



Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024

No. 37, 2024

**An Act to amend the law relating to taxation, and
for related purposes**

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Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024

No. 37, 2024

An Act to amend the law relating to taxation, and for related purposes

[Assented to 31 May 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024*.

2 Commencement

- (1) Each provision of this Act 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	31 May 2024
2. Schedules 1 to 3	The later of: (a) 1 July 2024; and (b) the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 July 2024
3. Schedule 4	The day after this Act receives the Royal Assent.	1 June 2024
4. Schedule 5	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 July 2024

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—PwC response—Promoter penalty law reform

Tax Agent Services Act 2009

1 Section 20-45

Before “The”, insert “(1)”.

2 Paragraph 20-45(d)

Repeal the paragraph, substitute:

- (d) you are penalised for implementing a *scheme that has been promoted on the basis of conformity with a *public ruling, *private ruling or *oral ruling in a way that is materially different from that described in the ruling;

3 After paragraph 20-45(d)

Insert:

- (da) you are penalised for promoting on the basis of conformity with a public ruling, private ruling or oral ruling a scheme that is materially different from that described in the ruling;

4 At the end of section 20-45

Add:

- (2) An event described in paragraph (1)(c), (d) or (da) does not affect your continued registration as a *registered tax agent or BAS agent if:
 - (a) you are a partner in a partnership; and
 - (b) you:
 - (i) did not aid, abet, counsel or procure the relevant act or omission; and
 - (ii) were not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

Taxation Administration Act 1953

5 After paragraph 290-5(a) in Schedule 1

Insert:

- (aa) to deter the promotion of schemes on the basis of conformity with a *public ruling, *private ruling or *oral ruling if the scheme is materially different from that described in the ruling; and

6 Paragraph 290-5(b) in Schedule 1

Omit “*product ruling”, substitute “public ruling, private ruling or oral ruling”.

7 Paragraph 290-5(b) in Schedule 1

Omit “the product ruling”, substitute “the ruling”.

8 After subsection 290-50(1) in Schedule 1

Insert:

Promoting scheme otherwise than in accordance with ruling

- (1A) An entity must not engage in conduct that results in a *scheme that is materially different from that described in a *public ruling, *private ruling or *oral ruling being promoted on the basis of conformity with that ruling.

9 Subsection 290-50(2) in Schedule 1

Omit “*product ruling”, substitute “*public ruling, *private ruling or *oral ruling (whether or not the ruling actually relates to the scheme)”.

10 Subsection 290-50(2) in Schedule 1

Omit “the product ruling”, substitute “the ruling”.

11 Subsection 290-50(2) in Schedule 1 (note)

Omit “product”.

12 Subsection 290-50(2A) in Schedule 1

Omit “subsection (2)”, substitute “subsections (1A) and (2)”.

13 Subsection 290-50(2A) in Schedule 1 (note 2)

Omit “product”.

14 Subsection 290-50(3) in Schedule 1

After “(1)”, insert “, (1A)”.

15 At the end of subsection 290-50(3) in Schedule 1

Add:

Note: If the entity is a registered tax agent or BAS agent, being penalised under this subsection may affect the continued registration of the entity: see section 20-45 and Subdivision 40-A of the *Tax Agent Services Act 2009*.

16 Subsection 290-50(4) in Schedule 1

Repeal the subsection, substitute:

Amount of penalty

- (4) The maximum amount of the penalty for a contravention by an entity is the greater of:
- (a) 5,000 penalty units; and
 - (b) 3 times the total value of all benefits received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4A) Despite subsection (4), the maximum amount of the penalty for a contravention by an entity that is a body corporate is the greatest of the following:
- (a) 50,000 penalty units;
 - (b) 3 times the total value of all benefits received or receivable (directly or indirectly) by the entity and *associates of the entity in respect of the *scheme;
 - (c) either:
 - (i) 10% of the *aggregated turnover of the entity for the most recent income year to end before the entity contravened, or began to contravene, the provision; or

