



Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015

No. 170, 2015

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 170, 2015

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

[Assented to 11 December 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Combating
Multinational Tax Avoidance) Act 2015*.

2 Commencement

- (1) Each provision of this Act 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 Act	The day this Act receives the Royal Assent.	11 December 2015

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Income Tax Assessment Act 1997

1 After subsection 960-50(7)

Insert:

(7A) Despite subsections (6) and (7), an amount that is relevant for the purposes of quantifying, for the purposes of section 960-565, the *annual global income of a *global parent entity as shown in *global financial statements for the entity is to be translated into Australian currency at the average exchange rate applicable for the period for which the statements are prepared.

(7B) For the purposes of subsection (7A):

(a) the entity must obtain:

(i) all of the exchange rates that it will use to work out the average exchange rate; or

(ii) an average exchange rate that has been worked out for the period referred to in that subsection;

from one or more sources that are not *associates of the entity, and not the entity itself, or from one or more sources specified by the Commissioner in a notice to the entity; and

(b) the entity must use the average exchange rate so worked out in translating into Australian currency any amount referred to in that subsection that is relevant to that period.

(7C) A notice under paragraph (7B)(a) is not a legislative instrument.

2 After subsection 960-50(9)

Insert:

(9A) Regulations made for the purposes of subsection (8) do not apply to translating an amount into Australian currency under subsection (7A), unless they provide otherwise.

3 At the end of Division 960

Add:

Subdivision 960-U—Significant global entities

Guide to Subdivision 960-U

960-550 What this Subdivision is about

Generally speaking, a significant global entity is:

- (a) a global parent entity with an annual global income of \$1 billion or more; or
- (b) any member of such a global parent entity's group.

Table of sections

Operative provisions

960-555	Meaning of <i>significant global entity</i>
960-560	Meaning of <i>global parent entity</i>
960-565	Meaning of <i>annual global income</i>
960-570	Meaning of <i>global financial statements</i>

Operative provisions

960-555 Meaning of *significant global entity*

- (1) An entity is a ***significant global entity*** for a period if the entity is a *global parent entity:
 - (a) whose *annual global income for the period is \$1 billion or more; or
 - (b) in relation to whom the Commissioner makes a determination under subsection (3) for the period.
- (2) An entity is also a ***significant global entity*** for a period if:
 - (a) the entity is a member of a group of entities that are consolidated for accounting purposes as a single group; and
 - (b) one of the other members of the group is a *global parent entity:
 - (i) whose *annual global income for the period is \$1 billion or more; or

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- (ii) in relation to whom the Commissioner makes a determination under subsection (3) for the period.
- (3) The Commissioner may make a determination under this subsection in relation to a *global parent entity for a period if:
- (a) *global financial statements have not been prepared for the entity for the period; and
 - (b) on the basis of the information available to the Commissioner, the Commissioner reasonably believes that, if such statements had been prepared for the period, the entity's *annual global income for the period would have been \$1 billion or more.
- The Commissioner must give a notice of the determination to the global parent entity, or to another entity that becomes a *significant global entity as a result of the determination.
- (4) An entity who is dissatisfied with a determination made in relation to the entity may object against the determination in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (5) However, if:
- (a) there has been a taxation objection (within the meaning of section 14ZL of the *Taxation Administration Act 1953*) against an *assessment relating to the entity; and
 - (b) the assessment involved the application of section 177DA of the *Income Tax Assessment Act 1936* (schemes that limit a taxable presence in Australia) in relation to the entity;
- the right of objection under subsection (4) of this section is unaffected, but the outcome of that objection has no effect on the assessment or on the outcome of the taxation objection.
- Note: Section 14ZVA of the *Taxation Administration Act 1953* excludes from a taxation objection to an assessment any grounds (or potential grounds) for an objection to a determination under subsection (3) of this section.
- (6) A determination under subsection (3) is not a legislative instrument.
- (7) Section 175 of the *Income Tax Assessment Act 1936* (validity) applies to a determination under subsection (3) of this section in the same way as it applies to an *assessment.
-

960-560 Meaning of *global parent entity*

A *global parent entity* is an entity that, according to:

- (a) *accounting principles; or
- (b) if accounting principles do not apply in relation to the entity—commercially accepted principles relating to accounting;

is not controlled by another entity.

Note: A global parent entity may be a single entity that is not a member of a group of entities.

960-565 Meaning of *annual global income*

The *annual global income* of a *global parent entity for a period is:

- (a) if the entity is a member of a group of entities that are consolidated for accounting purposes as a single group—the total annual income of all the members of the group; or
- (b) otherwise—the total annual income of the entity;

as shown in the latest *global financial statements for the entity for the period.

