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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Consultation) Bill 2023: Deductions for payments relating to intangible assets connected with low corporate tax jurisdictions

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule 1 | The day after this Act receives the Royal Assent. |  |
| 2. |  |  |
| 3. |  |  |

Schedule 1—Deductions for payments relating to intangible assets connected with low corporate tax jurisdictions

Income Tax Assessment Act 1997

1 Section 12‑5 (after table item headed “insurance with non‑residents”)

Insert:

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| intangible assets connected with low corporate tax jurisdictions |  |
| payments etc. that significant global entity makes to associate in relation to exploiting intangible asset connected with low corporate tax jurisdiction, no deduction for | 26‑110 |

2 At the end of Division 26

Add:

26‑110 Payments etc. that significant global entities make to associates in relation to exploiting intangible assets connected with low corporate tax jurisdictions

(1) The object of this section is to deter \*significant global entities from avoiding corporate income tax by structuring their \*arrangements so that income from \*exploiting intangible assets is derived in \*low corporate tax jurisdictions.

(2) You cannot deduct under this Act, for an income year, an amount for a payment you make to your \*associate (the ***recipient***), to the extent that the payment is attributable to a right to \*exploit an intangible asset, if:

(a) you are a \*significant global entity for the year; and

(b) as a result of the \*arrangement under which you make the payment, or a related arrangement, you or an associate of yours:

(i) acquire the intangible asset; or

(ii) acquire a right to exploit the intangible asset; or

(iii) exploit the intangible asset; and

(c) the entering into of the arrangement under which you make the payment, or the related arrangement mentioned in paragraph (b), the acquisition of the intangible asset, the acquisition of the right to exploit the intangible asset or the exploitation of the intangible asset results in:

(i) the recipient; or

(ii) another associate of yours;

deriving income:

(iii) in a \*low corporate tax jurisdiction; and

(iv) directly or indirectly from exploiting the intangible asset, or from a related intangible asset.

Example: Each of the following is an intangible asset:

(a) intellectual property;

(b) information or data, including a database of customers;

(c) an algorithm.

(3) For the purposes of subsection (2), it does not matter:

(a) whether you make the payment to the recipient directly or through one or more other entities; or

(b) where the recipient is located.

Incurring liabilities and crediting amounts

(4) This section applies in relation to:

(a) incurring a liability; or

(b) crediting an amount;

in the same way as this section applies in relation to making a payment.

Intangible assets

(5) Subject to subsection (7), this section applies in relation to the following in the same way as this section applies in relation to an intangible asset:

(a) if the use of, supply of or reception of a thing is mentioned in paragraphs (a) or (c) to (e) of the definition of ***royalty*** in subsection 6(1) of the *Income Tax Assessment Act 1936*—that thing;

(b) a right in respect of, or an interest in, an intangible asset;

(c) anything prescribed by the regulations for the purposes of this paragraph.

(6) For the purposes of paragraph (5)(a) of this section, disregard the reference in paragraph (d) of the definition of ***royalty*** in subsection 6(1) of the *Income Tax Assessment Act 1936* to paragraph (b) of that definition.

(7) This section does not apply in relation to an intangible asset that is any of the following:

(a) a right in respect of, or an interest in, a tangible asset;

(b) without limiting paragraph (a):

(i) an estate, interest or right in or over land; or

(ii) a right in respect of such an estate, interest or right;

(c) a \*Division 230 financial arrangement;

(d) a right in respect of, or an interest in, an intangible asset if, because of this subsection, this section does not apply in relation to that intangible asset;

(e) anything prescribed by the regulations for the purposes of this paragraph.

(8) To avoid doubt, subsections (5) to (7) do not, by implication, affect the meaning of ***intangible asset*** outside this section.

Meaning of **exploit**

(9) ***Exploit*** an intangible asset includes:

(a) use the intangible asset; and

(b) market, sell, license or distribute the intangible asset; and

(c) supply, receive, or forbear in respect of, the intangible asset if paragraph (c), (d), (da) or (f) of the definition of ***royalty*** in subsection 6(1) of the *Income Tax Assessment Act 1936* applies to the supply, reception or forbearance; and

(d) exploit another intangible asset that is a right in respect of, or an interest in, the intangible asset; and

(e) do anything else in respect of the intangible asset.

(10) To avoid doubt, this section applies in relation to permission to \*exploit an intangible asset in the same way as it applies in relation to a right to exploit the intangible asset.

Low corporate tax jurisdictions

(11) In applying paragraph 960‑258(1)(a) for the purposes of paragraph (2)(c) of this section, have regard to income tax under the laws of a foreign country only to the extent the income tax is applicable to income of an entity that is a \*significant global entity.

Note: Paragraph 960‑258(1)(a) provides that a foreign country is a ***low corporate tax jurisdiction*** if the rate of corporate income tax under the laws of that foreign country is less than 15%.

3 After Subdivision 960‑J

Insert:

Subdivision 960‑L—Low corporate tax jurisdictions

Table of sections

960‑258 Low corporate tax jurisdictions

960‑258 Low corporate tax jurisdictions

(1) A foreign country is a ***low corporate tax jurisdiction*** if:

(a) the rate of corporate income tax under the laws of that foreign country is:

(i) less than 15%; or

(ii) nil; or

(b) the foreign country is determined under subsection (3).

(2) For the purposes of paragraph (1)(a):

(a) disregard the effect of deductions, offsets, tax credits, tax losses, tax treaties and concessions for intra‑group dividends; and

(b) disregard rates of income tax that apply only to non‑residents; and

(c) if the application or rate of income tax under the laws mentioned in that paragraph depends, to any extent, on the amount of income of the taxpayer—have regard only to the highest possible rate; and

(d) if, under those laws, there is no income tax on a particular amount of income—treat the rate of income tax on that amount as being nil; and

(e) if, under those laws and after applying paragraphs (a) to (d), there are different rates of income tax for different types of income—have regard only to the lowest rate.

Preferential patent box regimes

(3) For the purposes of paragraph (1)(b), the Minister may, by legislative instrument, determine a foreign country if the Minister is satisfied that the income tax laws of the foreign country provide for a preferential patent box regime without sufficient economic substance.

(4) In making a determination under subsection (3), the Minister may have regard to any relevant findings, determinations, advice, reports or other publications of the Council of the Organisation for Economic Cooperation and Development.

4 Subsection 995‑1(1)

Insert:

***exploit*** an intangible asset has a meaning affected by subsection 26‑110(9).

***low corporate tax jurisdiction*** has the meaning given by section 960‑258.

5 Application of amendments

Section 26‑110 of the *Income Tax Assessment Act 1997* applies to amounts paid, liabilities incurred or amounts credited on or after 1 July 2023.