

# EXPOSURE DRAFT



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

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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

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## 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## 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;<br>or<br>(b) paragraph (e) of item 2; or<br>(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 <i>Income Tax Assessment Act 1997</i> ) of the following for the assessment year is \$200,000 or more:<br><ul style="list-style-type: none"><li>(a) the assessed entity;</li><li>(b) an affiliate (within the meaning of the <i>Income Tax Assessment Act 1997</i>) of the assessed entity;</li><li>(c) an entity that is connected with (within the meaning of the <i>Income Tax Assessment Act 1997</i>) the assessed entity.</li></ul> |
| 5B | (a) Paragraph (e) of item 2; or<br>(b) paragraph (d) of item 3                                       | The assessed entity is, at any time in the assessment year:<br><ul style="list-style-type: none"><li>(a) a foreign controlled Australian entity (within the meaning of the <i>Income Tax Assessment Act 1997</i>); or</li><li>(b) a non-resident.</li></ul>   |

#### **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<br>(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 <i>Income Tax Assessment Act 1997</i> ), or are an affiliate of (within the meaning of the <i>Income Tax Assessment Act 1997</i> ), the assessed entity is 10 or more. |
|----|--|--|

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- |    |   |   |
|----|---|---|
| 11 | (a) Paragraph (e) of item 2; or<br>(b) paragraph (d) of item 3                                    | The assessed entity:<br>(a) may be entitled to a tax offset under Division 355 of the <i>Income Tax Assessment Act 1997</i> for the assessment year; or<br>(b) may be able to deduct an amount under a provision mentioned in subsection 355-105(2) of the <i>Income Tax Assessment Act 1997</i> for the assessment year; or<br>(c) may have, in the entity's assessable income for the assessment year, an amount under section 355-450 of the <i>Income Tax Assessment Act 1997</i> . |
| 12 | (a) Paragraph (f) of item 1; or<br>(b) paragraph (e) of item 2; or<br>(c) paragraph (d) of item 3 | Any of the following provisions may be applicable to the assessed entity in relation to the assessment year:<br>(a) Division 125 of the <i>Income Tax Assessment Act 1997</i> ;<br>(b) Subdivision 126-B of that Act;<br>(c) Division 615 of that Act.  |
| 13 | (a) Paragraph (f) of item 1; or<br>(b) paragraph (e) of item 2; or<br>(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 <i>Income Tax Assessment Act 1997</i> (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.