960-570 Meaning of *global financial statements*

Global financial statements for a *global parent entity for a period (the *relevant period*) are the financial statements that:

- (a) have been prepared and audited in relation to that entity, or that entity and other entities, in accordance with:
 - (i) *accounting principles and *auditing principles; or
 - (ii) if such principles do not apply—commercially accepted principles, relating to accounting and auditing, that ensure the statements give a true and fair view of the financial position and performance of that entity (or that entity and the other entities on a consolidated basis); and
- (b) are for the most recent period ending:
 - (i) no later than the end of the relevant period; and
 - (ii) no earlier than 12 months before the start of the relevant period.

4 Subsection 995-1(1)

Insert:

annual global income has the meaning given by section 960-565.

global financial statements has the meaning given by section 960-570.

global parent entity has the meaning given by section 960-560.

significant global entity has the meaning given by section 960-555.

Taxation Administration Act 1953

4A Paragraphs 3C(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the entity has total income equal to or exceeding \$100 million for the income year and, at the end of the income year:
 - (i) the entity is not an Australian resident that is a private company for the income year; or
 - (ii) the entity is a member of a wholly-owned group that has a foreign resident ultimate holding company; or
 - (iii) the percentage of foreign shareholding in the entity is greater than 50%; or
- (b) the entity has total income equal to or exceeding \$200 million for the income year and, at the end of the income year, the entity is an Australian resident that is a private company for the income year.

4B After section 3C

Insert:

3CA Reporting of information by significant global entities

- (1) This section applies to a corporate tax entity for an income year if:
 - (a) the entity is a significant global entity for the income year; and

- (b) at the end of the income year, the entity is:
 - (i) an Australian resident; or
 - (ii) a foreign resident who operates an Australian permanent establishment (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*); and
 - (c) the entity does not lodge a general purpose financial statement for the financial year most closely corresponding to the income year:
 - (i) with the Australian Securities and Investments Commission; and
 - (ii) within the time provided under subsection 319(3) of the *Corporations Act 2001* for lodgement of a report for that financial year.
- (2) A corporate tax entity to which this section applies for an income year must, on or before the day by which the entity is required to lodge its income tax return for the income year with the Commissioner, give to the Commissioner a general purpose financial statement for the financial year most closely corresponding to the income year.
- Note: Section 286-75 in Schedule 1 provides an administrative penalty for breach of this subsection.
- (3) The Commissioner must give a copy of the statement to the Australian Securities and Investments Commission.
- (4) The giving of the copy to the Australian Securities and Investments Commission under subsection (3) is taken, for the purposes of the *Corporations Act 2001*, to be lodgement of the document with the Australian Securities and Investments Commission.
- Note: Under section 1274 of the *Corporations Act 2001*, a person may inspect, and require to be given a copy or extract of, any document lodged with the Australian Securities and Investments Commission.
- (5) For the purposes of this section, a general purpose financial statement in relation to an entity:
- (a) must be prepared in accordance with:
 - (i) the accounting principles; or

- (ii) if accounting principles do not apply in relation to the entity—commercially accepted principles relating to accounting; and
 - (b) if the entity is a member of a group of entities that are consolidated for accounting purposes as a single group—must relate to:
 - (i) the entity; or
 - (ii) the entity and some or all of the other members of the group.
- (6) An expression used in this section that is also used in the *Income Tax Assessment Act 1997* has the same meaning as in that Act.

5 Section 14ZVA

Repeal the section, substitute:

14ZVA Limited objection rights because of other objections

If there has been a taxation objection against:

- (a) a private ruling; or
- (b) a determination under subsection 960-555(3) of the *Income Tax Assessment Act 1997*;

the right of objection under this Part against an assessment, or against a decision made under an indirect tax law or an excise law, relating to the matter ruled or determined is limited to a right to object on grounds that neither were, nor could have been, grounds for the taxation objection against the ruling or determination.

6 Application of amendment—item 4A

The amendment made by item 4A applies in relation to an entity for the 2013-14 income year and each later income year.

7 Application of amendment—item 4B

The amendment made by item 4B of this Schedule applies in relation to income years commencing on or after 1 July 2016.

Schedule 2—Multinational anti-avoidance

Income Tax Assessment Act 1936

1 Subsection 177A(1)

Insert:

associate has the same meaning as in Part X.

Australian customer, of a foreign entity, means another entity who:

- (a) is in Australia, or is an Australian entity; and
- (b) if the foreign entity is a member of a global group—is not a member of that global group.

Australian entity has the same meaning as in Part X.