- (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4B) Despite subsections (4) and (4A), the maximum amount of the penalty for a contravention by an entity that is:
- (a) a partner in a partnership that is a *significant global entity; or
 - (b) a trustee of a trust that is a significant global entity;
- is the greatest of the following:
- (c) 50,000 penalty units;
 - (d) 3 times the total value of all benefits received or receivable (directly or indirectly) by the significant global entity and *associates of the significant global entity in respect of the *scheme;
 - (e) either:
 - (i) 10% of the *aggregated turnover of the significant global entity for the most recent income year to end before the entity contravened, or began to contravene, the provision; or
 - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

17 Subsection 290-50(5) in Schedule 1

After “(1)”, insert “, (1A)”.

18 Paragraph 290-50(5)(a) in Schedule 1

Omit “consideration”, substitute “benefit”.

19 Subsection 290-55(2) in Schedule 1

Repeal the subsection, substitute:

- (2) The other entity referred to in paragraph (1)(b) does not include:
-

- (a) someone who was an employee or agent of the entity when the alleged conduct occurred; or
- (b) if the entity is a body corporate—someone who was a director of the entity when the alleged conduct occurred; or
- (c) if the entity is a partner in a partnership—someone who was also a partner in the partnership when the alleged conduct occurred; or
- (d) if the entity is a trustee of a trust that has more than one trustee—someone who was also a trustee of the trust when the alleged conduct occurred.

20 Subsection 290-55(4) in Schedule 1

Omit “4 years”, substitute “6 years”.

21 Subsection 290-55(5) in Schedule 1

Omit “*product ruling”, substitute “*public ruling, *private ruling or *oral ruling”.

22 Subsection 290-55(5) in Schedule 1

Omit “4 years”, substitute “6 years”.

23 Subsection 290-55(5) in Schedule 1

Omit all the words after “last engaged”, substitute:

in conduct in relation to:

- (a) if the scheme has been implemented—the implementation of the scheme; or
- (b) if the scheme has not been implemented—the promotion of the scheme.

24 Subsection 290-55(6) in Schedule 1

Omit “a *scheme involving”, substitute “*schemes that involve, or if implemented would involve,”.

25 After paragraph 290-55(7)(a) in Schedule 1

Insert:

- (aa) that results in a *scheme that is materially different from that described in a *public ruling, *private ruling or *oral ruling

being promoted on the basis of conformity with that ruling;
or

26 Paragraph 290-55(7)(b) in Schedule 1

Omit “*scheme”, substitute “scheme”.

27 Paragraph 290-55(7)(b) in Schedule 1

Omit “*product ruling”, substitute “public ruling, private ruling or oral ruling”.

28 Paragraph 290-55(7)(b) in Schedule 1

Omit “the product ruling”, substitute “the ruling”.

29 After subsection 290-55(7) in Schedule 1

Insert:

- (7A) The other entity referred to in paragraph (7)(a) does not include:
- (a) if the entity mentioned first in subsection (7) is a partner in a partnership:
 - (i) the partnership; or
 - (ii) someone who was a partner in the partnership when the alleged conduct occurred; or
 - (b) if the entity mentioned first in subsection (7) is a trustee of a trust:
 - (i) the trust; or
 - (ii) if the trust has more than one trustee—someone who was also a trustee of the trust when the alleged conduct occurred.

30 Paragraph 290-60(1)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) the entity:
 - (i) markets the scheme; or
 - (ii) otherwise encourages the growth of the scheme or interest in it; and

31 Paragraph 290-60(1)(b) in Schedule 1

Omit “consideration”, substitute “a benefit”.

