

EXPOSURE DRAFT

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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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1
2 **A Bill for an Act to amend the law relating to**
3 **taxation, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

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

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 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.	

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

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

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

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Electronic sales suppression tools **Schedule 1**

1 **Schedule 1—Electronic sales suppression**
2 **tools**

3 **Part 1—Amendments**

4 *Income Tax Assessment Act 1997*

5 **1 Subsection 995-1(1)**

6 Insert:

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

10 *Taxation Administration Act 1953*

11 **2 After Subdivision B of Division 2 of Part III**

12 Insert:

13 **Subdivision BAA—Offences relating to electronic sales**
14 **suppression tools**

15 **8WAA Object of this Subdivision**

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

19 **8WAB Interpretation**

20 In this Subdivision:

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

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

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Schedule 1 Electronic sales suppression tools

- 1 (i) an entity is required to keep or make by a taxation law;
2 and
3 (ii) is created by a system that is or includes an electronic
4 point of sale system;
5 (b) a reasonable person would conclude that one of its principal
6 functions is to falsify, manipulate, hide, obfuscate, destroy, or
7 prevent the creation of, such records.

8 *right to use* includes right to possess.

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

11 **8WAC Producing or supplying electronic sales suppression tools**

- 12 (1) A person commits an offence if the person:
13 (a) manufactures, develops or publishes an electronic sales
14 suppression tool; or
15 (b) modifies such a tool with the result that the modification
16 allows, facilitates or enhances the tool's capacity to falsify,
17 manipulate, hide, obfuscate, destroy, or prevent the creation
18 of, relevant tax records.

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

- 20 (2) A person commits an offence if the person:
21 (a) supplies, or makes available for use, an electronic sales
22 suppression tool or a right to use an electronic sales
23 suppression tool; or
24 (b) provides a service to an entity that involves the use of an
25 electronic sales suppression tool.

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

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

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

- 32 (4) An offence against subsection (1) or (2) is an offence of strict
33 liability.
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Electronic sales suppression tools **Schedule 1**

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

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

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

13 **8WAD Possessing electronic sales suppression tools**

- 14 (1) A person commits an offence if:
15 (a) the person is required under, or pursuant to, a taxation law to
16 keep or make a record; and
17 (b) the person acquires, or has possession or control of, an
18 electronic sales suppression tool or a right to use an
19 electronic sales suppression tool.

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

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

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

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

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

28 **8WAE Incorrectly keeping records using an electronic sales** 29 **suppression tool**

- 30 (1) A person commits an offence if:
31 (a) the person is required under, or pursuant to, a taxation law to
32 keep or make a record; and
-

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Schedule 1 Electronic sales suppression tools

- 1 (b) the person keeps, makes or alters the record with the use of
2 an electronic sales suppression tool; and
3 (c) as a result of the use:
4 (i) the record does not correctly record and explain the
5 matter, transaction, act or operation to which it relates;
6 or
7 (ii) the person does not keep or make the record in
8 accordance with the taxation law.

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

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

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

15 **3 After section 288-120 in Schedule 1**

16 Insert:

17 **288-125 Producing or supplying electronic sales suppression tools**

- 18 (1) An entity is liable to an administrative penalty of 60 penalty units
19 if the entity:
20 (a) manufactures, develops or publishes an *electronic sales
21 suppression tool; or
22 (b) modifies an electronic sales suppression tool to allow,
23 facilitate or enhance the tool's capacity to falsify, manipulate,
24 hide, obfuscate, destroy, or prevent the creation of records of
25 a kind that an entity is required to keep or make by a
26 *taxation law (other than an *Excise Act); or
27 (c) *supplies or makes available for use:
28 (i) an electronic sales suppression tool; or
29 (ii) a *right to use an electronic sales suppression tool; or
30 (d) supplies or makes available services for the installation,
31 upgrade or maintenance of an electronic sales suppression
32 tool.
- 33 (2) An entity is liable to an administrative penalty of 60 penalty units
34 if the entity aids, abets, counsels or procures conduct of another
-

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Electronic sales suppression tools **Schedule 1**

1 entity for which subsection (1) makes the other entity liable to an
2 administrative penalty.

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

5 **288-130 Possessing electronic sales suppression tools**

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

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

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

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

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

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

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

19 **288-135 Incorrectly keeping records using an electronic sales 20 suppression tool**

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

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

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

27 (c) as a result of the use:

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

31 (ii) the person does not keep or make the record in
32 accordance with the taxation law.
33

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Schedule 1 Electronic sales suppression tools

1 **Part 2—Application and transitional provisions**

2 **4 Application of amendments**

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

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

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

- 19 (a) if the entity is given a direction under subitem (2)—the date
20 specified in the Commissioner's direction;
21 (b) 6 months after commencement.

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Third party reporting **Schedule 2**

Schedule 2—Third party reporting

Taxation Administration Act 1953

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

Insert:

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:

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Schedule 2 Third party reporting

- 1 (i) at the time the transaction happens, a period has not
2 been specified for the relevant inserted item under
3 subparagraph (a)(ii) of the amended provision;
4 (ii) the transaction happens before 1 July 2018; or
5 (b) both of the following apply:
6 (i) at the time the transaction happens, a period has been
7 specified for the relevant inserted item under
8 subparagraph (a)(ii) of the amended provision;
9 (ii) the transaction happens during a period that begins
10 before 1 July 2018.