Australian permanent establishment of an entity means:

- (a) if:
 - (i) the entity is a resident in a country that has entered into an international tax agreement (within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*) with Australia; and
 - (ii) that agreement contains a permanent establishment article (within the meaning of that subsection); a permanent establishment (within the meaning of that agreement) in Australia; or
- (b) otherwise—a permanent establishment of the person in Australia.

entity has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

foreign entity has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

foreign law has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

global group means a group of entities, at least one of which is a foreign entity, that are consolidated for accounting purposes as a single group.

significant global entity has the meaning given by section 960-555 of the *Income Tax Assessment Act 1997*.

supply has the meaning given by section 9-10 of the GST Act, but does not include any of the following, or of any combination of 2 or more of the following:

- (a) a supply of an equity interest in an entity;
- (b) a supply of a debt interest in an entity;
- (c) a supply of an option for:
 - (i) a supply of a kind referred to in paragraph (a) or (b); or
 - (ii) any combination of 2 or more such supplies.

2 Subsection 177A(5)

After “this Part”, insert “(other than section 177DA)”.

3 At the end of section 177CB

Add:

- (5) Subsection (4) applies in relation to the scheme as if references in that subsection to the operation of this Act included references to the operation of any foreign law relating to taxation:
 - (a) if this Part applies to the scheme because of section 177DA; or
 - (b) for the purposes of determining whether this Part applies to the scheme because of section 177DA.

4 After section 177D

Insert:

177DA Schemes that limit a taxable presence in Australia

Scheme for a purpose including obtaining a tax benefit etc.

- (1) Without limiting section 177D, this Part also applies to a scheme if:

- (a) under, or in connection with, the scheme:
 - (i) a foreign entity makes a supply to an Australian customer of the foreign entity; and
 - (ii) activities are undertaken in Australia directly in connection with the supply; and
 - (iii) some or all of those activities are undertaken by an Australian entity who, or are undertaken at or through an Australian permanent establishment of an entity who, is an associate of or is commercially dependent on the foreign entity; and
 - (iv) the foreign entity derives ordinary income, or statutory income, from the supply; and
 - (v) some or all of that income is not attributable to an Australian permanent establishment of the foreign entity; and
- (b) it would be concluded (having regard to the matters in subsection (2)) that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a principal purpose of, or for more than one principal purpose that includes a purpose of:
 - (i) enabling a taxpayer (a *relevant taxpayer*) to obtain a tax benefit, or both to obtain a tax benefit and to reduce one or more of the relevant taxpayer's liabilities to tax under a foreign law, in connection with the scheme; or
 - (ii) enabling the relevant taxpayer and another taxpayer (or other taxpayers) each to obtain a tax benefit, or both to obtain a tax benefit and to reduce one or more of their liabilities to tax under a foreign law, in connection with the scheme;whether or not that person who entered into or carried out the scheme or any part of the scheme is the relevant taxpayer or is the other taxpayer or one of the other taxpayers; and
- (c) the foreign entity is a significant global entity for a year of income in which the relevant taxpayer, or one or more other taxpayers, would (but for this Part):
 - (i) obtain a tax benefit; or
 - (ii) reduce one or more of their liabilities to tax under a foreign law;

in connection with the scheme.

Have regard to certain matters

- (2) For the purposes of paragraph (1)(b), have regard to the following matters:
- (a) the matters in subsection 177D(2);
 - (b) the extent to which the activities that contribute to bringing about the contract for the supply are performed, and are able to be performed, by:
 - (i) the foreign entity; or
 - (ii) another entity referred to in subparagraph (1)(a)(iii); or
 - (iii) any other entities;
 - (c) the result, in relation to the operation of any foreign law relating to taxation, that (but for this Part) would be achieved by the scheme.

Deferral of foreign tax liabilities

- (3) For the purposes of paragraph (1)(b), a deferral of a taxpayer's liabilities to tax under a foreign law is taken to be a reduction of those liabilities, unless there are reasonable commercial grounds for the deferral.

Tax benefit

- (4) Despite subsection (1), this Part applies to the scheme because of this section only if the relevant taxpayer has obtained, or would but for section 177F obtain, a tax benefit in connection with the scheme.

Commissioner not required to enquire into foreign tax matters

- (5) The Commissioner is required to have regard to a matter referred to in paragraph (2)(c) only so far as information relevant to that matter is available to the Commissioner, and is not required to acquire further information in order to have regard to that matter.

Schemes outside Australia

- (6) This section applies whether or not the scheme has been or is entered into or carried out in Australia or outside Australia or partly in Australia and partly outside Australia.

Taxation Administration Act 1953

5 After subparagraph 284-145(1)(b)(i) in Schedule 1

Insert:

- (ia) for a scheme to which Part IVA of the *Income Tax Assessment Act 1936* applies because of section 177DA of that Act—an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a scheme benefit from the scheme; or

6 Paragraph 284-145(2A)(b) in Schedule 1

Omit “subparagraph (1)(b)(i) is not”, substitute “neither subparagraph (1)(b)(i) nor subparagraph (1)(b)(ia) is”.

