

# EXPOSURE DRAFT

## EXPOSURE DRAFT

1

2 Inserts for

3 **Tax and Superannuation Laws**  
4 **Amendment (2014 Measures No. 2) Bill**  
5 **2014: Protection for discontinued**  
6 **announced measures**

7

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**Commencement information**

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Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule #— Protection for anticipation of certain discontinued announcements	The day this Act receives the Royal Assent.	

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## **Schedule #—Protection for anticipation of certain discontinued announcements**

## **Income Tax Assessment Act 1936**

## 1 Subsection 170(10) (after table item 27)

Insert:

27A Subsection 170B(8) Removal of protection relating to discontinued announcement because of later inconsistent return

## 2 After section 170A

Insert:

## **170B Protection for anticipation of certain discontinued announcements**

*Assessments based on returns that anticipate discontinued announcements*

(1) This section applies to an assessment of a taxpayer for a year of income if:

- (a) a statement in a return of the taxpayer for that year of income or an earlier year of income is consistent with amendments (the taxpayer's *anticipated amendments*) having been made to the taxation law that, if made, would reasonably reflect an announcement mentioned in the table in subsection (9); and
- (b) the statement is made in good faith; and
- (c) the statement:
  - (i) is in a return that was lodged in the period that the announcement was on foot (see subsection (9)), and was not required to be lodged before the start of that period; or
  - (ii) relates to the application of the taxation law to events or circumstances that happened or existed while the announcement was on foot; and

(d) the assessment is made, in a particular respect, on a basis that is consistent with the taxpayer's anticipated amendments having been made.

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(2) In determining, for the purpose of paragraph (1)(a), whether a taxpayer's anticipated amendments would reasonably reflect an announcement, have regard to the following:

- (a) the terms of the announcement;
- (b) any related document published after the announcement on behalf of the Commonwealth Government, the Department of the Treasury or the Commissioner;
- (c) if the announcement proposes to apply to a particular kind of scheme or practice—that kind of scheme or practice;
- (d) existing provisions of the taxation law, if:
  - (i) the announcement proposes to effect a particular result in relation to the operation of the taxation law; and
  - (ii) those existing provisions effect that result, or a substantially similar result, in relation to another matter;
- (e) any other relevant matter.

### *Limit on amending assessments*

(3) The Commissioner cannot amend an assessment to which this section applies in the respect mentioned in paragraph (1)(d) on the basis of the taxpayer's anticipated amendments *not* having been made, if amending the assessment in that way would produce a less favourable result for the taxpayer.

### *Anticipation not to give rise to administrative overpayment*

(4) If:

- (a) the Commissioner pays an amount to the taxpayer on the basis of an assessment to which this section applies; and
- (b) if the assessment were instead made on the basis of the taxpayer's anticipated amendments *not* having been made:
  - (i) the assessment to which this section applies would not be amended; but
  - (ii) the taxpayer would not be entitled to the amount;

the amount is taken, for the purposes of the taxation law, to be an amount to which the taxpayer is entitled.

Note 1: An assessment would not be amended if changing the basis of the assessment does not change the ascertained amounts (this might happen if the assessment was that no tax is payable).

Note 2: For administrative overpayments, see section 8AAZN of the *Taxation Administration Act 1953*.

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### *Operation of section*

(5) Subsections (3) and (4) apply despite any other provision of the taxation law, apart from subsections (6) to (8), (which are about exceptions).

## *Exceptions*

- (6) Subsection (3) does not apply if the taxpayer applies for the amendment of the assessment.
- (7) Subsection (3) does not apply if the Commissioner may amend the assessment in accordance with item 6 (review or appeal) of the table in subsection 170(1).
- (8) Despite subsection (1), this section does not apply to an assessment for a year of income if:
  - (a) the taxpayer makes a statement in a return of income for a later year of income; and
  - (b) that statement is not consistent with the taxpayer's anticipated amendments; and
  - (c) if the assessment for the later year of income was to be made on the basis of the taxpayer's anticipated amendments, instead of on the basis of the statement, the result would be less favourable to the taxpayer in that year of income.

