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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

**Treasury Laws Amendment (Combating
Multinational Tax Avoidance) Bill 2017**

No. , 2017

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Treasury Laws Amendment (Combating*
6 *Multinational Tax Avoidance) Act 2017.*

7 **2 Commencement**

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

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, items 1 to 6	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
3. Schedule 1, item 7	At the same time as Part 2 of Schedule 4 to the <i>Treasury Laws Amendment (Enterprise Tax Plan) Act 2017</i> commences. However, the provisions do not commence at all if that Part does not commence.	
4. Schedule 1, items 8 to 52	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
5. Schedules 2 and 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

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

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

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

Schedule 1—Diverted profits tax***Administrative Decisions (Judicial Review) Act 1977*****1 Paragraph (e) of Schedule 1**

After “*Taxation Administration Act 1953*, but only so far as the decisions are made under Part 2-35, 3-10”, insert “, 3-30”.

Income Tax Assessment Act 1936**2 Subsection 6(1) (at the end of the definition of assessment)**

Add:

; or (k) the ascertainment of the amount payable under subsection 177P(1) (diverted profits tax).

3 Subsection 6(1)

Insert:

diverted profits tax has the meaning given by the *Income Tax Assessment Act 1997*.

4 After subsection 170(11)

Insert:

(12) Nothing in this section prevents the amendment, at any time, of an assessment to increase the liability of a taxpayer if:

- (a) the Commissioner amends a DPT assessment to decrease the liability of the taxpayer to diverted profits tax; and
- (b) that increase is attributable to that decrease.

5 Subsection 170(14)

Insert:

DPT assessment has the meaning given by the *Income Tax Assessment Act 1997*.

1 **6 Subsection 177A(1)**

2 Insert:

3 *DPT base amount* has the meaning given by subsection 177P(2).

4 *DPT provisions* means sections 177H, 177J, 177K, 177L, 177M,
5 177N, 177P, 177Q and 177R.

6 *DPT tax benefit* has the meaning given by subsection 177J(1).

7 *standard corporate tax rate* means the rate of tax in respect of the
8 taxable income of a company covered by paragraph 23(2)(b) of the
9 *Income Tax Rates Act 1986*.

10 **7 Subsection 177A(1) (definition of *standard corporate tax***
11 ***rate*)**

12 Omit “covered by paragraph 23(2)(b)”, substitute “under
13 subsection 23(2)”.

14 Note: This item commences on 1 July 2023, at the same time as Part 2 of Schedule 4 to the
15 *Treasury Laws Amendment (Enterprise Tax Plan) Act 2017*.

16 **8 Subsection 177A(5)**

17 Omit “section 177DA”, substitute “sections 177DA and 177J”.

18 **9 Paragraph 177CB(5)(a)**

19 Omit “section 177DA”, substitute “section 177DA or 177J”.

20 **10 Paragraph 177CB(5)(b)**

21 Omit “section 177DA”, substitute “section 177DA or 177J”.

22 **11 Subsection 177F(3)**

23 After “in relation to a scheme to which this Part applies,”, insert “or the
24 Commissioner has made a DPT assessment in respect of a taxpayer in
25 relation to a scheme to which this Part applies,”.

26 **12 After subsection 177F(5)**

27 Insert:

28 (5A) Subsection (5B) applies if the taxpayer considers that the
29 Commissioner ought to make the determination under

1 subsection (3) because the Commissioner has made a DPT
2 assessment in respect of a taxpayer in relation to a scheme to which
3 this Part applies.

4 (5B) Despite subsection (5), the request may be posted to or lodged with
5 the Commissioner only after the end of the period of review
6 (within the meaning of section 145-15 in Schedule 1 to the
7 *Taxation Administration Act 1953*) for the DPT assessment.

8 **13 At the end of Part IVA**

9 Add:

10 **177H Diverted profits tax—objects**

- 11 (1) The primary objects of the DPT provisions are:
- 12 (a) to ensure that the Australian tax payable by significant global
13 entities properly reflects the economic substance of the
14 activities that those entities carry on in Australia; and
- 15 (b) to prevent those entities from reducing the amount of
16 Australian tax they pay by diverting profits offshore through
17 contrived arrangements between related parties.
- 18 (2) In addition, the DPT provisions (in combination with Division 145
19 in Schedule 1 to the *Taxation Administration Act 1953*) have the
20 object of encouraging significant global entities to provide
21 sufficient information to the Commissioner to allow for the timely
22 resolution of disputes about Australian tax.

23 **177J Diverted profits tax—application**

24 *Scheme for a purpose including obtaining a tax benefit etc.*

- 25 (1) This Part also applies to a scheme, in relation to a tax benefit (the
26 ***DPT tax benefit***) if:
- 27 (a) a taxpayer (a ***relevant taxpayer***) has obtained, or would but
28 for section 177F obtain, the DPT tax benefit in connection
29 with the scheme, in a year of income; and
- 30 (b) it would be concluded (having regard to the matters in
31 subsection (2)) that the person, or one of the persons, who
32 entered into or carried out the scheme or any part of the