32 After subsection 290-65(1) in Schedule 1

Insert:

- (1A) A *scheme is also a *tax exploitation scheme* if, at the time of the conduct mentioned in subsection 290-50(1):
- (a) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—Part IVA of the *Income Tax Assessment Act 1936* applies to the scheme because of section 177DA or 177J of that Act;
 - (ii) if the scheme has not been implemented—it is reasonable to conclude that, had the scheme been entered into or carried out, Part IVA of that Act would apply to the scheme because of section 177DA or 177J of that Act; and
 - (b) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is reasonable to conclude that an entity that (alone or with others) entered into or carried out the scheme, or part of it, did so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a *scheme benefit from the scheme;
 - (ii) if the scheme has not been implemented—it is reasonable to conclude that if an entity (alone or with others) had entered into or carried out the scheme, it would have done so for a principal purpose of, or for more than one principal purpose that includes a purpose of, that entity or another entity getting a scheme benefit from the scheme; and
 - (c) one of these conditions is satisfied:
 - (i) if the scheme has been implemented—it is not *reasonably arguable that the scheme benefit is available at law;
 - (ii) if the scheme has not been implemented—it is not reasonably arguable that the scheme benefit would be available at law if the scheme were implemented.

33 Section 290-120 in Schedule 1

After “(1)”, insert “, (1A)”.

34 Paragraph 290-135(a) in Schedule 1

Omit “*product ruling”, substitute “*public ruling, *private ruling or *oral ruling”.

35 At the end of section 444-30 in Schedule 1

Add:

- (5) If a civil penalty may be imposed in relation to a contravention of a provision of this Schedule or an *indirect tax law:
- (a) subsection (3) applies to a contravention of the provision in a corresponding way to the way in which it applies to an offence; and
 - (b) subsection (4) does not apply.

36 At the end of Division 444 in Schedule 1

Add:

Subdivision 444-F—Trusts

Table of sections

444-120 Joint and several liability for all trustees

444-120 Joint and several liability for all trustees

If:

- (a) a trust has more than one trustee; and
- (b) a civil penalty is imposed in relation to a contravention of a provision of this Schedule or an *indirect tax law on one of those trustees;

then all the trustees are jointly and severally liable to pay the amount of the penalty.

37 Application

- (1) Subject to subitem (2), the amendments made by this Schedule apply in relation to conduct engaged in on or after the commencement of this Schedule.

- (2) The amendments made by items 20 and 22 apply in relation to conduct engaged in before, on or after the commencement of this Schedule.

Schedule 2—PwC response—Extending tax whistleblower protections

Taxation Administration Act 1953

1 Subsection 2(1)

Insert:

Tax Practitioners Board means the Tax Practitioners Board established by section 60-5 of the *Tax Agent Services Act 2009*.

2 Section 8AC

Omit “established by the *Tax Agent Services Act 2009*”.

3 After subsection 14ZZT(1)

Insert:

- (1A) A disclosure of information by an individual (the *discloser*) qualifies for protection under this Part if:
- (a) the discloser is an eligible whistleblower in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (b) the disclosure is made to:
 - (i) the Tax Practitioners Board; or
 - (ii) the Commissioner; and
 - (c) the discloser considers that the information may assist the Tax Practitioners Board to perform its functions or duties under the *Tax Agent Services Act 2009*, or an instrument made under that Act, in relation to the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity.

4 After subsection 14ZZT(3)

Insert:

- (3A) A disclosure of information by an individual (the *discloser*) qualifies for protection under this Part if the disclosure is made:
-

- (a) to an entity (within the meaning of the *Income Tax Assessment Act 1997*) that has one or more members, if:
 - (i) the entity is prescribed by the regulations; and
 - (ii) the discloser is a member of the entity; and
 - (b) for the purpose of obtaining assistance in relation to the operation of this Part.
- (3B) A disclosure of information by an individual (the **discloser**) qualifies for protection under this Part if the disclosure is made to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment or counselling (including psychological counselling).

5 Subsection 14ZZT(4)

Insert:

medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

psychologist means a person registered or licensed as a psychologist under a law of a State or Territory that provides for the registration or licensing of psychologists.

