

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Black
Economy Taskforce Measures No. 2) Bill
2018: Removing tax deductibility of
non-compliant payments**

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. | |
| 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. | |
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Schedule 1—Amendments

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 of goods (within the meaning of section 195-1 of the *GST Act) or real property (within the meaning of that section)—section 12-190 (about quoting of *ABN); and

(b) either:

(i) you fail to withhold any amount from the payment; or

(ii) after withholding any amount from the payment, you fail to comply with section 16-150 or 389-5 (as the case requires) in that Schedule in relation to the amount withheld.

Note: If you withhold an amount from the payment, even if it is different from the amount required to be withheld as mentioned in paragraph (a), this subsection will not affect your ability to deduct the payment.

(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

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

- 3 (i) section 12-35 (about payments to employees);
4 (ii) section 12-40 (about payments to directors);
5 (iii) section 12-47 (about payments to *religious
6 practitioners);
7 (iv) section 12-60 (about payments under labour hire and
8 certain other arrangements);
9 (v) in relation to a *supply, other than a supply of goods
10 (within the meaning of section 195-1 of the *GST Act)
11 or real property (within the meaning of that section)—
12 section 12-190 (about quoting of *ABN); and
13 (b) you fail to comply with section 16-150 in that Schedule in
14 relation to that amount.

15 *Exception—nil amounts*

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

19 *Exception—ABN quoted*

- 20 (4) Subsection (1) does not apply in relation to an amount required to
21 be withheld from a payment under section 12-35 in Schedule 1 to
22 the *Taxation Administration Act 1953*, if:
23 (a) when the payment is made, you have been given:
24 (i) an *invoice or some other document that relates to the
25 payment that *quotes the individual's *ABN; or
26 (ii) if the payment relates to a *supply that has been made
27 through an *agent—an invoice or some other document
28 that relates to the payment that quotes the agent's ABN;
29 or
30 (b) when the payment is made:
31 (i) you have been given an invoice or some other document
32 that relates to the payment that purports to quote the
33 individual's ABN; and
34 (ii) the individual does not have an ABN, or the invoice or
35 other document does not in fact quote the individual's
36 ABN; and

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- 1 (iii) you have no reasonable grounds to believe that the
2 individual does not have an ABN, or that the invoice or
3 other document does not quote the individual's ABN; or
4 (c) if the payment relates to a supply that has been made through
5 an agent—when the payment is made:
6 (i) you have been given an invoice or some other document
7 that relates to the payment that purports to quote the
8 agent's ABN; and
9 (ii) the agent does not have an ABN, or the invoice or other
10 document does not in fact quote the agent's ABN; and
11 (iii) you have no reasonable grounds to believe that the
12 agent does not have an ABN, or that the invoice or other
13 document does not quote the agent's ABN.
- 14 (5) Subsection (2) does not apply in relation to a *non-cash benefit that
15 requires an amount to be paid to the Commissioner, if:
16 (a) when the non-cash benefit is provided, you have been given:
17 (i) an *invoice or some other document that relates to the
18 non-cash benefit that *quotes the individual's *ABN; or
19 (ii) if the non-cash benefit relates to a *supply that has been
20 made through an *agent—an invoice or some other
21 document that relates to the non-cash benefit that quotes
22 the agent's ABN; or
23 (b) when the non-cash benefit is provided:
24 (i) you have been given an invoice or some other document
25 that relates to the non-cash benefit that purports to quote
26 the individual's ABN; and
27 (ii) the individual does not have an ABN, or the invoice or
28 other document does not in fact quote the individual's
29 ABN; and
30 (iii) you have no reasonable grounds to believe that the
31 individual does not have an ABN, or that the invoice or
32 other document does not quote the individual's ABN; or
33 (c) if the non-cash benefit relates to a supply that has been made
34 through an agent—when the non-cash benefit is provided:
35 (i) you have been given an invoice or some other document
36 that relates to the non-cash benefit that purports to quote
37 the agent's ABN; and
38 (ii) the agent does not have an ABN, or the invoice or other
39 document does not in fact quote the agent's ABN; and
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1 (iii) you have no reasonable grounds to believe that the
2 agent does not have an ABN, or that the invoice or other
3 document does not quote the agent's ABN.

4 *Exception—voluntarily tell the Commissioner about a mistake*

5 (6) Subsection (1) does not apply if, before either of the events
6 referred to in subsection (8) happens, you voluntarily tell the
7 Commissioner that you have failed to:
8 (a) withhold any amount; or
9 (b) comply with section 16-150 or 389-5 (as the case requires) in
10 Schedule 1 to the *Taxation Administration Act 1953* in
11 relation to an amount withheld.

12 (7) Subsection (2) does not apply if, before either of the events
13 referred to in subsection (8) happens, you voluntarily tell the
14 Commissioner that you have failed to comply with section 16-150
15 in Schedule 1 to the *Taxation Administration Act 1953* in relation
16 to an amount.

17 (8) For the purposes of subsections (6) and (7), the events are:
18 (a) the Commissioner tells you that an examination is to be made
19 of your affairs relating to a *taxation law for a relevant
20 period; or
21 (b) the Commissioner makes a public statement requesting
22 entities to make a voluntary disclosure by a particular earlier
23 day about a *scheme or transaction that applies to your
24 affairs.

25 **2 Application**

26 The amendments made by this Schedule apply in relation to income
27 years starting on or after 1 July 2019.