- 1 scheme did so for a principal purpose of, or for more than
2 one principal purpose that includes a purpose of:
- 3 (i) enabling the relevant taxpayer to obtain a tax benefit, or
4 both to obtain a tax benefit and to reduce one or more of
5 the relevant taxpayer's liabilities to tax under a foreign
6 law, in connection with the scheme; or
 - 7 (ii) enabling the relevant taxpayer and another taxpayer (or
8 other taxpayers) each to obtain a tax benefit, or both to
9 obtain a tax benefit and to reduce one or more of their
10 liabilities to tax under a foreign law, in connection with
11 the scheme;
- 12 whether or not that person who entered into or carried out the
13 scheme or any part of the scheme is the relevant taxpayer or
14 is the other taxpayer or one of the other taxpayers; and
- 15 (c) the relevant taxpayer is a significant global entity for the year
16 of income mentioned in paragraph (a); and
 - 17 (d) a foreign entity is an associate (within the meaning of
18 section 318) of the relevant taxpayer at any time in the year
19 of income mentioned in paragraph (a); and
 - 20 (e) that foreign entity:
 - 21 (i) is the person, or one of the persons, who entered into or
22 carried out the scheme or any part of the scheme; or
 - 23 (ii) is otherwise connected with the scheme or any part of
24 the scheme; and
 - 25 (f) the relevant taxpayer is not any of the following:
 - 26 (i) a managed investment trust (within the meaning of the
27 *Income Tax Assessment Act 1997*);
 - 28 (ii) an entity covered by paragraph 275-20(4)(f) of that Act
29 (foreign collective investment vehicle with a wide
30 membership);
 - 31 (iii) an entity covered by paragraph 275-20(4)(h) of that Act
32 (entity owned by foreign government etc.) that is a
33 foreign entity;
 - 34 (iv) a complying superannuation entity (within the meaning
35 of that Act);
 - 36 (v) a foreign pension fund (within the meaning of that Act);
37 and

-
- 1 (g) it is reasonable to conclude that none of the following
2 sections apply in relation to the relevant taxpayer, in relation
3 to the DPT tax benefit:
4 (i) section 177K (\$25 million income test);
5 (ii) section 177L (sufficient foreign tax test);
6 (iii) section 177M (sufficient economic substance test).

7 *Have regard to certain matters*

- 8 (2) For the purposes of paragraph (1)(b), have regard to the following
9 matters:
10 (a) the matters in subsection 177D(2);
11 (b) without limiting subsection 177D(2), the extent to which
12 non-tax financial benefits that are quantifiable have resulted,
13 will result, or may reasonably be expected to result, from the
14 scheme;
15 (c) the result, in relation to the operation of any foreign law
16 relating to taxation, that (but for this Part) would be achieved
17 by the scheme;
18 (d) the amount of the tax benefit mentioned in paragraph (1)(b).

19 *Deferral of foreign tax liabilities*

- 20 (3) For the purposes of paragraph (1)(b), a deferral of a taxpayer's
21 liabilities to tax under a foreign law is taken to be a reduction of
22 those liabilities, unless there are reasonable commercial grounds
23 for the deferral.

24 *Modification where thin capitalisation provisions apply*

- 25 (4) Subsection (5) applies if:
26 (a) Division 820 of the *Income Tax Assessment Act 1997* (about
27 thin capitalisation) applies to the relevant taxpayer for the
28 year of income mentioned in paragraph (1)(a); and
29 (b) the DPT tax benefit includes all or part of a debt deduction
30 (within the meaning of that Act); and
31 (c) the calculation of the amount of the DPT tax benefit involves
32 applying a rate to a debt interest (within the meaning of that
33 Act).

- 1 (5) For the purposes of the DPT provisions, in calculating the amount
2 of the DPT tax benefit, apply the rate to the debt interest the entity
3 actually issued (rather than the debt interest that would have
4 existed if the scheme had not been entered into or carried out).

5 *Modification where foreign entity is CFC*

- 6 (6) Subsection (6A) applies if:
7 (a) the foreign entity mentioned in paragraph (1)(d) is a CFC
8 (within the meaning of Part X); and
9 (b) an amount of attributable income (within the meaning of that
10 Part) of the foreign entity has been included as a result of the
11 operation of that Part in the assessable income of:
12 (i) the relevant taxpayer; or
13 (ii) an associate (within the meaning given by section 318)
14 of the relevant taxpayer, if the associate is a Part X
15 Australian resident (within the meaning of that Part) and
16 is not a trust or partnership.
- 17 (6A) For the purposes of the DPT provisions, reduce the DPT tax benefit
18 to the extent to which the amount included in assessable income as
19 mentioned in paragraph (6)(b):
20 (a) would not have been so included if the scheme had not been
21 entered into or carried out; and
22 (b) is directly referable to the DPT tax benefit.

23 *Schemes outside Australia*

- 24 (7) This section applies whether or not the scheme has been or is
25 entered into or carried out in Australia or outside Australia or
26 partly in Australia and partly outside Australia.

27 *Non-limitation in relation to other provisions in this Part*

- 28 (8) This section:
29 (a) does not limit section 177D, 177DA, 177E, 177EA or
30 177EB; and
31 (b) is not limited by those sections.

