

EXPOSURE DRAFT

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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.		

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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:

intangible assets connected with low corporate tax jurisdictions

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

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

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- 1 (c) the entering into of the arrangement under which you make
2 the payment, or the related arrangement mentioned in
3 paragraph (b), the acquisition of the intangible asset, the
4 acquisition of the right to exploit the intangible asset or the
5 exploitation of the intangible asset results in:
6 (i) the recipient; or
7 (ii) another associate of yours;
8 deriving income:
9 (iii) in a *low corporate tax jurisdiction; and
10 (iv) directly or indirectly from exploiting the intangible
11 asset, or from a related intangible asset.

12 Example: Each of the following is an intangible asset:
13 (a) intellectual property;
14 (b) information or data, including a database of customers;
15 (c) an algorithm.

- 16 (3) For the purposes of subsection (2), it does not matter:
17 (a) whether you make the payment to the recipient directly or
18 through one or more other entities; or
19 (b) where the recipient is located.

20 *Incurring liabilities and crediting amounts*

- 21 (4) This section applies in relation to:
22 (a) incurring a liability; or
23 (b) crediting an amount;
24 in the same way as this section applies in relation to making a
25 payment.

26 *Intangible assets*

- 27 (5) Subject to subsection (7), this section applies in relation to the
28 following in the same way as this section applies in relation to an
29 intangible asset:
30 (a) if the use of, supply of or reception of a thing is mentioned in
31 paragraphs (a) or (c) to (e) of the definition of *royalty* in
32 subsection 6(1) of the *Income Tax Assessment Act 1936*—
33 that thing;
34 (b) a right in respect of, or an interest in, an intangible asset;
35 (c) anything prescribed by the regulations for the purposes of
36 this paragraph.

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- 1 (6) For the purposes of paragraph (5)(a) of this section, disregard the
2 reference in paragraph (d) of the definition of *royalty* in
3 subsection 6(1) of the *Income Tax Assessment Act 1936* to
4 paragraph (b) of that definition.
- 5 (7) This section does not apply in relation to an intangible asset that is
6 any of the following:
7 (a) a right in respect of, or an interest in, a tangible asset;
8 (b) without limiting paragraph (a):
9 (i) an estate, interest or right in or over land; or
10 (ii) a right in respect of such an estate, interest or right;
11 (c) a *Division 230 financial arrangement;
12 (d) a right in respect of, or an interest in, an intangible asset if,
13 because of this subsection, this section does not apply in
14 relation to that intangible asset;
15 (e) anything prescribed by the regulations for the purposes of
16 this paragraph.
- 17 (8) To avoid doubt, subsections (5) to (7) do not, by implication, affect
18 the meaning of *intangible asset* outside this section.

Meaning of exploit

- 19
- 20 (9) **Exploit** an intangible asset includes:
21 (a) use the intangible asset; and
22 (b) market, sell, license or distribute the intangible asset; and
23 (c) supply, receive, or forbear in respect of, the intangible asset if
24 paragraph (c), (d), (da) or (f) of the definition of *royalty* in
25 subsection 6(1) of the *Income Tax Assessment Act 1936*
26 applies to the supply, reception or forbearance; and
27 (d) exploit another intangible asset that is a right in respect of, or
28 an interest in, the intangible asset; and
29 (e) do anything else in respect of the intangible asset.
- 30 (10) To avoid doubt, this section applies in relation to permission to
31 *exploit an intangible asset in the same way as it applies in relation
32 to a right to exploit the intangible asset.

Low corporate tax jurisdictions

- 33
- 34 (11) In applying paragraph 960-258(1)(a) for the purposes of
35 paragraph (2)(c) of this section, have regard to income tax under

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1 the laws of a foreign country only to the extent the income tax is
2 applicable to income of an entity that is a *significant global entity.

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

6 **3 After Subdivision 960-J**

7 Insert:

8 **Subdivision 960-L—Low corporate tax jurisdictions**

9 **Table of sections**

10 960-258 Low corporate tax jurisdictions

11 **960-258 Low corporate tax jurisdictions**

- 12 (1) A foreign country is a *low corporate tax jurisdiction* if:
- 13 (a) the rate of corporate income tax under the laws of that
14 foreign country is:
- 15 (i) less than 15%; or
16 (ii) nil; or
17 (b) the foreign country is determined under subsection (3).
- 18 (2) For the purposes of paragraph (1)(a):
- 19 (a) disregard the effect of deductions, offsets, tax credits, tax
20 losses, tax treaties and concessions for intra-group dividends;
21 and
22 (b) disregard rates of income tax that apply only to
23 non-residents; and
24 (c) if the application or rate of income tax under the laws
25 mentioned in that paragraph depends, to any extent, on the
26 amount of income of the taxpayer—have regard only to the
27 highest possible rate; and
28 (d) if, under those laws, there is no income tax on a particular
29 amount of income—treat the rate of income tax on that
30 amount as being nil; and
31 (e) if, under those laws and after applying paragraphs (a) to (d),
32 there are different rates of income tax for different types of
33 income—have regard only to the lowest rate.

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Preferential patent box regimes

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

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

4 Subsection 995-1(1)

11
12 Insert:

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

15 *low corporate tax jurisdiction* has the meaning given by
16 section 960-258.

5 Application of amendments

17
18 Section 26-110 of the *Income Tax Assessment Act 1997* applies to
19 amounts paid, liabilities incurred or amounts credited on or after 1 July
20 2023.