2016‑2017

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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| **EXPOSURE DRAFT** |

Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Bill 2017

No. , 2017

(Treasury)

A Bill for an Act to amend the law relating to taxation, and for related purposes

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A Bill for an Act to amend the law relating to taxation, and for related purposes

The Parliament of Australia enacts:

1 Short title

 This Act is the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2017*.

2 Commencement

 (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| 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 day after this Act receives the Royal Assent. |  |
| 3. Schedule 2 | The first 1 January, 1 April, 1 July or 1 October after the day this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Electronic sales suppression tools

Part 1—Amendments

Income Tax Assessment Act 1997

1 Subsection 995‑1(1)

Insert:

***electronic sales suppression tool*** has the same meaning as in Subdivision BAA of Division 2 of Part III of the *Taxation Administration Act 1953*.

Taxation Administration Act 1953

2 After Subdivision B of Division 2 of Part III

Insert:

Subdivision BAA—Offences relating to electronic sales suppression tools

8WAA Object of this Subdivision

 The object of this Subdivision is to deter the use and distribution of tools to manipulate or falsify electronic point of sale records to facilitate tax evasion.

8WAB Interpretation

 In this Subdivision:

***electronic sales suppression tool*** means a device, software program or other thing, a part of any such thing, or a combination of any such things or parts, that meets the following conditions:

 (a) it is capable of falsifying, manipulating, hiding, obfuscating, destroying, or preventing the creation of a record that:

 (i) an entity is required to keep or make by a taxation law; and

 (ii) is created by a system that is or includes an electronic point of sale system;

 (b) a reasonable person would conclude that one of its principal functions is to falsify, manipulate, hide, obfuscate, destroy, or prevent the creation of, such records.

***right to use*** includes right to possess.

***supply*** has the meaning given by section 9‑10 of the *A New Tax System (Goods and Services Tax) Act 1999*.

8WAC Producing or supplying electronic sales suppression tools

 (1) A person commits an offence if the person:

 (a) manufactures, develops or publishes an electronic sales suppression tool; or

 (b) modifies such a tool with the result that the modification allows, facilitates or enhances the tool’s capacity to falsify, manipulate, hide, obfuscate, destroy, or prevent the creation of, relevant tax records.

Penalty: 5 years imprisonment or 5,000 penalty units, or both.

 (2) A person commits an offence if the person:

 (a) supplies, or makes available for use, an electronic sales suppression tool or a right to use an electronic sales suppression tool; or

 (b) provides a service to an entity that involves the use of an electronic sales suppression tool.

Penalty: 5 years imprisonment or 5,000 penalty units, or both.

 (3) Subsections (1) and (2) do not apply to conduct undertaken by a person for the purpose of preventing or deterring tax evasion or enforcing a taxation law.

Note: A defendant bears an evidential burden in relation to this matter: see subsection 13.3(3) of the *Criminal Code*.

 (4) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

 (5) Section 15.4 (extended geographical jurisdiction—category D) of the *Criminal Code* applies to an offence against subsection (1) of this section if the electronic sales suppression tool is, at any time, used to modify records that an entity is required to hold under, or pursuant to, a taxation law.

 (6) Section 15.4 (extended geographical jurisdiction—category D) of the *Criminal Code* applies to an offence against subsection (2) of this section if the electronic sales suppression tool or the right to use the tool is supplied or made available for use, by the person or another person, to an entity that is required under, or pursuant to, a taxation law to hold any record.

8WAD Possessing electronic sales suppression tools

 (1) A person commits an offence if:

 (a) the person is required under, or pursuant to, a taxation law to keep or make a record; and

 (b) the person acquires, or has possession or control of, an electronic sales suppression tool or a right to use an electronic sales suppression tool.

Penalty: 2 years imprisonment or 500 penalty units, or both.

 (2) Subsection (1) does not apply to conduct undertaken by a person for the purpose of preventing or deterring tax evasion or enforcing a taxation law.

Note: A defendant bears an evidential burden in relation to this matter: see subsection 13.3(3) of the *Criminal Code*.

 (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

8WAE Incorrectly keeping records using an electronic sales suppression tool

 (1) A person commits an offence if:

 (a) the person is required under, or pursuant to, a taxation law to keep or make a record; and

 (b) the person keeps, makes or alters the record with the use of an electronic sales suppression tool; and

 (c) as a result of the use:

 (i) the record does not correctly record and explain the matter, transaction, act or operation to which it relates; or

 (ii) the person does not keep or make the record in accordance with the taxation law.

Penalty: 3 years imprisonment or 1,000 penalty units, or both.

 (2) Subsection (1) does not apply to conduct undertaken by a person for the purpose of preventing or deterring tax evasion or enforcing a taxation law.

Note: A defendant bears an evidential burden in relation to this matter: see subsection 13.3(3) of the *Criminal Code*.