177K Diverted profits tax—\$25 million income test

- 1
- 2 (1) This section applies in relation to the relevant taxpayer, in relation
3 to the DPT tax benefit, if the sum of the following does not exceed
4 \$25 million:
- 5 (a) the assessable income of the relevant taxpayer for the year of
6 income mentioned in paragraph 177J(1)(a);
- 7 (b) the exempt income of the relevant taxpayer for that year of
8 income;
- 9 (c) the non-assessable non-exempt income of the relevant
10 taxpayer for that year of income;
- 11 (d) the assessable income of each entity covered by
12 subsection (2) for that year of income;
- 13 (e) if the DPT tax benefit is a tax benefit mentioned in
14 paragraph 177C(1)(a)—the amount of the DPT tax benefit.
- 15 (2) An entity is covered by this subsection if for the year of income
16 mentioned in paragraph 177J(1)(a):
- 17 (a) the entity is an associate (within the meaning given by
18 section 318) of the relevant taxpayer; and
- 19 (b) both the entity and the relevant taxpayer:
- 20 (i) are members of the same global group; and
- 21 (ii) are significant global entities because they are members
22 of that group.

177L Diverted profits tax—sufficient foreign tax test

- 23
- 24 (1) This section applies in relation to the relevant taxpayer, in relation
25 to the DPT tax benefit, if the amount worked out under
26 subsection (2) (foreign tax liability) equals or exceeds 80% of the
27 amount worked out under subsection (6) (reduced Australian tax
28 liability).

Foreign tax liability

- 29
- 30 (2) The amount is the total of the increases in liability for foreign
31 income tax (within the meaning of the *Income Tax Assessment Act*
32 *1997*) of each entity covered by subsection (5) that results, will
33 result, or may reasonably be expected to result, from the scheme

- 1 during a foreign tax period that corresponds to the year of income
2 mentioned in paragraph 177J(1)(a).
- 3 (3) The regulations may provide for a method of working out increases
4 in foreign tax liability for the purposes of subsection (2):
5 (a) for all situations; or
6 (b) for specified situations.
- 7 (4) If the regulations provide for such a method, apply that method in
8 working out increases in foreign tax liability for the purposes of
9 subsection (2) in relevant situations.
- 10 (5) An entity is covered by this subsection if:
11 (a) the entity is a foreign entity; and
12 (b) the entity is the relevant taxpayer or an associate (within the
13 meaning given by section 318) of the relevant taxpayer; and
14 (c) the entity:
15 (i) is the person, or one of the persons, who entered into or
16 carried out the scheme or any part of the scheme; or
17 (ii) is otherwise connected with the scheme or any part of
18 the scheme.
- 19 *Reduced Australian tax liability*
- 20 (6) The amount is:
21 (a) if the DPT tax benefit is a tax benefit mentioned in
22 paragraph 177C(1)(a), (b), (ba) or (bc)—the amount of the
23 tax benefit multiplied by the standard corporate tax rate; or
24 (b) otherwise—the amount of the DPT tax benefit.
- 25 (7) If the relevant taxpayer must withhold an amount in respect of
26 withholding tax as a result of the tax benefit, reduce the amount
27 worked out under subsection (6) by the amount withheld.

28 **177M Diverted profits tax—sufficient economic substance test**

- 29 (1) This section applies in relation to the relevant taxpayer, in relation
30 to the DPT tax benefit, if the profit made as a result of the scheme
31 by each entity covered by subsection (2) reasonably reflects the
32 economic substance of the entity's activities in connection with the
33 scheme.
-

-
- 1 (2) This subsection covers an entity if:
- 2 (a) the entity is the relevant taxpayer or an associate (within the
- 3 meaning given by section 318) of the relevant taxpayer; and
- 4 (b) any of the following apply:
- 5 (i) the entity entered into or carried out the scheme or any
- 6 part of the scheme;
- 7 (ii) the entity is otherwise connected with the scheme or any
- 8 part of the scheme.
- 9 (3) However, subsection (2) does not cover an entity if the entity's role
- 10 in the scheme is minor or ancillary.
- 11 (4) In determining whether the profit made as a result of the scheme by
- 12 an entity reasonably reflects the economic substance of the entity's
- 13 activities in connection with the scheme, have regard to:
- 14 (a) the functions that the entity performs in connection with the
- 15 scheme, taking into account assets used and risks assumed by
- 16 the entity in connection with the scheme; and
- 17 (b) the documents covered by section 815-135 of the *Income Tax*
- 18 *Assessment Act 1997*, to the extent that they are relevant to
- 19 the matters mentioned in paragraph (a) or to any other aspect
- 20 of the determination; and
- 21 (c) any other relevant matters.

22 **177N Diverted profits tax—consequences**

- 23 If this Part applies to a scheme because of section 177J:
- 24 (a) section 177P applies to the relevant taxpayer mentioned in
- 25 section 177J; and
- 26 (b) the Commissioner cannot make a determination under
- 27 subsection 177F(1) or (2A) in relation to the scheme merely
- 28 because of section 177J.

29 **177P Diverted profits tax—liability**

- 30 (1) The relevant taxpayer is liable to pay tax at the rate declared by the
- 31 Parliament on:
- 32 (a) if this Part applies to a scheme in respect of the relevant
- 33 taxpayer for the year of income mentioned in

- 1 paragraph 177J(1)(a), in relation to one DPT tax benefit—the
2 DPT base amount for that DPT tax benefit; or
3 (b) if this Part applies to a scheme in respect of the relevant
4 taxpayer for the year of income mentioned in
5 paragraph 177J(1)(a), in relation to more than one DPT tax
6 benefit—the sum of the DPT base amounts for those DPT tax
7 benefits.