7 Application

- (1) The amendments made by this Schedule apply on or after 1 January 2016 in connection with a scheme, whether or not the scheme was entered into, or was commenced to be carried out, before that day.
- (2) Despite subitem (1), the amendments made by this Schedule do not apply in relation to tax benefits that a taxpayer derives before that day.

Schedule 3—Scheme penalties for significant global entities

Taxation Administration Act 1953

1 At the end of section 284-155 in Schedule 1

Add:

- (3) However, the amount of the penalty is twice the amount worked out under subsection (1) or (2) of this section if:
- (a) you are a *significant global entity during an income year that consists of, or includes all or part of, the accounting period to which your *scheme shortfall amount relates; and
 - (b) it is not *reasonably arguable that the adjustment provision does not apply.

2 Application

The amendment made by this Schedule applies in relation to any scheme benefit that an entity gets in relation to an income year commencing on or after 1 July 2015, whether the scheme to which the scheme benefit relates was entered into, or commenced to be carried out, before, on or after the commencement of that income year.

Schedule 4—Country-by-Country reporting

Income Tax Assessment Act 1997

1 At the end of Division 815

Add:

Subdivision 815-E—Reporting obligations for significant global entities

Guide to Subdivision 815-E

815-350 What this Subdivision is about

Significant global entities must give the Commissioner statements under this Subdivision.

Note: This Subdivision enables the implementation of measures issued by the Organisation for Economic Cooperation and Development relating to transfer pricing documentation and country-by-country reporting (including Action 13 of the Action Plan on Base Erosion and Profit Shifting of the G20 and the Organisation for Economic Cooperation and Development)

Table of sections

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Operative provisions

815-355 Requirement to give statements

- (1) You must give to the Commissioner a statement of each of the kinds referred to in subsection (3), in the *approved form, in relation to an income year if:

-
- (a) you were a *significant global entity during a period that includes the whole or a part of the income year that preceded that income year; and
 - (b) you are, during that income year, any of the following:
 - (i) an Australian resident;
 - (ii) a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*;
 - (iii) a partnership that has at least one partner who is an Australian resident;
 - (iv) a foreign resident who operates an Australian permanent establishment (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*);
 - (v) a non-resident trust estate (within the meaning of section 102AAB of the *Income Tax Assessment Act 1936*) that operates an Australian permanent establishment (within the meaning of Part IVA of that Act);
 - (vi) a partnership that operates an Australian permanent establishment (within the meaning of that Part); and
 - (c) you are not exempted under section 815-365 from giving the statement; and
 - (d) you are not included in a class of entities prescribed by the regulations.

Note: Under section 815-360, the Commissioner may allow you to give statements in relation to a 12 month period other than an income year.

- (2) You must give the statement within 12 months after the end of the period to which it relates.

Note: Section 388-55 in Schedule 1 to the *Taxation Administration Act 1953* allows the Commissioner to defer the time for giving the statement.

- (3) The statements are to be of the following kinds:
 - (a) a statement relating to the global operations and activities, and the pricing policies relevant to transfer pricing, of:
 - (i) you; and
 - (ii) if you were a *significant global entity during the preceding income year by virtue of your membership of a group of entities—the other members of that group;

- (b) a statement relating to your operations, activities, dealings and transactions;
- (c) a statement relating to the allocation between countries of the income and activities of, and taxes paid by:
 - (i) you; and
 - (ii) if subparagraph (a)(ii) applies—the other members of that group.

Note: These statements correspond to the following in Annexes I, II and III to Chapter V set out in the Guidance on Transfer Pricing Documentation and Country-by-country Reporting of the Organisation for Economic Cooperation and Development and the G20:

- (a) a statement under paragraph (a) corresponds to the master file (see Annexe I);
- (b) a statement under paragraph (b) corresponds to the local file (see Annexe II);
- (c) a statement under paragraph (c) corresponds to the country-by-country report (see Annexe III).

815-360 Replacement reporting periods

- (1) The Commissioner may, by notice in writing, allow you to give all statements, or specified kinds of statements, under section 815-355 in relation to a 12 month period other than an income year.
- (2) A notice under subsection (1) is not a legislative instrument.

815-365 Exemptions

Exemptions for particular entities

- (1) The Commissioner may, by notice in writing, exempt an entity from:
 - (a) giving statements under section 815-355; or
 - (b) giving statements of a particular kind under that section.
- (2) A notice under subsection (1) is not a legislative instrument.

General exemptions

- (3) The Commissioner may, by legislative instrument, determine that section 815-355 does not apply to a specified class of entity.

2 Application

The amendments made by this Schedule apply in relation to income years starting on or after 1 January 2016.

*[Minister's second reading speech made in—
House of Representatives on 16 September 2015
Senate on 9 November 2015]*

(171/15)