3 After section 288‑120 in Schedule 1

Insert:

288‑125 Producing or supplying electronic sales suppression tools

 (1) An entity is liable to an administrative penalty of 60 penalty units if the entity:

 (a) manufactures, develops or publishes an \*electronic sales suppression tool; or

 (b) modifies an electronic sales suppression tool to allow, facilitate or enhance the tool’s capacity to falsify, manipulate, hide, obfuscate, destroy, or prevent the creation of records of a kind that an entity is required to keep or make by a \*taxation law (other than an \*Excise Act); or

 (c) \*supplies or makes available for use:

 (i) an electronic sales suppression tool; or

 (ii) a \*right to use an electronic sales suppression tool; or

 (d) supplies or makes available services for the installation, upgrade or maintenance of an electronic sales suppression tool.

 (2) An entity is liable to an administrative penalty of 60 penalty units if the entity aids, abets, counsels or procures conduct of another entity for which subsection (1) makes the other entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative and civil penalties.

288‑130 Possessing electronic sales suppression tools

 (1) An entity is liable to an administrative penalty of 30 penalty units if:

 (a) the entity is required under, or pursuant to, a \*taxation law (other than an \*Excise Act) to keep or make a record; and

 (b) the entity acquires, or has possession or control of:

 (i) an \*electronic sales suppression tool; or

 (ii) a \*right to use an electronic sales suppression tool.

 (2) An entity is liable to an administrative penalty of 30 penalty units if the entity aids, abets, counsels or procures conduct of another entity for which subsection (1) makes the other entity liable to an administrative penalty.

Note: Division 298 contains machinery provisions for administrative and civil penalties.

288‑135 Incorrectly keeping records using an electronic sales suppression tool

 An entity is liable to an administrative penalty of 60 penalty units if:

 (a) the entity is required under, or pursuant to, a \*taxation law (other than an \*Excise Act) to keep or make a record; and

 (b) a person keeps, makes or alters the record with the use of an \*electronic sales suppression tool; and

 (c) as a result of the use:

 (i) the record does not correctly record and explain the matter, transaction, act or operation to which it relates; or

 (ii) the person does not keep or make the record in accordance with the taxation law.

Part 2—Application and transitional provisions

4 Application of amendments

(1) An entity may, as soon as practicable after the commencement of this Schedule, give the Commissioner a notice, in the approved form, of the fact that before 7.30 pm (by legal time in the Australian Capital Territory) on 9 May 2017 the entity acquired, or assumed possession or control of, an electronic sales suppression tool or the right to use an electronic sales suppression tool.

(2) If notice is given in accordance with subitem (1), the Commissioner may give to the entity a direction to deal in a particular way, and by a particular date, with the tool or the right to use the tool so that the entity no longer has possession or control of the tool or the right.

(3) If notice is given in accordance with subitem (1), neither subsection 8WAD(1) of the *Taxation Administration Act 1953* nor subsection 288‑130(1) in Schedule 1 to that Act applies in relation to the tool or the right to use the tool during the period beginning at the commencement of this Schedule and ending at the earlier of the following times:

 (a) if the entity is given a direction under subitem (2)—the date specified in the Commissioner’s direction;

 (b) 6 months after commencement.

Schedule 2—Third party reporting

Taxation Administration Act 1953

1 Section 396‑55 in Schedule 1 (after table item 10)

Insert:

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| 11 | an entity that \*supplies cleaning services | the provision of consideration (within the meaning of the \*GST Act) to the entity wholly or partly for the \*supply by the entity of a cleaning service, unless:(a) the entity and the provider of the consideration are \*members of the same \*consolidated group or \*MEC group; or(b) Division 12 requires that an amount be withheld from the payment of the consideration |
| 12 | an entity that \*supplies courier services | the provision of consideration (within the meaning of the \*GST Act) to the entity wholly or partly for the \*supply by the entity of a courier service, unless:(a) the entity and the provider of the consideration are \*members of the same \*consolidated group or \*MEC group; or(b) Division 12 requires that an amount be withheld from the payment of the consideration |

2 Application

(1) In this item:

***amended provision*** means section 396‑55 in Schedule 1 to the *Taxation Administration Act 1953*, as amended by item 1 of this Schedule.

***inserted item*** means either item 11 or 12 of the table in the amended provision.

(2) An inserted item does not apply in relation to a transaction if:

 (a) both of the following apply:

 (i) at the time the transaction happens, a period has not been specified for the relevant inserted item under subparagraph (a)(ii) of the amended provision;

 (ii) the transaction happens before 1 July 2018; or

 (b) both of the following apply:

 (i) at the time the transaction happens, a period has been specified for the relevant inserted item under subparagraph (a)(ii) of the amended provision;

 (ii) the transaction happens during a period that begins before 1 July 2018.