8 Note: The tax is imposed by the *Diverted Profits Tax Act 2017* and the rate
9 of the tax is set out in that Act.

- 10 (2) The **DPT base amount** for a DPT tax benefit is:
11 (a) if the DPT tax benefit is a tax benefit mentioned in
12 paragraph 177C(1)(a), (b), (ba) or (bc)—the amount of the
13 DPT tax benefit; or
14 (b) otherwise—the amount of the DPT tax benefit divided by the
15 standard corporate tax rate.
- 16 (3) The tax is due and payable at the end of 21 days after the
17 Commissioner gives the relevant taxpayer notice of the assessment
18 of the amount of the tax for the year of income mentioned in
19 paragraph 177J(1)(a).

20 Note: For assessments of the amount of the tax see Divisions 145 and 155 in
21 Schedule 1 to the *Taxation Administration Act 1953*.

22 **177Q Diverted profits tax—general interest charge on unpaid**
23 **diverted profits tax or shortfall interest charge**

24 If an amount of diverted profits tax or shortfall interest charge that
25 an entity is liable to pay remains unpaid after the time by which it
26 is due to be paid, the entity is liable to pay the general interest
27 charge on the unpaid amount for each day in the period that:

- 28 (a) starts at the beginning of the day by which the amount was
29 due to be paid; and
30 (b) finishes at the end of the last day on which, at the end of the
31 day, any of the following remains unpaid:
32 (i) the diverted profits tax or shortfall interest charge;
33 (ii) general interest charge on any of the diverted profits tax
34 or shortfall interest charge.

1 Note: The general interest charge is worked out under Part IIA of the
 2 *Taxation Administration Act 1953*.

3 **177R Diverted profits tax—when shortfall interest charge is payable**

4 An amount of shortfall interest charge that an entity is liable to pay
 5 under section 280-102C in Schedule 1 to the *Taxation*
 6 *Administration Act 1953* is due and payable 21 days after the day
 7 on which the Commissioner gives the entity notice of the charge.

8 ***Income Tax Assessment Act 1997***

9 **14 Subsection 205-15(1) (at the end of the table)**

10 Add:

8	the entity *pays diverted profits tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to the period during which the entity was a franking entity, multiplied by the proportion worked out under subsection (5)	on the day on which the payment is made
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11 **15 At the end of section 205-15**

12 Add:

13 (5) The proportion is the standard corporate tax rate (within the
 14 meaning of Part IVA of the *Income Tax Assessment Act 1936*)
 15 divided by 40%.

16 **16 Section 205-20 (heading)**

17 Repeal the heading, substitute:

18 **205-20 Paying a PAYG instalment, income tax or diverted profits**
 19 **tax**

20 **17 After subsection 205-20(3)**

21 Insert:

1 (3A) An entity *pays diverted profits tax* if and only if:

2 (a) the entity has a liability to pay the *diverted profits tax; and

3 (b) either:

4 (i) the entity makes a payment to satisfy the liability (in
5 whole or in part); or

6 (ii) a credit, or an *RBA surplus, is applied to discharge or
7 reduce the liability.

8 **18 Subsection 205-20(4)**

9 Omit “Subparagraphs (1)(b)(ii) and (3)(b)(ii)”, substitute
10 “Subparagraphs (1)(b)(ii), (3)(b)(ii) and (3A)(b)(ii)”.

11 **19 Subsection 205-30(1) (at the end of the table)**

12 Add:

13	the entity *receives a refund of diverted profits tax; and	that part of the refund that is attributable to the period during which the entity was a franking entity, multiplied by the proportion worked out under subsection (3)	on the day on which the refund is received
	the entity satisfies the *residency requirement for the income year to which the refund relates; and		
	the entity was a *franking entity during the whole or part of the income year to which the refund relates		

13 **20 At the end of section 205-30**

14 Add:

15 (3) The proportion is the standard corporate tax rate (within the
16 meaning of Part IVA of the *Income Tax Assessment Act 1936*)
17 divided by 40%.

18 **21 Section 205-35 (heading)**

19 Repeal the heading, substitute:

205-35 Refund of income tax or diverted profits tax**22 After subsection 205-35(1)**

Insert:

(1A) An entity *receives a refund of diverted profits tax* if and only if:

(a) either:

(i) the entity receives an amount as a refund; or

(ii) the Commissioner applies a credit, or an *RBA surplus, against a liability or liabilities of the entity; and

(b) the refund of the amount, or the application of the credit, represents in whole or in part a return to the entity of an amount paid or applied to satisfy the entity's liability to pay *diverted profits tax.

23 Subsection 205-35(2)

Omit "paragraph (1)(b)", substitute "paragraph (1)(b) or (1A)(b)".

24 Section 208-115

Before "The following table", insert "(1)".

25 Section 208-115 (at the end of the table)

Add:

9	the entity *pays diverted profits tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity was an *exempting entity for the whole or part of that income year	an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity, multiplied by the proportion worked out under subsection (2)	on the day on which the payment is made
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26 At the end of section 208-115

Add:

1 (2) The proportion is the standard corporate tax rate (within the
2 meaning of Part IVA of the *Income Tax Assessment Act 1936*)
3 divided by 40%.

