





# **Treasury Laws Amendment (2018 Measures No. 5) Act 2019**

**No. 15, 2019**

**An Act to amend the law relating to taxation and  
competition, 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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# Treasury Laws Amendment (2018 Measures No. 5) Act 2019

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

[Assented to 12 March 2019]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (2018 Measures No. 5) Act 2019*.

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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.

| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provisions</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.  | 12 March 2019       |
| 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 April 2019        |
| 5. Schedule 4   | The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.     | 12 September 2019   |
| 6. Schedule 5   | The day after this Act receives the Royal Assent.  | 13 March 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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—AMIT technical amendments

### *Income Tax Assessment Act 1936*

#### **1 At the end of subsection 128B(1A)**

Add:

Note: References in this section to amounts paid to a person may include amounts from an AMIT that, under section 12A-205 in Schedule 1 to the *Taxation Administration Act 1953*, are treated as payments to the person (from the trustee of the AMIT or a custodian).

### *Income Tax Assessment Act 1997*

#### **2 At the end of section 104-71**

Add:

- (6) Item 7 of the table in subsection (4) does not apply if the entity making the payment is a \*managed investment trust.

#### **3 Paragraphs 104-107A(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) either:
- (i) the \*cost base of that asset is reduced under subsection 104-107B(2) during the income year; or
  - (ii) the cost base of that asset is nil at the start of the income year; and
- (c) the asset's \*AMIT cost base net amount for the income year is the excess mentioned in paragraph 104-107C(a); and
- (d) the asset's AMIT cost base net amount for the income year exceeds the cost base of the asset.

#### **4 Subsection 104-107A(2)**

Repeal the subsection, substitute:

- (2) The time of the event is:
- (a) if subparagraph (1)(b)(i) applies—the time at which the reduction occurs under section 104-107B; or

- (b) if subparagraph (1)(b)(ii) applies—the time at which the \*cost base would have been reduced under subsection 104-107B(2) during the income year if the cost base had been greater than nil at the start of the income year.

### **5 Subsection 104-107A(3)**

Repeal the subsection, substitute:

- (3) You make a *capital gain* equal to:
  - (a) if the \*cost base of the asset is nil—the excess mentioned in paragraph 104-107C(a); or
  - (b) if the cost base of the asset is not nil—the excess mentioned in paragraph (1)(d) of this section.

Note 1: If you make a capital gain, the cost base and reduced cost base of the CGT asset are reduced to nil (see paragraph 104-107B(2)(a)).

Note 2: You cannot make a capital loss.

### **6 Paragraph 104-107F(1)(f)**

Omit “section 104-107E”, substitute “section 104-107D”.

### **7 After paragraph 275-20(4)(i)**

Insert:

- (ia) the \*Future Fund Board;

### **8 After subsection 275-20(4)**

Insert:

- (4A) Any financial assets (within the meaning of the *Future Fund Act 2006*) held by the \*Future Fund Board are taken, for the purposes of subparagraph (4)(k)(ii), to be held by the Future Fund Board in its own right.

### **9 Paragraph 276-10(1)(c)**

Repeal the paragraph.

### **10 Subsections 276-315(4) and (5)**

Repeal the subsections.

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**11 Subsection 276-415(4)**

Repeal the subsection, substitute:

- (4) For the purposes of subsection (2), treat the amount of the shortfall under subsection (1) relating to the component as being double what it would be apart from this subsection.

**12 Paragraph 840-805(2)(b)**

Omit “a payment that is”.

**13 At the end of subsection 840-805(2)**

Add:

- Note 1: Because a fund payment can be adjusted to account for earlier fund payments and the expected amounts of later fund payments (see subsection 12A-110(5) in Schedule 1 to the *Taxation Administration Act 1953*), the amount of a particular fund payment may not reflect the actual amount you are paid for the purposes of this subsection.
- Note 2: If the withholding MIT is an AMIT, under subsection 12A-205(2) in Schedule 1 to the *Taxation Administration Act 1953*, amounts may be treated, for the purposes of this Subdivision, as having been paid to you from the trustee of the AMIT.

**14 Paragraph 840-805(3)(b)**

Omit “a payment that is”.

**15 At the end of subsection 840-805(3)**

Add:

- Note: If the withholding MIT is an AMIT, under subsection 12A-205(5) in Schedule 1 to the *Taxation Administration Act 1953*, amounts may be treated, for the purposes of this Subdivision, as having been paid to you from the custodian.

**16 Paragraph 842-230(1)(a)**

Omit “or (i)”, substitute “, (i) or (ia)”.

**17 Subsection 995-1(1)**

Insert:

***Future Fund Board*** means the Future Fund Board of Guardians established by section 34 of the *Future Fund Act 2006*.

