

|  |
| --- |
| **EXPOSURE DRAFT** |

Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley

Governor-General

By His Excellency’s Command

Dr Jim Chalmers **[DRAFT ONLY—NOT FOR SIGNATURE]**

Treasurer

Contents

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Amendments 2

Income Tax Assessment (1936 Act) Regulation 2015 2

1 Name

 This instrument is the *Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022*.

2 Commencement

 (1) Each provision of this instrument 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. The whole of this instrument | The day after this instrument is registered. |  |

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

 This instrument is made under the *Income Tax Assessment Act 1936*.

4 Schedules

 Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Income Tax Assessment (1936 Act) Regulation 2015

1 Section 14 (table item 1, column 2, paragraph (b))

Repeal the paragraph, substitute:

(b) either:

(i) the parties were not dealing with each other at arm’s length in relation to the transaction; or

(ii) the transaction relates to assets or non‑cash benefits that have a market value of $50,000 or more;

2 Section 14 (table item 1, column 2, paragraph (c))

Repeal the paragraph.

3 Section 14 (after table item 5)

Insert:

|  |  |  |
| --- | --- | --- |
| 5A | (a) Paragraph (f) of item 1; or(b) paragraph (e) of item 2; or(c) paragraph (d) of item 3 | The sum of the amounts of assessable income from sources other than an Australian source (within the meaning of the *Income Tax Assessment Act 1997*) of the following for the assessment year is $200,000 or more:(a) the assessed entity;(b) an affiliate (within the meaning of the *Income Tax Assessment Act 1997*) of the assessed entity;(c) an entity that is connected with (within the meaning of the *Income Tax Assessment Act 1997*) the assessed entity. |
| 5B | (a) Paragraph (e) of item 2; or(b) paragraph (d) of item 3 | The assessed entity is, at any time in the assessment year:(a) a foreign controlled Australian entity (within the meaning of the *Income Tax Assessment Act 1997*); or(b) a non‑resident. |

4 Section 14 (table item 8, column 2, after paragraph (c))

Insert:

(ca) section 177DA of the Act (schemes that limit a taxable presence in Australia);

5 Section 14 (table item 8, column 2, after paragraph (e))

Insert:

(ea) subsection 177J(1) of the Act (diverted profits tax);

6 Section 14 (at the end of the table)

Add:

|  |  |  |
| --- | --- | --- |
| 10 | (a) Paragraph (e) of item 2; or(b) paragraph (d) of item 3 | At any time during the assessment year, the total number of entities that are connected with (within the meaning of the *Income Tax Assessment Act 1997*), or are an affiliate of (within the meaning of the *Income Tax Assessment Act 1997*), the assessed entity is 10 or more. |

|  |  |  |
| --- | --- | --- |
| 11 | (a) Paragraph (e) of item 2; or(b) paragraph (d) of item 3 | The assessed entity:(a) may be entitled to a tax offset under Division 355 of the *Income Tax Assessment Act 1997* for the assessment year; or(b) may be able to deduct an amount under a provision mentioned in subsection 355‑105(2) of the *Income Tax Assessment Act 1997* for the assessment year; or(c) may have, in the entity’s assessable income for the assessment year, an amount under section 355‑450 of the *Income Tax Assessment Act 1997*. |

|  |  |  |
| --- | --- | --- |
| 12 | (a) Paragraph (f) of item 1; or(b) paragraph (e) of item 2; or(c) paragraph (d) of item 3 | Any of the following provisions may be applicable to the assessed entity in relation to the assessment year:(a) Division 125 of the *Income Tax Assessment Act 1997*;(b) Subdivision 126‑B of that Act;(c) Division 615 of that Act. |
| 13 | (a) Paragraph (f) of item 1; or(b) paragraph (e) of item 2; or(c) paragraph (d) of item 3 | A capital gain or capital loss of the assessed entity in relation to the assessment year may be disregarded under section 855‑10 of the *Income Tax Assessment Act 1997* (capital gains and losses of foreign residents)*.* |

7 At the end of Part 9

Add:

27 Application of the *Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022*

 The amendments made by Schedule 1 to the *Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022* apply in relation to an assessment for an income year if:

 (a) the assessment is made after the commencement of that Schedule; and

 (b) the income year begins on or after 1 July 2021.