



Treasury Laws Amendment (Tax Integrity and Other Measures) Act 2018

No. 124, 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/>)

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No. 124, 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 (Tax Integrity and Other Measures) Act 2018*.

No. 124, 2018 *Treasury Laws Amendment (Tax Integrity and Other Measures) Act* 1
2018

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 first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | 1 January 2019 |

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Income Tax Assessment Act 1936

1 Subsection 177A(1)

Insert:

foreign entity participant:

- (a) if a beneficiary of a trust estate or a partner in a partnership is a foreign entity, the trust estate or partnership has a ***foreign entity participant***; and
- (b) if a trust estate or partnership has a foreign entity participant (including through a previous operation of this paragraph):
 - (i) a trust of which the trust estate or partnership is a beneficiary also has a ***foreign entity participant***; and
 - (ii) a partnership in which the trust estate or partnership is a partner also has a ***foreign entity participant***.

2 At the end of section 177DA

Add:

Income from supply by trust estate or partnership

- (7) Subsection (8) applies if:
 - (a) both of the following conditions are satisfied:
 - (i) a trust estate or partnership makes a supply to an entity;
 - (ii) that entity would be an Australian customer of the trust estate or partnership if the trust estate or partnership were a foreign entity; and
 - (b) because of the supply, an amount of ordinary income, or statutory income, is included in the assessable income of the trust estate or partnership (as worked out for the purposes of working out its net income for a year of income); and
 - (c) the trust estate or partnership has a foreign entity participant at any time in that year of income; and
 - (d) any of the following conditions are satisfied at the time the supply is made:

- (i) the trust estate or partnership is connected with (within the meaning of the *Income Tax Assessment Act 1997*) a foreign entity;
 - (ii) the trust estate or partnership would be an affiliate (within the meaning of that Act) of a foreign entity if the trust estate or partnership were an individual or a company;
 - (iii) the trust estate or partnership and a foreign entity are members of the same global group.
- (8) For the purposes of this section:
- (a) treat the foreign entity mentioned in paragraph (7)(d) as having made the supply; and
 - (b) treat the entity mentioned in subparagraph (7)(a)(ii) as being an Australian customer of the foreign entity; and
 - (c) treat the foreign entity as having derived the ordinary income, or statutory income, from the supply.

3 Application

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.

Schedule 2—Improving the integrity of the small business CGT concessions

Income Tax Assessment Act 1997

1 Section 152-5

Omit:

The 3 major basic conditions are:

- (a) the entity must be a CGT small business entity or a partner in a partnership that is a CGT small business entity, or the net value of assets that the entity and related entities own must not exceed \$6,000,000;
- (b) the CGT asset must be an active asset;
- (c) if the asset is a share or interest in a trust, there must be a CGT concession stakeholder just before the CGT event, and the entity claiming the concession must be a CGT concession stakeholder in the company or trust or CGT concession stakeholders in the company or trust must have a small business participation percentage in the entity of at least 90%.

substitute:

The 2 major basic conditions are:

- (a) the entity must be a CGT small business entity or a partner in a partnership that is a CGT small business entity, or the net value of assets that the entity and related entities own must not exceed \$6,000,000; and
- (b) the CGT asset must be an active asset.

Additional basic conditions must be satisfied if the CGT asset is a share in a company or an interest in a trust.

2 Subsection 152-10(2)

Repeal the subsection, substitute:

Additional basic conditions for shares in a company or interests in a trust

- (2) The following additional basic conditions must be satisfied if the *CGT asset is a *share in a company, or an interest in a trust, (the **object entity**):
- (a) the CGT asset would still satisfy the active asset test (see section 152-35) if the assumptions in subsection (2A) were made;
 - (b) if you do not satisfy the maximum net asset value test (see section 152-15)—you are carrying on a *business just before the *CGT event;
 - (c) either:
 - (i) the object entity would be a *CGT small business entity for the income year; or
 - (ii) the object entity would satisfy the maximum net asset value test (see section 152-15);if the following assumptions were made:
 - (iii) the only CGT assets or *annual turnovers considered were those of the object entity, each affiliate of the object entity, and each entity controlled by the object entity in a way described in section 328-125;
 - (iv) each reference in section 328-125 to 40% were a reference to 20%;
 - (v) no determination under subsection 328-125(6) were in force;
 - (d) just before the CGT event, either:
 - (i) you are a *CGT concession stakeholder in the object entity; or
 - (ii) CGT concession stakeholders in the object entity together have a *small business participation percentage in you of at least 90%.
- (2A) For the purposes of paragraph (2)(a), in working out whether subsection 152-40(3) applies at a given time (the **test time**) assume that:
- (a) an asset of a company or trust is covered by neither:
 - (i) subparagraph 152-40(3)(b)(ii) (about financial instruments); nor