Note: An amendment of an assessment can be made at any time to give effect to this subsection (see item 27A of the table in subsection 170(10)).

### *Table of discontinued announcements*

(9) The following table lists the announcements to which this section applies. An announcement is *on foot* during the period:

- (a) starting on the day mentioned in column 2 of the table for the announcement; and
- (b) ending on 14 December 2013.

## Discontinued announcements

Item	Column 1 Announcement	Column 2 Announcement date
1	2012-13 Budget Paper No. 2, Part 1, topic headed “Bad debts—ensuring consistent treatment in related party financing arrangements”.	8 May 2012

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**Discontinued announcements**

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<b>Item</b>	<b>Column 1</b> <b>Announcement</b>	<b>Column 2</b> <b>Announcement</b> <b>date</b>
2	2012-13 Budget Paper No. 2, Part 1, topic headed “Capital gains tax—refinements to the income tax law in relation to deceased estates”.	8 May 2012
3	The following constitute the announcement: (a) Media Release No. 137, issued by the then Assistant Treasurer on 9 October 2011, titled “No Capital Gains Tax for Properties in Natural Disaster Land Swap Programs”; (b) 2012-13 Budget Paper No. 2, Part 1, topic headed “Capital gains tax—broadening relief for taxpayers affected by natural disasters”.	9 October 2011
4	2011-12 Budget Paper No. 2, Part 1, topic headed “Income tax relief for water reforms”.	10 May 2011
5	2011-12 Budget Paper No. 2, Part 1, topic headed “Capital gains tax and other roll-overs for amalgamations of indigenous corporations”.	10 May 2011
6	2011-12 Budget Paper No. 2, Part 1, topic headed “Securities lending arrangements tax rules—extending the scope to address insolvency issues”.	10 May 2011
7	2011-12 Budget Paper No. 2, Part 1, topic headed “Capital gains tax—exemption for incentives related to renewable resources or for preserving environmental benefits”.	10 May 2011
8	2011-12 Budget Paper No. 2, Part 1, topic headed “Capital gains tax—minor amendments ensuring the proper functioning of the capital gains tax provisions”, fourth dot point (which is about allowing a testamentary trust to distribute an asset of the deceased person without a CGT taxing point occurring).	10 May 2011
9	2011-12 Budget Paper No. 2, Part 1, topic headed “Improvements to the company loss recoupment rules”.	10 May 2011
10	The following constitute the announcement: (a) 2009-10 Budget Paper No. 2, Part 1, topic headed “Uniform capital allowance regime—technical changes”; (b) Media Release No. 048, issued by the then Assistant Treasurer on 12 May 2009, Attachment D	12 May 2009

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## Discontinued announcements

Item	Column 1 Announcement	Column 2 Announcement date
	headed “Technical changes to uniform capital allowance regime”.	
11	<p>The following constitute the announcement:</p> <p>(a) 2007-08 Budget Paper No. 2, Part 1, topic headed “Consolidation—further improvements to the operation of the income tax law for consolidated groups”;</p> <p>(b) Media Release No. 050, issued by the then Minister for Revenue and Assistant Treasurer on 8 May 2007, topic headed “Extension of the single entity rule and entry history rule for certain CGT integrity provisions affecting third parties”.</p>	8 May 2007
12	<p>The following constitute the announcement:</p> <p>(a) 2007-08 Budget Paper No. 2, Part 1, topic headed “Consolidation—further improvements to the operation of the income tax law for consolidated groups”;</p> <p>(b) Media Release No. 050, issued by the then Minister for Revenue and Assistant Treasurer on 8 May 2007, topic headed “Trusts joining or leaving a consolidated group or MEC group part way through an income year”.</p>	8 May 2007
13	2006-7 Budget Paper No. 2, Part 1, topic headed “Simplified imputation system—franking credits available to life tenants”.	9 May 2006

1 (10) In this section:

**2** **taxation law** has the meaning given by subsection 995-1(1) of the  
**3** *Income Tax Assessment Act 1997*.