

# EXPOSURE DRAFT

EXPOSURE DRAFT
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Inserts for  
**Treasury Laws Amendment (Measures  
for Consultation) Bill 2023: PWC  
Response—promoter penalty laws  
reform**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Promoter penalty reform	The later of: (a) 1 July 2024; and (b) 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 #—Promoter penalty law reform

### *Taxation Administration Act 1953*

#### **1 After paragraph 290-5(a) in Schedule 1**

Insert:

(aa) to deter the promotion of schemes on the basis of conformity with a \*public ruling, \*private ruling or \*oral ruling if the scheme is materially different from that described in the ruling; and

#### **2 Paragraph 290-5(b) in Schedule 1**

Omit “\*product ruling”, substitute “public ruling, private ruling or oral ruling”.

#### **3 Paragraph 290-5(b) in Schedule 1**

Omit “the product ruling”, substitute “the ruling”.

#### **4 After subsection 290-50(1) in Schedule 1**

Insert:

*Promoting scheme otherwise than in accordance with ruling*

(1A) An entity must not engage in conduct that results in a \*scheme that is materially different from that described in a \*public ruling, \*private ruling or \*oral ruling being promoted on the basis of conformity with that ruling.

#### **5 Subsection 290-50(2) in Schedule 1**

Omit “\*product ruling”, substitute “\*public ruling, \*private ruling or \*oral ruling (whether or not the ruling actually relates to the scheme)”.

#### **6 Subsection 290-50(2) in Schedule 1**

Omit “the product ruling”, substitute “the ruling”.

#### **7 Subsection 290-50(2) in Schedule 1 (note)**

Omit “product”.

#### **8 Subsection 290-50(2A) in Schedule 1**

Omit “subsection (2)”, substitute “subsections (1A) and (2)”.

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## 9 Subsection 290-50(2A) in Schedule 1 (note 2)

Omit “product”.

## 10 Subsection 290-50(3) in Schedule 1

After “(1)”, insert “, (1A)”.

## 11 Subsection 290-50(4) in Schedule 1

Repeal the subsection, substitute:

### *Amount of penalty*

- (4) The maximum amount of the penalty for a contravention by an individual is the greater of:
- (a) 5,000 penalty units; and
  - (b) 3 times the total value of all benefits received or receivable (directly or indirectly) by the individual and \*associates of the individual in respect of the \*scheme.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4A) The maximum amount of the penalty for a contravention by an entity that is a body corporate is the greatest of the following:
- (a) 50,000 penalty units;
  - (b) 3 times the total value of all benefits received or receivable (directly or indirectly) by the entity and \*associates of the entity in respect of the \*scheme;
  - (c) either:
    - (i) 10% of the \*aggregated turnover of the entity for the most recent income year to end before the entity contravened, or began to contravene, the provision; or
    - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4B) Despite subsections (4) and (4A), the maximum amount of the penalty for a contravention by an entity that is:
- (a) a partner in a partnership that is a \*significant global entity;
- or
- (b) a trustee of a trust that is a significant global entity;
- is the greatest of the following:

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- 1 (c) 50,000 penalty units;
- 2 (d) 3 times the total value of all benefits received or receivable
- 3 (directly or indirectly) by the significant global entity and
- 4 \*associates of the significant global entity in respect of the
- 5 \*scheme;
- 6 (e) either:
- 7 (i) 10% of the \*aggregated turnover of the significant
- 8 global entity for the most recent income year to end
- 9 before the entity contravened, or began to contravene,
- 10 the provision; or
- 11 (ii) if the amount worked out under subparagraph (i) is
- 12 greater than an amount equal to 2.5 million penalty
- 13 units—2.5 million penalty units.

14 Note: See section 4AA of the *Crimes Act 1914* for the current value of a

15 penalty unit.

## 16 **12 Subsection 290-50(5) in Schedule 1**

17 After “(1)”, insert “, (1A)”.

## 18 **13 Paragraph 290-50(5)(a) in Schedule 1**

19 Omit “consideration”, substitute “benefit”.

## 20 **14 Subsection 290-55(2) in Schedule 1**

21 Repeal the subsection, substitute:

- 22 (2) The other entity referred to in paragraph (1)(b) does not include:
- 23 (a) someone who was an employee or agent of the entity when
- 24 the alleged conduct occurred; or
- 25 (b) if the entity is a body corporate—someone who was a
- 26 director of the entity when the alleged conduct occurred; or
- 27 (c) if the entity is a partner in a partnership that is a \*significant
- 28 global entity—someone who was a partner in the partnership
- 29 when the alleged conduct occurred; or
- 30 (d) if the entity is a trustee of a trust that is a significant global
- 31 entity and has more than one trustee—someone who was also
- 32 a trustee of the trust when the alleged conduct occurred.

## 33 **15 Subsection 290-55(4) in Schedule 1**

34 Omit “4 years”, substitute “6 years”.

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## 16 Subsection 290-55(5) in Schedule 1

Omit “\*product ruling”, substitute “\*public ruling, \*private ruling or \*oral ruling”.

## 17 Subsection 290-55(5) in Schedule 1

Omit “4 years”, substitute “6 years”.

## 18 Subsection 290-55(5) in Schedule 1

Omit all the words after “last engaged”, substitute:

in conduct in relation to:

(a) if the scheme has been implemented—the implementation of the scheme; or

(b) if the scheme has not been implemented—the promotion of the scheme.

