



Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018

No. 141, 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. 141, 2018

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

[Assented to 29 November 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018*.

No. 141, 2018

Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 November 2018
2. Schedule 1	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
3. Schedule 2	The later of: (a) the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 January 2019 (paragraph (a) applies)
4. Schedule 3	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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Removing tax deductibility of non-compliant payments

Income Tax Assessment Act 1997

1 At the end of Division 26 of Part 2-5

Add:

26-105 Non-compliant payments for work and services

No deduction if amount not withheld or Commissioner not notified

- (1) You cannot deduct under this Act a payment if:
- (a) any of the following provisions in Schedule 1 to the *Taxation Administration Act 1953* require you to withhold an amount from the payment:
 - (i) section 12-35 (about payments to employees);
 - (ii) section 12-40 (about payments to directors);
 - (iii) section 12-47 (about payments to *religious practitioners);
 - (iv) section 12-60 (about payments under labour hire and certain other arrangements);
 - (v) in relation to a *supply, other than a supply referred to in subsection (3) of this section—section 12-190 (about quoting of *ABN); and
 - (b) either:
 - (i) you fail to withhold an amount (whether or not that amount is the amount required to be withheld as mentioned in paragraph (a)) from the payment; or
 - (ii) after withholding the amount from the payment, you fail to comply, or purportedly comply, with section 16-150 or 389-5 (as the case requires) in that Schedule, in relation to the amount.
- (2) You cannot deduct under this Act a *non-cash benefit if:
- (a) section 14-5 in Schedule 1 to the *Taxation Administration Act 1953* requires you to pay an amount to the Commissioner

before providing the benefit, because of any of the following provisions in that Schedule:

- (i) section 12-35 (about payments to employees);
 - (ii) section 12-40 (about payments to directors);
 - (iii) section 12-47 (about payments to *religious practitioners);
 - (iv) section 12-60 (about payments under labour hire and certain other arrangements);
 - (v) in relation to a *supply, other than a supply referred to in subsection (3) of this section—section 12-190 (about quoting of *ABN); and
- (b) you fail to comply, or purportedly comply, with section 16-150 in that Schedule in relation to the amount.
- (3) For the purposes of subparagraphs (1)(a)(v) and (2)(a)(v), the supplies are supplies that are wholly a *supply of either or both of the following:
- (a) a supply of goods (within the meaning of section 195-1 of the *GST Act);
 - (b) a supply of real property (within the meaning of that section of that Act).

Exception—nil amounts

- (4) Subsection (1) or (2) does not apply if the amount required to be withheld, or the amount required to be paid to the Commissioner, (as the case requires) is a nil amount.

Exception—ABN quoted

- (5) Subsection (1) does not apply in relation to an amount required to be withheld from a payment under section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*, if:
- (a) when the payment is made, you have been given:
 - (i) an *invoice or some other document that relates to the payment that *quotes the individual's *ABN; or
 - (ii) if the payment relates to a *supply that has been made through an *agent—an invoice or some other document that relates to the payment that quotes the agent's ABN; or

- (b) when the payment is made:
 - (i) you have been given an invoice or some other document that relates to the payment that purports to quote the individual's ABN; and
 - (ii) the individual does not have an ABN, or the invoice or other document does not in fact quote the individual's ABN; and
 - (iii) you have no reasonable grounds to believe that the individual does not have an ABN, or that the invoice or other document does not quote the individual's ABN; or
 - (c) if the payment relates to a supply that has been made through an agent—when the payment is made:
 - (i) you have been given an invoice or some other document that relates to the payment that purports to quote the agent's ABN; and
 - (ii) the agent does not have an ABN, or the invoice or other document does not in fact quote the agent's ABN; and
 - (iii) you have no reasonable grounds to believe that the agent does not have an ABN, or that the invoice or other document does not quote the agent's ABN.
- (6) Subsection (2) does not apply in relation to a *non-cash benefit that requires an amount to be paid to the Commissioner, if:
- (a) when the non-cash benefit is provided, you have been given:
 - (i) an *invoice or some other document that relates to the non-cash benefit that *quotes the individual's *ABN; or
 - (ii) if the non-cash benefit relates to a *supply that has been made through an *agent—an invoice or some other document that relates to the non-cash benefit that quotes the agent's ABN; or
 - (b) when the non-cash benefit is provided:
 - (i) you have been given an invoice or some other document that relates to the non-cash benefit that purports to quote the individual's ABN; and
 - (ii) the individual does not have an ABN, or the invoice or other document does not in fact quote the individual's ABN; and
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- (iii) you have no reasonable grounds to believe that the individual does not have an ABN, or that the invoice or other document does not quote the individual's ABN; or
- (c) if the non-cash benefit relates to a supply that has been made through an agent—when the non-cash benefit is provided:
 - (i) you have been given an invoice or some other document that relates to the non-cash benefit that purports to quote the agent's ABN; and
 - (ii) the agent does not have an ABN, or the invoice or other document does not in fact quote the agent's ABN; and
 - (iii) you have no reasonable grounds to believe that the agent does not have an ABN, or that the invoice or other document does not quote the agent's ABN.