***Income Tax (Transitional Provisions) Act 1997***

**18 Section 276-25 (definition of starting income year)**

Repeal the definition, substitute:

***starting income year*** means:

- (a) unless paragraph (b) or (c) applies—the 2017-18 income year; or
- (b) if the trustee of the trust has made a choice for the purposes of paragraph 1(1)(b) of Schedule 8 to the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*—the first income year starting on or after 1 July 2015; or
- (c) if the trustee of the trust has made a choice for the purposes of subparagraph 276-10(1)(e)(i) of the *Income Tax Assessment Act 1997* in respect of the 2016-17 income year—that income year.

***Taxation Administration Act 1953***

**19 At the end of subsection 12-140(1) in Schedule 1**

Add:

Note: If the investment body is an AMIT, under subsection 12A-205(2) amounts may be treated, for the purposes of this Part, as having been paid to the other entity by the investment body.

**20 At the end of section 12-140 in Schedule 1**

Add:

- (3) If:
  - (a) because of subsection 12A-205(2), an entity is treated as having made a payment to another entity; and
  - (b) under subsection (2) of this section, the entity has withheld an amount from that payment, and paid the amount to the Commissioner;the entity may recover from the other entity, as a debt, the amount withheld.

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- (4) The entity is entitled to set off an amount that the entity can recover from the other entity under subsection (3) against debts due by the entity to the other entity.

**21 After section 12-150 in Schedule 1**

Insert:

**12-152 Limited application of section 12-140 to payment covered by section 12A-205**

- (1) If a payment is treated under section 12A-205 as having been made, section 12-140 does not apply to the payment to the extent that it covers a \*pre-AMMA actual payment from which section 12-140 has required an amount to be withheld.
- (2) If a payment is a \*post-AMMA actual payment, section 12-140 does not apply to the payment to the extent that it covers either or both of the following:
- (a) a \*pre-AMMA actual payment from which section 12-140 has required an amount to be withheld;
  - (b) a payment that is treated under section 12A-205 as having been made from which section 12-140 has required an amount to be withheld.

**22 Section 12-383 in Schedule 1**

Before “A trust”, insert “(1)”.

**23 Paragraph 12-383(a) in Schedule 1**

Omit “(2)(b)”, substitute “subsection 275-10(2)”.

**24 At the end of section 12-383 in Schedule 1**

Add:

- (2) For the purposes of ascertaining whether a trust is a \*managed investment trust in relation to that income year for the purposes of paragraph (1)(a), treat as a \*fund payment by the trustee of the trust any amount that, under subsection 12A-205(2), would be treated as a payment by the trustee if the trust were an \*AMIT.

Note: The making of a fund payment is a requirement for the trust to be a managed investment trust under paragraph 275-10(1)(a) and subsection 275-10(3) of the *Income Tax Assessment Act 1997*.

**25 Subsection 12-405(2) in Schedule 1 (method statement, at the end of step 1)**

Add “, and increase it by any amounts to which subsection (2A) or (2B) applies for the income year (except to the extent that capital gains against which those amounts are applied are included in the actual payment made in relation to the income year)”.

**26 Subsection 12-405(2) in Schedule 1 (method statement, step 2, before paragraph (a))**

Insert:

|   |
|---|
| (aa) increasing the net income by any amounts to which subsection (2A) or (2B) applies for the income year; and |
|---|

**27 Subsection 12-405(2) in Schedule 1 (method statement, step 2, paragraph (a))**

After “disregarding”, insert “(except to the extent that they are amounts to which subsection (2A) or (2B) applies for the income year)”.

**28 After subsection 12-405(2) in Schedule 1**

Insert:

(2A) If:

- (a) during an income year, a \*capital loss from a \*CGT event happens in relation to a \*CGT asset that is not \*taxable Australian property; and
- (b) in relation to that income year, some or all of the capital loss is applied against a \*capital gain from a CGT event that happens in relation to a CGT asset that is taxable Australian property;

this subsection applies, for that income year, to the amount that is so applied.

(2B) If:

- (a) the trust has a \*net capital loss for an income year; and
- (b) one or more of the \*capital losses the trust made during that income year were from \*CGT events that happened in

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relation to \*CGT assets that were not \*taxable Australian property; and

- (c) in relation to a later income year, some or all of the net capital loss is applied against a \*capital gain from a CGT event that happens in relation to a CGT asset that is taxable Australian property;

this subsection applies, for the later income year, to an amount equal to so much of the net capital loss that is so applied as related to capital losses mentioned in paragraph (b).

