

EXPOSURE DRAFT

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Tax Laws Amendment (Tax Integrity Multinational Anti-avoidance Law) Bill 2015

No. , 2015

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

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2 **A Bill for an Act to amend the law relating to** 3 **taxation, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Tax Laws Amendment (Tax Integrity*
7 *Multinational Anti-avoidance Law) Act 2015.*

8 **2 Commencement**

9 This Act commences on the day this Act receives the Royal
10 Assent.

11 **3 Schedules**

12 Legislation that is specified in a Schedule to this Act is amended or
13 repealed as set out in the applicable items in the Schedule
14 concerned, and any other item in a Schedule to this Act has effect
15 according to its terms.

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Schedule 1 Amendments

1 **Schedule 1—Amendments**
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3 ***Income Tax Assessment Act 1936***

4 **1 Subsection 177A(1)**

5 Insert:

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

8 ***Australian permanent establishment*** of an entity means:

9 (a) if:

10 (i) the entity is a resident in a country that has entered into
11 an international tax agreement (within the meaning of
12 subsection 995-1(1) of the *Income Tax Assessment Act*
13 *1997*) with Australia; and

14 (ii) that agreement contains a permanent establishment
15 article;

16 a permanent establishment (within the meaning of the
17 relevant international tax agreement) in Australia; or

18 (b) otherwise—a permanent establishment of the person in
19 Australia.

20 ***accounting principles*** has the meaning given by
21 subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

22 ***audited consolidated financial statements*** has the meaning given
23 by section 820-935 of the *Income Tax Assessment Act 1997*.

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

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

28 ***global group*** means a group of entities, at least one of which is a
29 non-resident, that are consolidated for accounting purposes as a
30 single group.

1 *supply* has the meaning given by section 9-10 of the GST Act.

2 **2 Subsection 177A(5)**

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

4 **3 After section 177D**

5 Insert:

6 **177DA Schemes that limit a taxable presence in Australia**

7 *Scheme for a purpose including obtaining a tax benefit etc.*

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

10 (a) under, or in connection with, the scheme:

11 (i) a non-resident makes a supply to an Australian resident
12 who is not an associate of the non-resident; and

13 (ii) income the non-resident derives from the supply is not
14 attributable to an Australian permanent establishment of
15 the non-resident; and

16 (iii) activities are undertaken in Australia in connection with
17 the supply; and

18 (iv) some or all of those activities are undertaken by an
19 Australian resident who, or undertaken at or through an
20 Australian permanent establishment of an entity who, is
21 an associate of or is commercially dependent on the
22 non-resident; and

23 (b) it would be reasonable to conclude (having regard to the
24 matters in subsection (2)) that the scheme is designed to
25 avoid the non-resident deriving income, from such supplies,
26 that would be attributable to an Australian permanent
27 establishment of the non-resident; and

28 (c) it would be concluded (having regard to the matters in
29 subsection (2)) that the person, or one of the persons, who
30 entered into or carried out the scheme or any part of the
31 scheme did so for a principal purpose of, or for more than
32 one principal purpose that includes a purpose of:

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Schedule 1 Amendments

- 1 (i) enabling a taxpayer (a *relevant taxpayer*) to obtain a tax
2 benefit, or both to obtain a tax benefit and to reduce one
3 or more of the relevant taxpayer's liabilities to which
4 subsection (3) applies, in connection with the scheme;
5 or
6 (ii) enabling the relevant taxpayer and another taxpayer (or
7 other taxpayers) each to obtain a tax benefit, or both to
8 obtain a tax benefit and to reduce one or more of their
9 liabilities to which subsection (3) applies, in connection
10 with the scheme;
11 whether or not that person who entered into or carried out the
12 scheme or any part of the scheme is the relevant taxpayer or
13 is the other taxpayer or one of the other taxpayers; and
14 (d) the non-resident's annual global revenue in relation to any of
15 the years of income in which:
16 (i) the relevant taxpayer would (apart from this Part) obtain
17 a tax benefit or reduce one or more of the relevant
18 taxpayer's liabilities to which subsection (3) applies, in
19 connection with the scheme; or
20 (ii) the relevant taxpayer, or one or more other taxpayers,
21 would (apart from this Part) obtain a tax benefit, or
22 reduce one or more of their liabilities to which
23 subsection (3) applies, in connection with the scheme;
24 exceeds \$1 billion (see subsections (5) to (7)); and
25 (e) the non-resident is connected with a no or low corporate tax
26 jurisdiction (see subsections (8) to (11)).