Exception—voluntarily tell the Commissioner about a mistake

- (7) Subsection (1) does not apply if, before the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period, you voluntarily tell the Commissioner, in the *approved form, that you have failed to:
 - (a) withhold an amount; or
 - (b) comply with section 16-150 or 389-5 (as the case requires) in Schedule 1 to the *Taxation Administration Act 1953* in relation to the amount.
- (8) Subsection (2) does not apply if, before the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period, you voluntarily tell the Commissioner, in the *approved form, that you have failed to comply with section 16-150 in Schedule 1 to the *Taxation Administration Act 1953* in relation to the amount.

2 Application

The amendments made by this Schedule apply in relation to a payment made, or a non-cash benefit provided, on or after 1 July 2019.

Schedule 2—Taxable payments reporting system

Taxation Administration Act 1953

1 Section 396-55 in Schedule 1 (table item 12)

Repeal the item, substitute:

- | | | |
|----|---|--|
| 12 | an entity that makes a *supply of a courier service or a road freight 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 or a road freight 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 |
| 13 | an entity that makes a *supply of a security, investigation or surveillance 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 security, investigation or surveillance 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 |
| 14 | an entity that makes a *supply of an information technology 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 an information technology 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 |

2 Application

- (1) Item 12 of the table in the amended provision applies in relation to a road freight service transaction unless:

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- (a) the transaction happens before 1 July 2019; or
 - (b) the transaction happens during an alternative reporting period for item 12 that begins before 1 July 2019.
 - (2) An inserted item applies to a transaction unless:
 - (a) the transaction happens before 1 July 2019; or
 - (b) the transaction happens during an alternative reporting period for the item that begins before 1 July 2019.
 - (3) In this item:
 - alternative reporting period** means a period specified 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 13 or 14 of the table in the amended provision.
 - road freight service transaction** means a transaction described in item 12 of the table that is not a transaction in relation to a courier service.

3 General exemptions

- (1) As from 1 July 2019 or the commencement of this Schedule, whichever is the later, the Commissioner is taken to have:
 - (a) determined, under subsection 396-70(4) in Schedule 1 to the *Taxation Administration Act 1953*, the matter in subitem (2); and
 - (b) revoked the determination of the matter in subitem 3(3) of Schedule 2 to the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018*, as amended by the Commissioner if it has been amended.
- (2) 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 or a road freight 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.
 - (3) For the purposes of paragraph (2)(c), giving a report for the transaction is sufficient evidence of the making of the choice.
 - (4) Neither of the following is a legislative instrument:
 - (a) the determination mentioned in paragraph (1)(a);
 - (b) the revocation mentioned in paragraph (1)(b).
 - (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 mentioned in paragraph (1)(a) 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 is repealed or amended.
- (6) For a transaction that happens on or after 1 July 2019 but during an alternative reporting period that begins before 1 July 2019:
 - (a) the determination mentioned in paragraph (1)(a) does not apply; and
 - (b) the determination to which paragraph (1)(b) refers applies despite its revocation.
 - (7) In this item:
 - alternative reporting period** means a period specified under subparagraph 396-55(a)(ii) in Schedule 1 to the *Taxation Administration Act 1953* for item 12 of the table in section 396-55.
 - 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.