4 **27 Section 208-120**

5 Before “The following table”, insert “(1)”.

6 **28 Section 208-120 (at the end of the table)**

7 Add:

8	the entity *receives a refund of diverted profits tax; and	an amount equal to that part of the refund that is attributable to the period during which the entity is an exempting entity, multiplied by the proportion worked out under subsection (2)	on the day on which the refund is received
	the entity was an *exempting entity during all or part of the income year to which the refund relates; and		
	the entity satisfies the *residency requirement for the income year to which the refund relates		

8 **29 At the end of section 208-120**

9 Add:

10 (2) The proportion is the standard corporate tax rate (within the
11 meaning of Part IVA of the *Income Tax Assessment Act 1936*)
12 divided by 40%.

13 **30 Section 208-130 (table item 9, column headed “If:”)**

14 Omit “item 3 or 5”, substitute “item 3, 5 or 8”.

15 **31 Section 208-145 (table item 3, column headed “If:”)**

16 Omit “item 5 or 6”, substitute “item 5, 6 or 9”.

17 **32 Paragraph 214-45(1)(a)**

18 After “*receives a refund of income tax”, insert “or *receives a refund of
19 diverted profits tax”.

33 Paragraph 214-45(2)(a)

After “*receives a refund of income tax”, insert “or *receives a refund of diverted profits tax”.

34 Paragraph 214-150(4)(a)

After “*receives a refund of income tax”, insert “or *receives a refund of diverted profits tax”.

35 Subsection 219-15(2) (at the end of the table)

Add:

<p>the company *pays diverted profits tax; and</p> <p>the company satisfies the *residency requirement for the income year for which the tax is paid; and</p> <p>the company is a *franking entity for the whole or part of that income year</p>	<p>that part of the payment that is attributable to:</p> <p>(a) the *shareholders’ share of the income tax liability of the company for that income year; and</p> <p>(b) the period during which the company was a franking entity;</p> <p>multiplied by the proportion worked out under subsection (4)</p>	<p>on the day on which the payment is made</p>
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36 At the end of section 219-15

Add:

- (4) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

37 Subsection 219-30(2) (at the end of the table)

Add:

4	the company *receives a refund of diverted profits tax; and the company satisfies the *residency requirement for the income year to which the refund relates; and the company was a *franking entity for the whole or part of that income year	that part of the refund that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity; multiplied by the proportion worked out under subsection (3)	on the day on which the refund is received
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1 **38 At the end of section 219-30**

2 Add:

- 3 (3) The proportion is the standard corporate tax rate (within the
4 meaning of Part IVA of the *Income Tax Assessment Act 1936*)
5 divided by 40%.

6 **39 Paragraph 709-100(1)(b)**

7 After “*receives a refund of income tax”, insert “or *receives a refund of
8 diverted profits tax,”.

9 **40 Subsection 721-10(2) (at the end of the table)**

10 Add:

11

115	Subsection 177P(3) of the <i>Income Tax Assessment Act 1936</i> (diverted profits tax)	the income year to which the diverted profits tax relates
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12 **41 Subsection 995-1(1)**

13 Insert:

14 *diverted profits tax* means tax imposed by the *Diverted Profits Tax Act 2017*.

15
16 *DPT assessment* has the meaning given by section 145-10 in
17 Schedule 1 to the *Taxation Administration Act 1953*.

1 *pays diverted profits tax* has the meaning given by
2 subsection 205-20(3A).

3 **42 Subsection 995-1(1) (at the end of the definition of *period***
4 ***of review*)**

5 Add:

6 Note: For the purposes of diverted profits tax, this definition is modified in
7 respect of a DPT assessment (see section 145-15 in Schedule 1 to the
8 *Taxation Administration Act 1953*).

9 **43 Subsection 995-1(1)**

10 Insert:

11 *receives a refund of diverted profits tax* has the meaning given by
12 subsection 205-35(1A).

13 *restricted DPT evidence* has the meaning given by
14 subsection 145-25(2) in Schedule 1 to the *Taxation Administration*
15 *Act 1953*.

16 ***Taxation Administration Act 1953***

17 **44 At the end of Chapter 3 in Schedule 1**

18 Add:

19 **Part 3-30—Diverted profits tax**

20 **Division 145—Assessments of diverted profits tax**

21 **Guide to Division 145**

22 **145-1 What this Division is about**

23

The Commissioner can make an assessment of diverted profits tax. 24 The entity that is the subject of the assessment can appeal to the 25 Federal Court against the Commissioner's decision to make the 26 assessment. Such an appeal can be made generally no earlier than

1 12 months after the day on which the Commissioner first gives
2 notice of the assessment to the entity.

3 **Table of sections**

4	145-5	DPT assessments—modified application of Division 155
5	145-10	When DPT assessments can be made
6	145-15	Period of review of DPT assessments
7	145-20	Review of assessments
8	145-25	Restricted DPT evidence

9 **145-5 DPT assessments—modified application of Division 155**

10 In applying Division 155 in relation to an amount of *diverted
11 profits tax:

- 12 (a) apply the provisions of that Division with the modifications
13 set out in sections 145-10 to 145-25; and
14 (b) disregard sections 155-15, 155-20, 155-25, 155-30, 155-40,
15 155-45, 155-50, 155-55 and 155-70.

16 **145-10 When DPT assessments can be made**

17 Despite subsection 155-5(1), the Commissioner can make an
18 assessment (the *DPT assessment*) of the amount of *diverted
19 profits tax only at a time in the period:

- 20 (a) starting on the day on which the Commissioner first gives the
21 entity that is the subject of the assessment a notice of
22 assessment under Part IV of the *Income Tax Assessment Act*
23 *1936* for the income year mentioned in paragraph 177J(1)(a)
24 of the *Income Tax Assessment Act 1936* (as that paragraph
25 applies in relation to the amount of diverted profits tax); and
26 (b) ending on the last day of the period of 7 years starting the day
27 after that day.