- (ii) subparagraph 152-40(3)(b)(iii) (about cash);
if the company or trust acquired that asset for a purpose that included assisting an entity to otherwise satisfy paragraph (2)(a) of this section; and
 - (b) paragraph 152-40(3)(b) does not cover an asset that:
 - (i) is a share in a company, or an interest in a trust, (the *later entity*); and
 - (ii) is held at the test time by the object entity directly or indirectly (through one or more interposed entities); and
 - (c) subparagraph 152-40(3)(b)(i) also covers each asset that:
 - (i) is held at the test time by a later entity covered by subsection (2B); and
 - (ii) is, for that later entity, an asset of a kind referred to in subparagraph 152-40(3)(b)(i), (ii) or (iii), as modified by paragraphs (a) and (b) of this subsection; and
 - (d) subject to paragraph (b) of this subsection, all of the assets of the object entity at the test time included all of the assets of each later entity at the test time; and
 - (e) for the purposes of paragraph 152-40(3)(b), the *market value at the test time of an asset held by a later entity were the product of:
 - (i) the asset's market value, apart from this paragraph, at the test time; and
 - (ii) the object entity's *small business participation percentage in the later entity at the test time.
- (2B) For the purposes of paragraph (2A)(c), this subsection covers a later entity if:
- (a) at the test time:
 - (i) your *small business participation percentage in the later entity is at least 20%; or
 - (ii) you are a *CGT concession stakeholder of the later entity; and
 - (b) either:
 - (i) the later entity would be a *CGT small business entity for the income year that includes the test time; or

- (ii) the later entity would satisfy the maximum net asset value test (see section 152-15) for a notional CGT event taken to have happened at the test time;
- if the following assumptions were made:
- (iii) the only *CGT assets or *annual turnovers considered were those of the later entity and of the entities referred to in subparagraph (2)(c)(iii);
 - (iv) each reference in section 328-125 to 40% were a reference to 20%;
 - (v) no determination under subsection 328-125(6) were in force.

3 Application of amendments

The amendments made by this Schedule apply in relation to CGT events happening on or after 8 February 2018.

Schedule 3—Fintech and venture capital amendments

Income Tax Assessment Act 1997

1 After subsection 118-425(13)

Insert:

- (13A) However, none of the following activities are ineligible activities mentioned in subsection (13):
- (a) developing technology for use in relation to an activity referred to in paragraph (13)(b), (c) or (e);
 - (b) an activity that is ancillary or incidental to the activity of developing technology referred to in paragraph (a) of this subsection;
 - (c) an activity referred to in paragraph (13)(b), (c) or (e) that is the subject of a finding in force under section 118-432 at the time the investment is made.
- (13B) Subsection (13A) does not apply in circumstances prescribed by regulations made for the purposes of this subsection.

2 After subsection 118-427(14)

Insert:

- (14A) However, none of the following activities are ineligible activities mentioned in subsection (14):
- (a) developing technology for use in relation to an activity referred to in paragraph (14)(b), (c) or (e);
 - (b) an activity that is ancillary or incidental to the activity of developing technology referred to in paragraph (a) of this subsection;
 - (c) an activity referred to in paragraph (14)(b), (c) or (e) that is the subject of a finding in force under section 118-432 at the time the investment is made.
- (14B) Subsection (14A) does not apply in circumstances prescribed by regulations made for the purposes of this subsection.

