



Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018

No. 121, 2018

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)



Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018

No. 121, 2018

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

[Assented to 3 October 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018*.

No. 121, 2018

*Treasury Laws Amendment (Black Economy Taskforce Measures
No. 1) Act 2018*

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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 after this Act receives the Royal Assent.	4 October 2018

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Review of operation of amendments

- (1) The Minister must cause a review of the operation of the amendments made by Schedule 1 of this Act.
- (2) The review must start as soon as practicable after 2 years after Royal Assent.
- (3) The Minister must cause a written report about the review to be prepared.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

(5) The report is not a legislative instrument.

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No. 1) Act 2018 3*

Schedule 1—Electronic sales suppression tools

Part 1—Amendments

Income Tax Assessment Act 1997

1 Subsection 995-1(1)

Insert:

electronic sales suppression tool has the meaning given by section 8WAB of the *Taxation Administration Act 1953*.

Taxation Administration Act 1953

2 After Subdivision B of Division 2 of Part III

Insert:

Subdivision BAA—Offences relating to electronic sales suppression tools

8WAA Object of this Subdivision

The object of this Subdivision is to deter the production, use and distribution of tools to manipulate or falsify electronic point of sale records to facilitate tax evasion.

8WAB Interpretation

In this Subdivision:

electronic sales suppression tool means a device, software program or other thing, a part of any such thing, or a combination of any such things or parts, that meets the following conditions:

- (a) it is capable of falsifying, manipulating, hiding, obfuscating, destroying, or preventing the creation of, a record that:
 - (i) an entity is required by a taxation law to keep or make;
and

- (ii) is, or would be, created by a system that is or includes an electronic point of sale system;
- (b) a reasonable person would conclude that one of its principal functions is to falsify, manipulate, hide, obfuscate, destroy, or prevent the creation of, such records.

right to use includes right to possess.

supply has the meaning given by section 9-10 of the *A New Tax System (Goods and Services Tax) Act 1999*.

8WAC Producing or supplying electronic sales suppression tools

- (1) A person commits an offence if the person manufactures, develops or publishes an electronic sales suppression tool.

Penalty: 5,000 penalty units.

- (2) A person commits an offence if the person:
 - (a) makes a supply of, or makes available for use, an electronic sales suppression tool or a right to use an electronic sales suppression tool; or
 - (b) provides a service to an entity that involves the use of an electronic sales suppression tool.

Penalty: 5,000 penalty units.

- (3) Subsections (1) and (2) do not apply to conduct undertaken by the person for the purpose of preventing or deterring tax evasion or enforcing a taxation law.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) Section 15.4 (extended geographical jurisdiction—category D) of the *Criminal Code* applies to an offence against subsection (1) if the electronic sales suppression tool is, at any time, used to modify records that a taxation law requires an entity to keep or make.

- (6) Section 15.4 (extended geographical jurisdiction—category D) of the *Criminal Code* applies to an offence against subsection (2) if the person makes a supply of, or makes available for use, the electronic sales suppression tool or the right to use the tool to an entity that is required by a taxation law to keep or make any record.

8WAD Possessing electronic sales suppression tools

- (1) A person commits an offence if:
- (a) the person is required under, or pursuant to, a taxation law to keep or make a record; and
 - (b) the person acquires, or has possession or control of, an electronic sales suppression tool or a right to use an electronic sales suppression tool.

Penalty: 500 penalty units.

- (2) Subsection (1) does not apply to conduct undertaken by a person for the purpose of preventing or deterring tax evasion or enforcing a taxation law.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

8WAE Incorrectly keeping records using electronic sales suppression tools

- (1) A person commits an offence if:
- (a) the person is required under, or pursuant to, a taxation law to keep or make a record; and
 - (b) the record is kept, made or altered with the use of an electronic sales suppression tool, or is prevented by the use of an electronic sales suppression tool from being kept, made or altered; and
 - (c) as a result of the use:
 - (i) the record does not correctly record and explain the matter, transaction, act or operation to which it relates; or

- (ii) the person does not keep or make the record in accordance with the taxation law.

Penalty: 1,000 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

3 At the end of Division 288 in Schedule 1

Add:

288-125 Producing or supplying electronic sales suppression tools

- (1) You are liable to an administrative penalty of 60 penalty units if you:
 - (a) manufacture, develop or publish an *electronic sales suppression tool; or
 - (b) *supply or make available for use:
 - (i) an electronic sales suppression tool; or
 - (ii) a *right to use an electronic sales suppression tool; or
 - (c) provide a service to an entity that involves the use of an electronic sales suppression tool.
- (2) You are liable to an administrative penalty of 60 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative penalties.
- (3) You are not liable to an administrative penalty under this section for conduct undertaken for the purpose of preventing or deterring tax evasion or enforcing a *taxation law.

288-130 Possessing electronic sales suppression tools

- (1) You are liable to an administrative penalty of 30 penalty units if:
 - (a) you are required under, or pursuant to, a *taxation law (other than an *Excise Act) to keep or make a record; and
 - (b) you acquire, or have possession or control of:
 - (i) an *electronic sales suppression tool; or

- (ii) a *right to use an electronic sales suppression tool.
- (2) You are liable to an administrative penalty of 30 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative penalties.
- (3) You are not liable to an administrative penalty under this section for conduct undertaken for the purpose of preventing or deterring tax evasion or enforcing a *taxation law.

288-135 Incorrectly keeping records using electronic sales suppression tools

- (1) You are liable to an administrative penalty of 60 units if:
 - (a) you are required under, or pursuant to, a *taxation law (other than an *Excise Act) to keep or make a record; and
 - (b) the record is kept, made or altered with the use of an *electronic sales suppression tool, or is prevented by the use of an electronic sales suppression tool from being kept, made or altered; and
 - (c) as a result of the use:
 - (i) the record does not correctly record and explain the matter, transaction, act or operation to which it relates; or
 - (ii) you do not keep or make the record in accordance with the taxation law.
- (2) You are liable to an administrative penalty of 60 penalty units if you aid, abet, counsel or procure conduct for which subsection (1) makes an entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative penalties.