27 *Have regard to certain matters*

- 28 (2) For the purposes of paragraphs (1)(b) and (c), have regard to the
29 following matters:
30 (a) the matters in subsection 177D(2); and
31 (b) any other matters that the Minister determines by legislative
32 instrument.

33 *Other liabilities*

- 34 (3) This subsection applies to any of the following liabilities:
35 (a) tax under an Australian law (other than income tax);
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Amendments **Schedule 1**

1 (b) tax under a foreign law.

2 *Tax benefit*

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

7 *Annual global revenue*

8 (5) For the purposes of paragraph (1)(d), if the non-resident is a
9 member of a global group, the non-resident's annual global
10 revenue in relation to a year of income is:

11 (a) if any audited consolidated financial statements that relate to
12 a period of 12 months, ending no later than the end of that
13 year of income, have been prepared in relation to the group—
14 the total revenue of all entities to which those statements
15 relate, as stated in latest of those statements that relate to
16 such a period; or

17 (b) otherwise—the Commissioner's estimate of the total revenue
18 of all members of the global group for the latest period of 12
19 months, ending no later than the end of that year of income,
20 to which it could reasonably be expected such statements
21 would have related had they been prepared.

22 (6) For the purposes of paragraph (1)(d), if the non-resident is not a
23 member of a global group, the non-resident's annual global
24 revenue in relation to a year of income is the total revenue of the
25 non-resident, as stated in the latest financial statements for the
26 non-resident that:

27 (a) relate to a period of 12 months ending no later than the end of
28 that year of income; and

29 (b) are in accordance with:

30 (i) the accounting principles; or

31 (ii) if the accounting principles do not apply to the
32 preparation of the financial statements—comparable
33 standards for accounting made under a foreign law that

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Schedule 1 Amendments

1 apply to the preparation of the financial statements
2 under a foreign law.

3 (7) For the purposes of subsections (5) and (6):

- 4 (a) amounts are to be expressed in Australian currency; and
5 (b) an entity must comply with the accounting standards in
6 converting an amount into Australian currency (whether or
7 not the accounting standard would otherwise apply to the
8 entity).

9 *Connection with a no or low corporate tax jurisdiction*

10 (8) For the purposes of paragraph (1)(e), the non-resident is connected
11 with a no or low corporate tax jurisdiction if any of the activities of
12 the non-resident, or (if the non-resident is a member of a global
13 group) any other member of the global group, give rise to income
14 that:

15 (a) is, under:

- 16 (i) a law of a foreign country; or
17 (ii) an arrangement with the government of, or an authority
18 of the government of, a foreign country or part of a
19 foreign country;

20 subject to no corporate income tax, or to a low rate of
21 corporate income tax; or

22 (b) is not subject to corporate income tax under any Australian
23 law or foreign law.

24 (9) Subsection (8) does not apply in relation to an activity that is not
25 related, directly or indirectly, to the supply in relation to which
26 paragraph (1)(a) applies.

27 (10) Subsection (8) does not apply in relation to an activity if the entity
28 undertaking the activity undertakes substantial economic activity,
29 relating to the supplies in relation to which paragraph (1)(a)
30 applies, in the foreign country, or part of the foreign country,
31 referred to in paragraph (8)(a).

32 (11) Subsection (9) or (10) is taken not to apply in relation to an activity
33 if the Commissioner has not been given information that
34 establishes that the subsection applies in relation to the activity.

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Amendments **Schedule 1**

1

Schemes outside Australia

2

(12) 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.

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4 Application

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The amendments made by this Schedule apply in relation to tax benefits that a taxpayer obtains, or would but for section 177F obtain, 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.

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