## **29 Paragraph 12A-110(3)(b) in Schedule 1**

Repeal the paragraph, substitute:

- (b) the total of each \*capital loss of the AMIT from a \*CGT event that:
- (i) happened in the income year to a CGT asset that is not taxable Australian property; and
  - (ii) has been applied against a capital gain from a CGT event that happened in relation to a CGT asset that is taxable Australian property;
- but only to the extent that each such capital loss has been so applied in the income year;
- (c) the total of each amount to which subsection (3A) applies in relation to the income year.

## **30 After subsection 12A-110(3) in Schedule 1**

Insert:

- (3A) If:
- (a) the AMIT has a \*net capital loss for an earlier income year; and
  - (b) one or more of the \*capital losses the trust made during that earlier income year were from \*CGT events that happened in relation to \*CGT assets that were not \*taxable Australian property; and
  - (c) in relation to the income year mentioned in paragraph (3)(c), some or all of the net capital loss is applied against a \*capital gain from a CGT event that happens in relation to a CGT asset that is taxable Australian property;

this subsection applies, for the income year mentioned in paragraph (3)(c), to an amount equal to so much of the net capital loss that is so applied as related to capital losses mentioned in paragraph (b) of this subsection.

**31 Paragraph 12A-215(1)(a) in Schedule 1**

Repeal the paragraph.

**32 Subparagraph 12A-215(1)(c)(i) in Schedule 1**

Repeal the subparagraph, substitute:

- (i) if the payment is a \*fund payment and the trust is a \*withholding MIT in relation to the income year—an entity covered by section 12-410; or

**33 Subparagraph 12A-215(1)(c)(ii) in Schedule 1**

After “\*AMIT DIR payment”, insert “made in relation to the income year”.

***Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016***

**34 Subitem 75(2) of Schedule 5**

Omit “Subitem (3) applies”, substitute “Subitems (3) and (3A) apply”.

**35 Paragraph 75(2)(b) of Schedule 5**

Omit “1 July 2018”, substitute “1 July 2019”.

**36 At the end of paragraph 75(2)(c) of Schedule 5**

Add:

; or (v) the trust ceasing to be a franking entity.

**37 After subitem 75(2) of Schedule 5**

Insert:

- (2A) However, subparagraph (2)(c)(v) does not apply unless the trust’s franking account is in surplus immediately before the trust ceases to be a franking entity.

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**38 After subitem 75(3) of Schedule 5**

Insert:

- (3A) If the event is an event described in item 4 of the table in subsection 205-30(1) of the *Income Tax Assessment Act 1997*, treat the event as happening on 1 July 2019.

**39 Subitem 75(4) of Schedule 5**

Omit “Subitem (5) applies”, substitute “Subitems (5) and (6) apply”.

**40 Paragraph 75(4)(a) of Schedule 5**

Omit “1 July 2018”, substitute “1 July 2019”.

**41 At the end of subitem 75(4) of Schedule 5**

Add:

- ; and (c) the distribution is not made out of income derived in relation to the 2016-17 income year or a later income year.

**42 After subitem 75(5) of Schedule 5 (before the note)**

Insert:

- (6) Treat a beneficiary of the trust who receives the distribution as receiving, for the purposes of the income tax law, a dividend from a corporate tax entity.

**43 Subitem 1(1) of Schedule 8**

Omit “income years starting on or after”.

**44 Paragraph 1(1)(a) of Schedule 8**

Omit “1 July 2016”, substitute “the 2016-17 income year and later income years”.

**45 Paragraph 1(1)(b) of Schedule 8**

Before “1 July 2015”, insert “income years starting on or after”.

**46 Application of amendments**

- (1) The amendment made by item 2 of this Schedule applies in relation to distributions made in relation to the 2017-18 income year and later income years.

**Schedule 1** AMIT technical amendments

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- (2) The amendment made by item 9 of this Schedule applies in relation to the 2017-18 income year and later income years.
- (3) The amendments made by item 18 and items 43 to 45 of this Schedule apply in relation to the 2016-17 income year and later income years.
- (4) The amendments made by any other items of this Schedule apply in relation to the 2018-19 income year and later income years.

## **Schedule 4—Repeal of subsection 51(3) of the Competition and Consumer Act 2010**

### ***Competition and Consumer Act 2010***

#### **1 Subsection 51(3)**

Repeal the subsection.

#### **2 In the appropriate position in Part XIII**

Insert:

### **Division 4—Application of amendment made by the Treasury Laws Amendment (2018 Measures No. 5) Act 2019**

#### **186 Application of repeal of subsection 51(3)**

- (1) The amendment made by item 1 of Schedule 4 to the *Treasury Laws Amendment (2018 Measures No. 5) Act 2019* applies in relation to a licence granted, an assignment made, or a contract, arrangement or understanding entered into, on or after the commencement of that Schedule.
- (2) The amendment also applies to a licence granted, an assignment made, or a contract, arrangement or understanding entered into, before the commencement of that Schedule in relation to:
  - (a) conditions imposed, or provisions included, on or after that commencement; and
  - (b) conditions imposed, or provisions included, before that commencement.
- (3) Despite subsections (1) and (2), the amendment does not apply to the extent (if any) to which its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

**3 Subsection 51(3) of Schedule 1**

Repeal the subsection.