## 19 Subsection 290-55(6) in Schedule 1

Omit “a \*scheme involving”, substitute “\*schemes that involve, or if implemented would involve,”.

## 20 After paragraph 290-55(7)(a) in Schedule 1

Insert:

(aa) that results in a \*scheme that is materially different from that described in a \*public ruling, \*private ruling or \*oral ruling being promoted on the basis of conformity with that ruling; or

## 21 Paragraph 290-55(7)(b) in Schedule 1

Omit “\*scheme”, substitute “scheme”.

## 22 Paragraph 290-55(7)(b) in Schedule 1

Omit “\*product ruling”, substitute “public ruling, private ruling or oral ruling”.

## 23 Paragraph 290-55(7)(b) in Schedule 1

Omit “the product ruling”, substitute “the ruling”.

## 24 After subsection 290-55(7) in Schedule 1

Insert:

(7A) The other entity referred to in paragraph (7)(a) does not include:

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- 1 (a) if the entity mentioned first in subsection (7) is a partner in a  
2 partnership:  
3 (i) the partnership; or  
4 (ii) someone who was a partner in the partnership when the  
5 alleged conduct occurred; or  
6 (b) if the entity mentioned first in subsection (7) is a trustee of a  
7 trust:  
8 (i) the trust; or  
9 (ii) if the trust has more than one trustee—someone who  
10 was also a trustee of the trust when the alleged conduct  
11 occurred.

## 12 **25 Paragraph 290-60(1)(a) in Schedule 1**

13 Repeal the paragraph, substitute:

- 14 (a) the entity:  
15 (i) markets the scheme; or  
16 (ii) otherwise encourages the growth of the scheme or  
17 interest in it; and

## 18 **26 Paragraph 290-60(1)(b) in Schedule 1**

19 Omit “consideration”, substitute “a benefit”.

## 20 **27 After subsection 290-65(1) in Schedule 1**

21 Insert:

- 22 (1A) A \*scheme is also a *tax exploitation scheme* if, at the time of the  
23 conduct mentioned in subsection 290-50(1):  
24 (a) one of these conditions is satisfied:  
25 (i) if the scheme has been implemented—Part IVA of the  
26 *Income Tax Assessment Act 1936* applies to the scheme  
27 because of section 177DA or 177J of that Act;  
28 (ii) if the scheme has not been implemented—it is  
29 reasonable to conclude that Part IVA of that Act would  
30 apply to the scheme because of section 177DA or 177J  
31 of that Act; and  
32 (b) one of these conditions is satisfied:  
33 (i) if the scheme has been implemented—it is reasonable to  
34 conclude that an entity that (alone or with others)  
35 entered into or carried out the scheme, or part of it, did  
36 so for a principal purpose of, or for more than one  
37 principal purpose that includes a purpose of, that entity

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- 1 or another entity getting a scheme benefit from the  
2 scheme;
- 3 (ii) if the scheme has not been implemented—it is  
4 reasonable to conclude that if an entity (alone or with  
5 others) had entered into or carried out the scheme, it  
6 would have done so for a principal purpose of, or for  
7 more than one principal purpose that includes a purpose  
8 of, that entity or another entity getting a scheme benefit  
9 from the scheme; and
- 10 (c) one of these conditions is satisfied:
- 11 (i) if the scheme has been implemented—it is not  
12 \*reasonably arguable that the scheme benefit is available  
13 at law;
- 14 (ii) if the scheme has not been implemented—it is not  
15 reasonably arguable that the scheme benefit would be  
16 available at law if the scheme were implemented.

## 28 Section 290-120 in Schedule 1

17 After “(1)”, insert “, (1A)”.

## 29 Paragraph 290-135(a) in Schedule 1

19 Omit “\*product ruling”, substitute “\*public ruling, \*private ruling or  
20 \*oral ruling”.

## 30 At the end of section 444-30 in Schedule 1

21 Add:

- 22 (5) If a civil penalty may be imposed in relation to a contravention of a  
23 provision of this Schedule or an \*indirect tax law:
- 24 (a) subsection (3) applies to a contravention of the provision in a  
25 corresponding way to the way in which it applies to an  
26 offence; and  
27 (b) subsection (4) does not apply.  
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## 31 At the end of Division 444 in Schedule 1

30 Add:

## 32 Subdivision 444-F—Trusts

### 33 Table of sections

34 444-120 Trusts

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## 444-120 Trusts

- 1  
2 (1) If a civil penalty may be imposed in relation to a contravention of a  
3 provision of this Schedule or an indirect tax law, a contravention  
4 of the provision by a trust is taken to have been committed by the  
5 trustee of the trust, or, if the trust has more than one trustee, by  
6 each of the trustees.

7 *Joint and several liability*

- 8 (2) If an amount is payable under this section by more than one entity,  
9 those entities are jointly and severally liable to pay the amount.

## 32 Application

- 10  
11 (1) Subject to subitem (2), the amendments made by this Schedule apply in  
12 relation to conduct engaged in on or after the commencement of this  
13 Schedule.
- 14 (2) The amendments made by items 15 and 17 apply in relation to conduct  
15 engaged in before, on or after the commencement of this Schedule.