28 **145-15 Period of review of DPT assessments**

29 (1) Despite subsection 155-35(2), the *period of review*, for the *DPT
30 assessment, is:

- 31 (a) the period:

-
- 1 (i) starting on the day on which the Commissioner first
2 gives notice of the assessment to the entity that is the
3 subject of the assessment under section 155-10; and
4 (ii) ending on the last day of the period of 12 months
5 starting the day after that day; or
6 (b) if:
7 (i) the entity, by written notice given to the Commissioner,
8 specifies a shorter period in accordance with
9 subsection (2); and
10 (ii) the Federal Court of Australia has not made an order
11 under subsection (3) in respect of the written notice;
12 that shorter period; or
13 (c) if the period of review is extended under
14 subsection 155-35(3) or (4)—the period as so extended.
- 15 (2) For the purposes of subparagraph (1)(b)(i), the shorter period must:
16 (a) start on the day mentioned in subparagraph (1)(a)(i); and
17 (b) end on a day that is at least 30 days after the day on which
18 the entity gives the written notice to the Commissioner.
- 19 (3) For the purposes of subparagraph (1)(b)(ii), the Federal Court of
20 Australia may make an order under this subsection in respect of the
21 written notice if:
22 (a) the Commissioner has started to examine the entity's affairs
23 in relation to the assessment; and
24 (b) the Commissioner has not completed the examination within
25 the shorter period specified in the written notice; and
26 (c) the Commissioner, within 30 days after the day on which the
27 entity gives the written notice to the Commissioner, applies
28 to the Court for the order; and
29 (d) the Court is satisfied that it was not reasonably practicable, or
30 it was inappropriate, for the Commissioner to complete the
31 examination within the shorter period specified in the written
32 notice, because of:
33 (i) any action taken by the entity; or
34 (ii) any failure by the entity to take action that it would have
35 been reasonable for the entity to take.
- 36 (4) Despite subsection 155-35(5), in relation to the *DPT assessment:
-

- 1 (a) an order may be made under subsection 155-35(3) only once;
2 and
3 (b) consent may be given under subsection 155-35(4) only once.

4 **145-20 Review of assessments**

- 5 (1) Section 155-90 does not apply during the *period of review
6 mentioned in section 145-15.
- 7 (2) In applying Part IVC of this Act as a result of section 155-90 after
8 the end of that *period of review:
- 9 (a) have regard only to the provisions of that Part mentioned in
10 subsection (3); and
11 (b) apply those provisions with the modifications set out in
12 subsection (4); and
13 (c) disregard the other provisions of that Part; and
14 (d) apply section 145-25 (restricted DPT evidence).
- 15 (3) For the purposes of paragraph (2)(a), the provisions of that Part are
16 as follows:
- 17 (a) sections 14ZL and 14ZP;
18 (b) subsection 14ZR(1);
19 (c) subsection 14ZZ(1);
20 (d) Division 5 (apart from section 14ZZS).
- 21 (4) For the purposes of paragraph (2)(b), the modifications are as
22 follows:
- 23 (a) treat the Commissioner's decision to make the *DPT
24 assessment as an objection decision;
25 (b) treat subsection 14ZZ(1) as reading "The entity that is the
26 subject of the DPT assessment may appeal to the Federal
27 Court of Australia against the objection decision.";
28 (c) treat the reference in section 14ZZN to "within 60 days after
29 the person appealing is served with notice of the decision" as
30 being a reference to "within 60 days after the end of the
31 period of review mentioned in section 145-15 in Schedule 1";
32 (d) disregard paragraph 14ZZO(a);
33 (e) treat paragraph 14ZZO(b) as reading "the appellant has the
34 burden of proving that the DPT assessment is excessive or

1 otherwise incorrect and what the DPT assessment should
2 have been”;

- 3 (f) treat the reference in section 14ZZR to a taxation decision as
4 being a reference to the Commissioner’s decision to make the
5 DPT assessment.

6 **145-25 Restricted DPT evidence**

- 7 (1) *Restricted DPT evidence is not admissible in evidence in
8 proceedings under Part IVC on an appeal to the Federal Court of
9 Australia related to the *DPT assessment.
- 10 (2) ***Restricted DPT evidence*** means information or documents that:
11 (a) the entity that is the subject of the *DPT assessment (or an
12 associate (within the meaning of section 318 of the *Income*
13 *Tax Assessment Act 1936*) of that entity), had in its custody
14 or under its control at a time before, during or after the
15 *period of review; and
16 (b) the Commissioner did not have in his or her custody or under
17 his or her control at any time in the period of review.
- 18 (3) Subsection (1) does not prevent *restricted DPT evidence from
19 being admissible in evidence in the proceedings if:
20 (a) the Commissioner consents to the admission of the restricted
21 DPT evidence in accordance with subsection (4); or
22 (b) the court in which the proceedings take place considers that
23 the admission of the restricted DPT evidence is necessary in
24 the interests of justice; or
25 (c) the restricted DPT evidence is expert evidence that:
26 (i) comes into existence after the *period of review; and
27 (ii) is based on evidence that the Commissioner had in his
28 or her custody or under his or her control at any time in
29 the period of review.
- 30 (4) For the purposes of paragraph (3)(a), the Commissioner may give
31 the consent if the Commissioner considers that it is reasonable to
32 do so.
- 33 (5) In making a decision under paragraph (3)(a) or (b), the
34 Commissioner or the court must have regard to:

