a) the assessment is made after the commencement of that Schedule; and
- (b) the income year begins on or after 1 July 2021.