Schedule 3—Taxing tobacco at the time of manufacture

Excise Act 1901

1 Subsection 4(1)

Insert:

tobacco goods means goods mentioned in subitem 5.1, 5.5 or 5.8 of the table in the Schedule to the *Excise Tariff Act 1921*.

2 At the end of subsection 39A(2)

Add:

; or (m) in relation to an application for a manufacturer licence that permits the manufacture of any tobacco goods—the applicant has previously failed to comply with a requirement to provide security under section 16.

3 At the end of subsection 39D(3)

Add:

Note: If the licence permits the manufacture of tobacco goods, the Collector must state the tobacco excise period in the licence and the licence holder must give a tobacco excise return for each tobacco excise period, see section 66.

4 After paragraph 39G(1)(m)

Insert:

(ma) in relation to a manufacturer licence that permits the manufacture of any tobacco goods—the licence holder has failed to comply with a requirement to provide security under section 16 in relation to that licence; or

5 At the end of section 54

Add:

(4) To avoid doubt, if the excisable goods are tobacco goods, only the licensed manufacturer of the goods is liable to pay Excise duty on the goods.

Note: Under subsection 66(7), tobacco goods are taken to be entered, and delivered, for home consumption at the time they are manufactured.

6 Subsection 61C(1)

After “deliver goods”, insert “(other than tobacco goods)”.

7 Before section 68

Insert:

66 Payment of duty relating to tobacco goods

- (1) If the Collector grants a person a licence under subsection 39A(1) that permits the manufacture of any tobacco goods, the Collector must determine a recurring 7 day period (the *tobacco excise period*) for the licence.
- (2) However, if the licence is granted on a day that is not the first day of the tobacco excise period, the Collector must determine the first tobacco excise period to be the period from that day until the day before the next tobacco excise period starts.
- (3) The tobacco excise period, and any tobacco excise period determined under subsection (2), must be stated in the licence.
- (4) The person must, for each tobacco excise period for the licence that begins before the licence ends or is cancelled, give a tobacco excise return to the Collector which includes:
 - (a) the amount (including a nil amount) of tobacco goods manufactured under the licence during the period; and
 - (b) the amount of the Excise duty payable on those tobacco goods.
- (5) The return must be:
 - (a) in the approved form; and
 - (b) given to the Collector:
 - (i) on the first business day after the tobacco excise period ends; or
 - (ii) if the licence ends or is cancelled during the tobacco excise period—on the first business day after the day the licence ends or is cancelled.

- (6) The Excise duty on the tobacco goods manufactured under the licence during the tobacco excise period is due and payable by the person on the same day that the return must be given for that period.
- (7) For the purposes of this Act, the tobacco goods manufactured under the licence during the tobacco excise period are taken to be entered for home consumption, and delivered for home consumption, at the time the goods are manufactured.

67 General interest charge on unpaid duty

If any of the Excise duty remains unpaid after it is due under subsection 66(6), the person liable to pay the duty is liable to pay the general interest charge (within the meaning of the *Taxation Administration Act 1953*) on the unpaid amount of the Excise duty for each day in the period that:

- (a) started at the beginning of the day by which the amount was due to be paid; and
- (b) finishes at the end of the last day, at the end of which, any of the following remains unpaid:
- (i) the amount;
 - (ii) general interest charge on any of the amount.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

8 Paragraph 59(a)

Omit “section 61C(2)”, substitute “subsection 61C(2) or 66(7)”.

Taxation Administration Act 1953

9 Subsection 8AAB(4) (after table item 3A)

Insert:

3B	67	<i>Excise Act 1901</i>	payment of excise duty for tobacco goods
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10 Application of amendments

The amendments made by this Schedule apply in relation to tobacco goods manufactured on or after 1 July 2019.

*[Minister's second reading speech made in—
House of Representatives on 20 September 2018
Senate on 18 October 2018]*

(206/18)

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No. 2) Act 2018 15*