- 1 (a) whether, if the *restricted DPT evidence were not admissible
2 in evidence in the proceedings, the remaining information or
3 documents that are relevant to the proceedings are, or are
4 likely to be, misleading; and
5 (b) whether it would have been reasonable for the entity that is
6 the subject of the *DPT assessment (or the associate of that
7 entity mentioned in paragraph (2)(a)) to have given the
8 Commissioner the restricted DPT evidence within the *period
9 of review.
- 10 (6) The Commissioner must give a consent for the purposes of
11 paragraph (3)(a) if failure to do so would have the effect, for the
12 purposes of the Constitution, of making any tax or penalty
13 incontestable.
- 14 (7) A consent for the purposes of paragraph (3)(a) is to be in writing.
- 15 (8) If the Commissioner gives a consent for the purposes of
16 paragraph (3)(a), the Commissioner must give the entity that is the
17 subject of the *DPT assessment a copy of the consent as soon as
18 practicable afterwards.

19 **45 At the end of subsection 155-5(2) in Schedule 1**

20 Add:

21 ; (j) an amount of *diverted profits tax.

22 Note: This Division has a modified operation in relation to diverted
23 profits tax (see Division 145).

24 **46 Subsection 250-10(1) in Schedule 1 (after table item 70)**

25 Insert:

80	diverted profits tax	subsection 177P(3)
85	shortfall interest charge for diverted profits tax	section 177R

26 **47 Section 280-1 in Schedule 1**

27 Omit “or Division 293 tax”, substitute “, Division 293 tax or diverted
28 profits tax”.

48 Section 280-50 in Schedule 1

Omit “or *Division 293 tax”, substitute “, *Division 293 tax or *diverted profits tax”.

49 After section 280-102B in Schedule 1

Insert:

280-102C Liability to shortfall interest charge—diverted profits tax

(1) Subsection (2) applies if:

- (a) the Commissioner has given an entity an assessment of income tax for an income year; and
- (b) the Commissioner subsequently gives the entity a *DPT assessment for that income year.

(2) The entity is liable to pay *shortfall interest charge equal to the amount of shortfall interest charge that the entity would be liable to pay under section 280-100 if:

- (a) the Commissioner amended the assessment of income tax mentioned in paragraph (1)(a) on the day that the Commissioner gave the entity the *DPT assessment mentioned in paragraph (1)(b); and
- (b) the entity were liable to pay an additional amount of income tax because of that amendment; and
- (c) the Commissioner made that amendment on the basis that the *tax benefit or tax benefits to which the DPT assessment related were cancelled.

(3) An entity is also liable to pay *shortfall interest charge on an additional amount of *diverted profits tax that the entity is liable to pay because the Commissioner amends the entity’s *DPT assessment in respect of an income year.

(4) The liability is for each day in the period:

- (a) beginning at the start of the day on which *diverted profits tax under the entity’s first *DPT assessment for that income year was due to be paid, or would have been due to be paid if there had been any; and

1 (b) ending at the end of the day before the day on which the
2 Commissioner gave the entity notice of the amended *DPT
3 assessment.

4 (5) However, if an amended *DPT assessment reinstates all or part of a
5 liability in relation to a particular that had been reduced by an
6 earlier amended DPT assessment, the period for the reinstated
7 liability begins at the start of the day on which *diverted profits tax
8 under the earlier amended DPT assessment was due to be paid.

9 Note 1: See subsection 177P(3) of the *Income Tax Assessment Act 1936* for
10 when the amount of diverted profits tax becomes due and payable.

11 Note 2: Section 177Q of the *Income Tax Assessment Act 1936* provides for
12 general interest charge on any part of the additional amount (plus any
13 shortfall interest charge) that remains unpaid after the additional
14 amount is due and payable.

15 Note 3: See section 177R of the *Income Tax Assessment Act 1936* for when
16 the amount of shortfall interest charge becomes due and payable.

17 ***Taxation (Interest on Overpayments and Early Payments)***
18 ***Act 1983***

19 **50 Subsection 3(1)**

20 Insert:

21 *diverted profits tax* has the same meaning as in the *Income Tax*
22 *Assessment Act 1997*.

23 **51 Section 3C (after table item 25)**

24 Insert:

30 Diverted profits tax

25 **52 Application**

26 The amendments made by this Schedule apply in relation to DPT tax
27 benefits for a year of income that starts on or after 1 July 2017 (whether
28 or not the DPT tax benefit arises in connection with a scheme that was
29 entered into, or was commenced to be carried out, before 1 July 2017).

