

# EXPOSURE DRAFT

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Inserts for  
**Tax and Superannuation Laws  
Amendment (2014 Measures No. #) Bill  
2014: FATCA**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Schedule #	The day this Act receives the Royal Assent.	
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## Schedule #—FATCA

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### *Income Tax Assessment Act 1997*

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#### **1 Subsection 995-1(1)**

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5           Insert:

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6                         *FATCA Agreement* has the meaning given by section 396-15 in  
7                         Schedule 1 to the *Taxation Administration Act 1953*.

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### *Taxation Administration Act 1953*

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#### **2 After Division 394**

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10           Insert:

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## 1 **Division 396—FATCA**

### 2 **Guide to Division 396**

#### 3 **396-1 What this Division is about**

4 This Subdivision gives effect to the FATCA Agreement between  
5 the Government of Australia and the Government of the United  
6 States of America.

7 Reporting Australian Financial Institutions must give the  
8 Commissioner certain information about U.S. Reportable  
9 Accounts. For the 2015 and 2016 calendar years, they must also  
10 give the Commissioner information about payments made to  
11 Nonparticipating Financial Institutions.

12 This Subdivision also creates record-keeping and due diligence  
13 obligations in relation to the requirements to give the  
14 Commissioner information.

#### 15 **Table of sections**

16	396-5	Statements about U.S. Reportable Accounts
17	396-10	Statements about payments to Nonparticipating Financial Institutions
18	396-15	Meaning of the <i>FATCA Agreement</i>
19	396-20	Due diligence procedures
20	396-25	Record keeping

#### 21 **396-5 Statements about U.S. Reportable Accounts**

- 22 (1) Subsection (2) applies if:
- 23 (a) an entity is a Reporting Australian Financial Institution
  - 24 (within the meaning of the \*FATCA Agreement) at any time
  - 25 in a calendar year; and
  - 26 (b) the entity maintains a U.S. Reportable Account (within the
  - 27 meaning of the FATCA Agreement) at any time in the year.
- 28 (2) The entity must give the Commissioner a statement that contains
- 29 the information in respect of that U.S. Reportable Account that the
- 30 Australian Government is required to obtain in order for it to fulfil
- 31 its obligations under the \*FATCA Agreement in respect of that
- 32 U.S. Reportable Account.

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- 1 (3) A statement under subsection (2) must be in the \*approved form.  
2 (4) More than one statement under subsection (2) may be included in  
3 the same document.  
4 (5) The statement must be given to the Commissioner no later than the  
5 first 31 July after the end of the year.  
6 Note: Section 388-55 allows the Commissioner to defer the time for giving  
7 an approved form.

## 8 **396-10 Statements about payments to Nonparticipating Financial** 9 **Institutions**

- 10 (1) Subsection (2) applies if:  
11 (a) an entity is a Reporting Australian Financial Institution  
12 (within the meaning of the \*FATCA Agreement) at any time  
13 in a calendar year; and  
14 (b) the calendar year is the 2015 or 2016 year; and  
15 (c) the entity makes a payment to a Nonparticipating Financial  
16 Institution (within the meaning of the FATCA Agreement) at  
17 any time in the year.  
18 (2) The entity must give the Commissioner a statement that contains  
19 the information in respect of that payment that the Australian  
20 Government is required to obtain in order for it to fulfil its  
21 obligations under the \*FATCA Agreement in respect of that  
22 payment.  
23 (3) A statement under subsection (2) must be in the \*approved form.  
24 (4) More than one statement under subsection (2) may be included in  
25 the same document.  
26 (5) The statement must be given to the Commissioner no later than the  
27 first 31 July after the end of the year.  
28 Note: Section 388-55 allows the Commissioner to defer the time for giving  
29 an approved form.

## 30 **396-15 Meaning of the *FATCA Agreement***

31 The *FATCA Agreement* is the Agreement between the  
32 Government of Australia and the Government of the United States  
33 of America to Improve International Tax Compliance and to  
34 Implement FATCA, done at [TBA] on [TBA].

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1 Note: The text of the Agreement is set out in Australian Treaty Series  
2 [TBA]. In 2014, the text of a Convention in the Australian Treaty  
3 Series was accessible through the Australian Treaties Library on the  
4 AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

## 5 396-20 Due diligence procedures

6 If an entity is obliged to give the Commissioner a statement under  
7 subsection 396-5(2) or 396-10(2), the entity must ensure that the  
8 information contained in the statement is determined by the entity  
9 by applying the due diligence procedures required under the  
10 \*FATCA Agreement.

11 Note: Those due diligence procedures are specified in Annex I to the  
12 FATCA Agreement, subject to the application of Article 7 of that  
13 Agreement (consistency in the application of FATCA to partner  
14 jurisdictions).

## 15 396-25 Record keeping

16 (1) If an entity is obliged to give the Commissioner a statement under  
17 subsection 396-5(2) or 396-10(2), the entity must keep written  
18 records that:

- 19 (a) correctly record the procedures by which the entity  
20 determines the information that is required to be contained in  
21 the statement; and  
22 (b) are in English, or readily accessible and easily convertible  
23 into English.

24 (2) The entity must retain the records until the expiration of 5 years  
25 after the entity gives the Commissioner the statement under  
26 subsection 396-5(2) or 396-10(2).

27 Note: Section 288-25 imposes an administrative penalty if an entity does not  
28 keep and retain records as required by this section.

## 29 3 Application

30 (1) Subject to subitem (2), the amendments made by this Schedule apply in  
31 relation to a U.S. Reportable Account that is maintained by a Reporting  
32 Australian Financial Institution on or after 1 July 2014.

33 (2) The following provisions apply in relation to a payment that is made by  
34 a Reporting Australian Financial Institution on or after 1 July 2014:

- 35 (a) section 396-10 in Schedule 1 to the *Taxation Administration*  
36 *Act 1953* (as inserted by this Schedule);

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(b) any other provision inserted in that Schedule by this Schedule, to the extent that the provision relates to the section mentioned in paragraph (a).