Part 2—Application and transitional provisions

4 Application of amendments

- (1) An entity may, as soon as practicable after the commencement of this Schedule, give the Commissioner a notice, in the approved form, of the fact that before 7.30 pm (by legal time in the Australian Capital Territory) on 9 May 2017 the entity acquired, or assumed possession or control of, an electronic sales suppression tool or the right to use an electronic sales suppression tool.
- (2) If notice is given in accordance with subitem (1), the Commissioner may give to the entity a direction to deal in a particular way, and by a particular date, with the tool or the right to use the tool so that the entity no longer has possession or control of the tool or the right.
- (3) If notice is given in accordance with subitem (1), neither subsection 8WAD(1) of the *Taxation Administration Act 1953* nor subsection 288-130(1) in Schedule 1 to that Act applies in relation to the tool or the right to use the tool during the period beginning at the commencement of this Schedule and ending at the earlier of the following times:
 - (a) if the entity is given a direction under subitem (2)—the date specified in the Commissioner’s direction;
 - (b) 6 months after commencement.

Schedule 2—Third party reporting

Part 1—Amendments

Taxation Administration Act 1953

1 Section 396-55 in Schedule 1 (at the end of the table)

Add:

- | | | |
|-------|--|---|
| 11 | an entity that makes a *supply of a cleaning service and has an *ABN | the provision of consideration (within the meaning of the *GST Act) by the entity to another entity wholly or partly for the *supply by the other entity of a cleaning service, unless:

(a) the entities are *members of the same *consolidated group or *MEC group; or

(b) Division 12 requires that an amount be withheld from the payment of the consideration |
| <hr/> | | |
| 12 | an entity that makes a *supply of a courier service and has an *ABN | the provision of consideration (within the meaning of the *GST Act) by the entity to another entity wholly or partly for the *supply by the other entity of a courier service, unless:

(a) the entities are *members of the same *consolidated group or *MEC group; or

(b) Division 12 requires that an amount be withheld from the payment of the consideration |

Part 2—Application and transitional provisions

2 Application

- (1) An inserted item applies in relation to a transaction unless:
- (a) the transaction happens before 1 July 2018; or
 - (b) the transaction happens during an alternative reporting period that begins before 1 July 2018.

- (2) In this item:

alternative reporting period, in relation to an inserted item, means a period specified for the inserted item under subparagraph (a)(ii) of the amended provision.

amended provision means section 396-55 in Schedule 1 to the *Taxation Administration Act 1953*, as amended by item 1 of this Schedule.

inserted item means either item 11 or 12 of the table in the amended provision.

3 General exemptions

- (1) As from the commencement of this Schedule, the Commissioner is taken to have determined, under subsection 396-70(4) in Schedule 1 to the *Taxation Administration Act 1953*, the matters in subitems (2) and (3).

Exemption in relation to cleaning services

- (2) Where the amended provision requires an entity to prepare and give a report for a transaction that is described in item 11 of the table in that provision and that happens during a particular period (the **reporting period**), the entity is not so required if:
- (a) the total value of the consideration that:
 - (i) is received by the entity during the reporting period; and
 - (ii) relates to the supply by the entity, including by a contractor or subcontractor on behalf of the entity, of a cleaning service;
- is less than 10% of the entity's relevant GST turnover as at the end of the reporting period; and

- (b) the transaction is not described in another item of the table in the amended provision; and
- (c) the entity has not, before the time by which the amended provision requires the report to be given, or within such further time allowed by the Commissioner, chosen to be required to prepare and give a report for the transaction.

Exemption in relation to courier services

- (3) Where the amended provision requires an entity to prepare and give a report for a transaction that is described in item 12 of the table in that provision and that happens during a particular period (the ***reporting period***), the entity is not so required if:
 - (a) the total value of the consideration that:
 - (i) is received by the entity during the reporting period; and
 - (ii) relates to the supply by the entity, including by a contractor or subcontractor on behalf of the entity, of a courier service;is less than 10% of the entity's relevant GST turnover as at the end of the reporting period; and
 - (b) the transaction is not described in another item of the table in the amended provision; and
 - (c) the entity has not, before the time by which the amended provision requires the report to be given, or within such further time allowed by the Commissioner, chosen to be required to prepare and give a report for the transaction.

Determination not a legislative instrument

- (4) The determination under subitem (1) is not a legislative instrument.

Repeal or amendment of determination

- (5) The Commissioner may, by legislative instrument under subsection 396-70(4) in Schedule 1 to the *Taxation Administration Act 1953*, repeal or amend the determination as if the Commissioner had made it by legislative instrument under subsection 396-70(4).

Note: See subsection 33(3) of the *Acts Interpretation Act 1901*. The legislative instrument would provide that the determination under subitem (1) is repealed or amended.

- (6) For paragraphs (2)(c) and (3)(c), giving a report for the transaction is sufficient evidence of the making of the choice.

Definitions

- (7) In this item:

amended provision means section 396-55 in Schedule 1 to the *Taxation Administration Act 1953*, as amended by item 1 of this Schedule.

relevant GST turnover, as at the end of a reporting period, means:

- (a) if the entity has been making supplies for at least 12 months—the entity’s current GST turnover as at the end of the reporting period; or
- (b) otherwise—the entity’s projected GST turnover, within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*, as at the end of the reporting period.

[Minister’s second reading speech made in—
House of Representatives on 7 February 2018
Senate on 18 June 2018]

(5/18)