1 **Schedule 2—Increasing penalties for**
2 **significant global entities**
3

4 ***Taxation Administration Act 1953***

5 **1 Subsection 3CA(2)**

6 After “give to the Commissioner”, insert “in the approved form”.

7 **2 Subsection 284-90(1) in Schedule 1**

8 After “using this table”, insert “and subsections (1A) to (2),”.

9 **3 After subsection 284-90(1) in Schedule 1**

10 Insert:

11 (1A) The *base penalty amount in an item of the table in subsection (1)
12 that applies to you is taken to be doubled if:

13 (a) on or before the day (your ***trigger day***) applying to you under
14 subsection (4) for that table item:

15 (i) the Commissioner has made an assessment of your
16 income tax for one or more income years; or

17 (ii) the Commissioner has made a determination under
18 subsection 960-555(3) of the *Income Tax Assessment*
19 *Act 1997* in relation to you, or in relation to the *global
20 parent entity for the group of which you are a member,
21 for a period; or

22 (iii) you have given the Commissioner statements in
23 accordance with Subdivision 815-E of that Act for an
24 income year or another 12 month period; and

25 (b) you were a *significant global entity for:

26 (i) whichever of those income years or periods that ends on
27 the most recent day; or

28 (ii) if more than one of them ends on that most recent day—
29 any of those income years or periods that ends on that
30 most recent day.

31 Note: For subparagraph (a)(iii), you may be allowed to give statements for a
32 12 month period other than an income year (see section 815-360 of the
33 *Income Tax Assessment Act 1997*).

1 (1B) However, subsection (1A) is taken never to have applied to you in
2 relation to your trigger day if:

3 (a) the Commissioner makes an assessment of your income tax
4 for the income year that includes your trigger day; and

5 (b) you are not a *significant global entity for that income year.

6 **4 At the end of section 284-90 in Schedule 1**

7 Add:

8 (4) For the purposes of paragraph (1A)(a), the following day applies to
9 you for the relevant item of the table in subsection (1):

10 (a) for any of table items 1 to 3C—the day you made the
11 statement referred to in that item;

12 (b) for any of table items 4 to 6—the day you made the statement
13 to which that item relates and that is referred to in
14 subsection 284-75(2);

15 (c) for table item 7—the day the return, notice or other document
16 to which that item relates, and that is referred to in
17 subsection 284-75(3), was required to be given.

18 **5 Paragraph 286-80(1)(b) in Schedule 1**

19 Omit “subsection (3) or (4)”, substitute “subsection (3), (4) or (4A)”.

20 **6 After subsection 286-80(4) in Schedule 1**

21 Insert:

22 (4A) Neither subsection (3) nor (4) applies to the entity, and the *base
23 penalty amount is multiplied by 500, if:

24 (a) the failure referred to in subsection (2) is a failure to give a
25 return, notice or other document on time or in the *approved
26 form, as mentioned in subsection 286-75(1); and

27 (b) on or before the day the return, notice or other document is
28 required to be given:

29 (i) the Commissioner has made an assessment of the
30 entity’s income tax for one or more income years; or

31 (ii) the Commissioner has made a determination under
32 subsection 960-555(3) of the *Income Tax Assessment*
33 *Act 1997* in relation to the entity, or in relation to the

- 1 *global parent entity for the group of which the entity is
 2 a member, for a period; or
 3 (iii) the entity has given the Commissioner statements in
 4 accordance with Subdivision 815-E of that Act for an
 5 income year or another 12 month period; and
 6 (c) the entity was a *significant global entity for:
 7 (i) whichever of those income years or periods that ends on
 8 the most recent day; or
 9 (ii) if more than one of them ends on that most recent day—
 10 any of those income years or periods that ends on that
 11 most recent day.
- 12 Note: For subparagraph (b)(iii), an entity may be allowed to give statements
 13 for a 12 month period other than an income year (see section 815-360
 14 of the *Income Tax Assessment Act 1997*).
- 15 (4B) However, subsection (4A) is taken never to have applied to the
 16 entity in relation to the day the return, notice or other document is
 17 required to be given if:
 18 (a) the Commissioner makes an assessment of the entity's
 19 income tax for the income year that includes that day; and
 20 (b) the entity is not a *significant global entity for that income
 21 year.

7 Application of amendments

- 22
- 23 (1) The amendment made by item 1 of this Schedule applies in relation to
 24 general purpose financial statements required to be given to the
 25 Commissioner at or after the application time.
- 26 (2) The amendments made by items 2, 3 and 4 of this Schedule apply in
 27 relation to any of the following:
 28 (a) statements referred to in section 284-75 in Schedule 1 to the
 29 *Taxation Administration Act 1953* that are made at or after
 30 the application time;
 31 (b) returns, notices or other documents referred to in that section
 32 that are required to be given at or after the application time.
- 33 (3) The amendments made by items 5 and 6 of this Schedule apply in
 34 relation to any returns, notices or other documents referred to in

Schedule 2 Increasing penalties for significant global entities

1 subsection 286-75(1) in Schedule 1 to the *Taxation Administration Act*
2 *1953* that are required to be given at or after the application time.

3 (4) In this item:

4 ***application time*** means the start of the day that is the later of:

5 (a) 1 July 2017; and

6 (b) the day this Schedule commences.

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Schedule 3—Transfer pricing guidelines

Income Tax Assessment Act 1997

1 Paragraph 815-135(2)(a)

Before “the Transfer Pricing Guidelines”, insert “subject to paragraph (aa),”.

2 After paragraph 815-135(2)(a)

Insert:

(aa) the Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports, of the Organisation for Economic Cooperation and Development, published on 5 October 2015;

3 Subsection 815-135(3)

After “paragraph (2)(a)”, insert “or (aa)”.

4 Application of amendments

The amendments made by this Schedule apply in relation to income years starting on or after 1 July 2016.

(10/17)