## **Schedule 5—Small business access to justice**

### *Australian Small Business and Family Enterprise Ombudsman Act 2015*

#### **1 At the end of section 7**

Add:

; and (h) conduct within the meaning of the *Competition and Consumer Act 2010*.

#### **2 At the end of section 15**

Add:

; (c) to give assistance under Division 3A of Part 4 in advising on and preparing a person's case for a no adverse costs order under subsection 82(4) of the *Competition and Consumer Act 2010*.

#### **3 After subparagraph 23(h)(ii)**

Insert:

(ia) assistance being given under section 74B (assistance in relation to a no adverse costs order in proceedings to recover the amount of any loss or damage as a result of contraventions of the *Competition and Consumer Act 2010*);

#### **4 At the end of section 65**

Add:

; (g) conduct, within the meaning of the *Competition and Consumer Act 2010*, that:

- (i) may be in contravention of a provision of Part IV of that Act; and
- (ii) affects, or may affect, a small business or family enterprise.

#### **5 After Division 3 of Part 4**

Insert:

### **Division 3A—Assistance where there may be a contravention of the Competition and Consumer Act 2010**

#### **74A Application of this Division**

This Division applies if the relevant action in relation to which a person requests the Ombudsman to give assistance is conduct, within the meaning of the *Competition and Consumer Act 2010*, that:

- (a) may be in contravention of a provision of Part IV of that Act; and
- (b) affects, or may affect, a small business or family enterprise.

#### **74B Ombudsman may give assistance in relation to costs order**

- (1) The Ombudsman may assist the person by doing either or both of the following:
  - (a) advising the person on the arguments that might be made, and the evidence that might be adduced, to satisfy a court that an order under subsection 82(4) of the *Competition and Consumer Act 2010* should be made (a no adverse costs order in proceedings to recover the amount of any loss or damage as a result of contraventions of that Act);
  - (b) preparing arguments that might be made in satisfying a court that an order under that subsection should be made.
- (2) Nothing in this section limits the functions, duties and powers of the Ombudsman under this Part in relation to the relevant action.

### **6 At the end of Division 2 of Part 5**

Add:

#### **91A Disclosure for the purposes of a no adverse costs order under the *Competition and Consumer Act 2010***

- (1) This section applies if the relevant action in relation to which a person (the **applicant**) requests the Ombudsman to give assistance is conduct, within the meaning of the *Competition and Consumer Act 2010*, that:

- 
- (a) may be in contravention of a provision of Part IV of that Act; and
  - (b) affects, or may affect, a small business or family enterprise.
- (2) A person assisting small business/family enterprise may disclose to the applicant any document or information obtained by the person assisting small business/family enterprise in the course of performing functions or duties, or exercising powers, in relation to assistance given to the applicant under section 74B.

Note: Section 74B allows the Ombudsman to give assistance in relation to a no adverse costs order in proceedings to recover the amount of any loss or damage as a result of contraventions of the *Competition and Consumer Act 2010*. This assistance may include advising the applicant on the arguments that might be made, and the evidence that might be adduced, in pursuing a no adverse costs order, and preparing arguments.

### ***Competition and Consumer Act 2010***

#### **7 At the end of section 82**

Add:

*No adverse costs orders*

- (3) A person who brings an action under subsection (1) in relation to a contravention of a provision of Part IV may at any time during proceedings on the matter seek an order under subsection (4) from the court hearing, or that will hear, the matter.
- (4) The court may order that the applicant is not liable for the costs of any respondent to the proceedings, regardless of the outcome or likely outcome of the proceedings.
- (5) The court may only make an order under subsection (4) if the court is satisfied that:
  - (a) the action raises a reasonable issue for trial; and
  - (b) the action raises an issue that is not only significant for the applicant, but may also be significant for other persons or groups of persons; and
  - (c) the disparity between the financial position of the applicant and the financial position of the respondent or respondents is such that the possibility of a costs order that does not favour

the applicant might deter the applicant from pursuing the action.

- (6) The court may satisfy itself of the matters in subsection (5) by having regard only to the documents filed with the court in the proceedings.
- (7) A person who appeals a decision of the court under subsection (4) is liable for any costs in relation to the appeal.

## **8 Application**

The amendment of section 82 of the *Competition and Consumer Act 2010* made by this Schedule applies in relation to actions under subsection 82(1) of that Act brought on or after 1 July 2019.

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

(198/18)

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