

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (2013 Measures**
3 **No. 1) Bill 2013: General anti-avoidance**
4 **rules**

5

EXPOSURE DRAFT

6

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule #	The day this Act receives the Royal Assent.	
2.		
3.		

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1
2 **Schedule #—General anti-avoidance rules**
3

4 ***Income Tax Assessment Act 1936***

5 **1 Paragraph 45B(8)(k)**

6 Omit “subparagraphs 177D(b)(i) to (viii)”, substitute “subsection
7 177D(2)”.

8 **2 Before section 177A**

9 Insert:

10 **177AA Object of this Part**

11 The object of this Part is to counter schemes (including schemes
12 that are steps within or towards other schemes) that are entered into
13 or carried out with an objectively ascertainable purpose of reducing
14 the liability of a taxpayer to tax or withholding tax.

15 Note: The ascertainable purpose must in most cases be the sole or dominant
16 purpose (see sections 177E, 177EA and 177EB for the exceptions).

17 **3 At the end of paragraph 177C(1)(bb)**

18 Add “or”.

19 **4 After paragraph 177C(1)(bb)**

20 Insert:

21 (bc) the taxpayer not being liable to pay withholding tax on an
22 amount where the taxpayer either would have, or might
23 reasonably be expected to have, been liable to pay
24 withholding tax on the amount if the scheme had not been
25 entered into or carried out;

26 **5 At the end of subsection 177C(1)**

27 Add:

28 ; and (g) in a case to which paragraph (bc) applies—the amount
29 referred to in that paragraph.

30 **6 Sections 177CA and 177D**

31 Repeal the sections, substitute:

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177CB Assumptions relating to alternative postulates

- 1
2 (1) In deciding whether paragraph 177C(1)(a), (b), (ba), (bb) or (bc) is
3 satisfied on the basis of a postulate that is an alternative to the
4 entry into or carrying out of a scheme:
- 5 (a) assume that each person (whether or not a participant in the
6 scheme) would have acted or refrained from acting, as the
7 case requires, without regard to any person's liability (or
8 potential liability) to tax or withholding tax in any year of
9 income; and
- 10 (b) if the scheme achieves, or would achieve, one or more
11 non-tax effects for the taxpayer—assume that each person
12 (whether or not a participant in the scheme) would have acted
13 or refrained from acting, as the case requires, intending to
14 achieve for the taxpayer:
- 15 (i) the same non-tax effects as the scheme achieves, or
16 would achieve, for the taxpayer; and
- 17 (ii) all the other non-tax effects that were achieved, or
18 would be achieved, for the taxpayer in connection with
19 the scheme; and
- 20 (c) if the scheme does not achieve, or would not achieve, any
21 non-tax effects for the taxpayer—assume that all events or
22 circumstances that actually happened or existed but did not
23 form part of the scheme would still have happened or existed.
- 24 (2) For the purposes of paragraph (1)(b), have regard to the matters to
25 which regard must be had under subsections 177D(1) and (2) in
26 deciding whether this Part applies to the scheme, so far as those
27 matters relate to the taxpayer.
- 28 (3) In this section:
- 29 *non-tax effect* means an effect other than:
- 30 (a) an effect relating to the taxpayer's liability to tax (or
31 withholding tax) in any year of income; or
- 32 (b) an effect that is incidental to achieving an effect, for the
33 taxpayer, covered by paragraph (a).

34 177D Schemes to which this Part applies

35 *Scheme for purpose of obtaining a tax benefit*

- 36 (1) This Part applies to a scheme if it would be concluded (having
37 regard to the matters in subsection (2)) that the person, or one of

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1 the persons, who entered into or carried out the scheme or any part
2 of the scheme did so for the purpose of:

- 3 (a) enabling a taxpayer (a *relevant taxpayer*) to obtain a tax
4 benefit in connection with the scheme; or
5 (b) enabling the relevant taxpayer and another taxpayer (or other
6 taxpayers) each to obtain a tax benefit in connection with the
7 scheme;

8 whether or not that person who entered into or carried out the
9 scheme, or a part of the scheme, is the relevant taxpayer or is the
10 other taxpayer (or one of the other taxpayers).

11 *Have regard to certain matters*

12 (2) For the purpose of subsection (1), have regard to the following
13 matters:

- 14 (a) the manner in which the scheme was entered into or carried
15 out;
16 (b) the form and substance of the scheme;
17 (c) the time at which the scheme was entered into and the length
18 of the period during which the scheme was carried out;
19 (d) the result in relation to the operation of this Act that, but for
20 this Part, would be achieved by the scheme;
21 (e) any change in the financial position of the relevant taxpayer
22 that has resulted, will result, or may reasonably be expected
23 to result, from the scheme;
24 (f) any change in the financial position of any person who has,
25 or has had, any connection (whether of a business, family or
26 other nature) with the relevant taxpayer, being a change that
27 has resulted, will result or may reasonably be expected to
28 result, from the scheme;
29 (g) any other consequence for the relevant taxpayer, or for any
30 person referred to in paragraph (f), of the scheme having
31 been entered into or carried out;
32 (h) the nature of any connection (whether of a business, family
33 or other nature) between the relevant taxpayer and any person
34 referred to in paragraph (f).

35 Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be
36 relevant to determining family relationships for the purposes of
37 paragraphs (f) and (h).

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Tax benefit

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

When schemes entered into etc.

- 5
- 6 (4) Despite subsection (1), this Part applies to the scheme only if:
7 (a) the scheme has been or is entered into after 27 May 1981; or
8 (b) the scheme has been or is carried out or commenced to be
9 carried out after that day (and is not a scheme that was
10 entered into on or before that day).

Schemes outside Australia

- 11
- 12 (5) This section applies whether or not the scheme has been or is
13 entered into or carried out in Australia or outside Australia or
14 partly in Australia and partly outside Australia.

7 Paragraphs 177EA(17)(j) and 177EB(10)(f)

15 Omit “subparagraphs 177D(b)(i) to (viii)”, substitute “subsection
16 177D(2)”.

8 Subsection 177F(1)

17

18 Omit “a tax benefit has been obtained, or would but for this section be
19 obtained, by a taxpayer in connection with a scheme to which this Part
20 applies,”, substitute “this Part applies to a scheme in connection with
21 which a tax benefit has been obtained, or would but for this section be
22 obtained,”.
23

9 Subsection 177F(2A)

24 Omit “section 177CA”, substitute “paragraph 177C(1)(bc)”.

Taxation Administration Act 1953

10 Paragraph 18-40(1)(a) in Schedule 1

25 Omit “section 177CA”, substitute “paragraph 177C(1)(bc)”.

11 Application

26

27 The amendments made by this Schedule apply in relation to all schemes
28 except schemes that were entered into, or that were commenced to be
29 carried out, on or before 15 November 2012.
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