3 After section 118-430

Insert:

118-432 Findings of substantially novel applications of technology

Public findings

- (1) *Innovation and Science Australia may, by legislative instrument, find that each activity within a specified class is a substantially novel application of one or more technologies.

Note: A substantially novel application of a technology could, for example, take the form of a substantially novel product or service.

Private findings

- (2) *Innovation and Science Australia may, on application by a company or unit trust, make a written decision:
- (a) finding that a specified activity is a substantially novel application of one or more technologies; or
 - (b) refusing to make such a finding about a specified activity.

Note: A refusal to make a finding is reviewable (see Part 5 of the *Venture Capital Act 2002*).

Period for which a finding is in force

- (3) Subject to variation or revocation, a finding under subsection (1) or paragraph (2)(a) is in force for the period specified in the finding.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Applications for private findings

- (4) An application for a finding under paragraph (2)(a) must be in the *form approved by Innovation and Science Australia.
- (5) *Innovation and Science Australia must notify the applicant in writing of any decision under subsection (2) about the application.
- (6) A failure to comply with subsection (5) does not affect the validity of a finding or decision.

3A At the end of Subdivision 118-F

Add:

118-455 Impact Assessment of this Subdivision

- (1) As soon as practicable after 24 months after the *Treasury Laws Amendment (Tax Integrity and Other Measures) Act 2018* receives the Royal Assent, the Minister must cause an impact assessment of the operation of this Subdivision and other related tax concessions to be conducted.
- (2) The impact assessment must:
 - (a) examine the operation of the tax concession regime for:
 - (i) investments made through a *VCLP, *ESVCLP or *AFOF; and
 - (ii) investments made directly by foreign residents registered under Part 3 of the *Venture Capital Act 2002*; and
 - (b) be conducted by the Department and Innovation and Science Australia; and
 - (c) make provision for public consultation.
- (3) For the purposes of conducting the impact assessment, the reference to Innovation and Science Australia in item 6 of the table in subsection 355-65(4) of Schedule 1 to the *Taxation Administration Act 1953* is taken to include the Secretary of the Department.
- (4) The Minister must cause a written report about the impact assessment to be prepared.
- (5) 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.

Taxation Administration Act 1953**4 At the end of subsections 362-5(1) and 362-25(1) in Schedule 1**

Add:

Schedule 3 Fintech and venture capital amendments

Note: An activity will not be an ineligible activity for the purposes of subsections 118-425(13) and 118-427(14) of the *Income Tax Assessment Act 1997* if, for example, it is covered by subsections 118-425(13A) and 118-427(14A) of that Act.

Venture Capital Act 2002

5 At the end of section 29-1

Add:

; (m) decisions under subsection 118-432(2) of the *Income Tax Assessment Act 1997* refusing to make a finding about an activity.

6 Application of amendments

The amendments made by this Schedule apply in relation to investments made on or after 1 July 2018.

Schedule 4—Tax exemption for payments made under the Defence Force Ombudsman Scheme

Income Tax Assessment Act 1997

1 Section 11-15 (table item headed “defence”)

Omit:

Defence Abuse Reparation Scheme, payments under 51-5

2 Section 11-15 (table item headed “defence”)

After:

Defence Force member, compensation payments for loss of deployment allowance for warlike service 51-5

insert:

Defence Force Ombudsman recommendation, reparation payments and additional payments in relation to 51-5

3 Section 51-5 (table item 1.7)

Repeal the item, substitute:

- 1.7 a recipient of a the reparation payment or none
reparation payment or additional payment
an additional
payment from the
Commonwealth in
relation to a
recommendation by
the Defence Force
Ombudsman
performing a function
conferred by
section 14 or 14B of
the *Ombudsman
Regulations 2017*

4 At the end of section 51-5

Add:

Schedule 4 Tax exemption for payments made under the Defence Force Ombudsman Scheme

Note: Reparation payments under section 14 or 14B of the *Ombudsman Regulations 2017* relate to abuse in the Defence Force.

5 Application of amendments

The amendments made by this Schedule apply in relation to the 2017-18 income year and later income years.

*[Minister's second reading speech made in—
House of Representatives on 28 March 2018
Senate on 18 June 2018]*

(73/18)

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