6 After section 14ZZT

Insert:

14ZZTA Information disclosed for the purpose of assisting the Tax Practitioners Board

- (1) If information is disclosed to the Commissioner in accordance with subsection 14ZZT(1A) then, for the purposes of the following provisions:
 - (a) paragraph 355-30(1)(a) in Schedule 1;
 - (b) paragraph (a) of the definition of **official information** in subsection 90-1(1) of the *Tax Agent Services Act 2009*;the information is taken to have been disclosed or obtained under or for the purposes of this Act, and not the *Tax Agent Services Act 2009*.

- (2) If information is disclosed to the Tax Practitioners Board in accordance with subsection 14ZZT(1A) then, for the purposes of the following provisions:
- (a) paragraph 355-30(1)(a) in Schedule 1;
 - (b) paragraph (a) of the definition of *official information* in subsection 90-1(1) of the *Tax Agent Services Act 2009*;
- the information is taken to have been disclosed or obtained under or for the purposes of the *Tax Agent Services Act 2009*, and not this Act.

7 Paragraph 14ZZX(1)(c)

After “to the Commissioner”, insert “or the Tax Practitioners Board”.

8 After section 14ZZX

Insert:

14ZZXA Claims for protection

- (1) If, in civil or criminal proceedings (the *primary proceedings*) instituted against an individual in a court, the individual makes a claim (relevant to the proceedings) that, because of section 14ZZX, the individual is not subject to any civil, criminal or administrative liability for making a particular disclosure:
- (a) the individual bears the onus of adducing or pointing to evidence that suggests a reasonable possibility that the claim is made out; and
 - (b) if the individual discharges that onus—the party instituting the primary proceedings against the individual bears the onus of proving that the claim is not made out; and
 - (c) the court must deal with the claim in separate proceedings; and
 - (d) the court must adjourn the primary proceedings until the claim has been dealt with; and
 - (e) none of the following:
 - (i) any admission made by the individual in the separate proceedings;
 - (ii) any information given by the individual in the separate proceedings;

(iii) any other evidence adduced by the individual in the separate proceedings;

is admissible in evidence against the individual except in proceedings in respect of the falsity of the admission, information or evidence; and

(f) if the individual or another person gives evidence in the separate proceedings in support of the claim—giving that evidence does not amount to a waiver of privilege for the purposes of the primary proceedings or any other proceedings.

(2) To avoid doubt, a right under section 126K of the *Evidence Act 1995* not to be compelled to give evidence is a privilege for the purposes of paragraph (1)(f) of this section.

9 Paragraph 15(3)(a)

Omit “(within the meaning of that Act)”.

10 Subsection 15A(12)

Omit “(within the meaning of that Act)”.

Schedule 3—PwC response—Tax Practitioners Board reform

Part 1—Information on the register

Tax Agent Services Act 2009

1 Subsections 60-135(1) to (3)

Repeal the subsections, substitute:

- (1) The Board must establish, and maintain, a register of entities in accordance with this Act and the regulations made for the purposes of this subsection.
- (2) Each entity that is a *registered tax agent or BAS agent must be entered on the register for the period during which the entity is a registered tax agent or BAS agent.

Note: Another provision of this Act, or regulations made for the purposes of subsection (1), may require an entity that is not a registered tax agent or BAS agent to be entered on the register for a period.

- (3) Without limiting the regulations that may be made for the purposes of subsection (1), those regulations may do the following:
 - (a) require an entity to be entered on the register for a specified period;
 - (b) if an entity is required (whether by this Act or by the regulations) to be entered on the register for a period—require specified information in respect of the entity to be entered on the register for some or all of that period.

Entities that are not registered tax agents or BAS agents

- (3A) An entity that is not a *registered tax agent or BAS agent, and information in respect of such an entity:
 - (a) must not be entered on the register; and
 - (b) must not remain entered on the register;except as required by this Act or by regulations made for the purposes of subsection (1).

Availability of register

2 Application and transitional provisions

Transition of register

- (1) The register that was established for the purposes of subsection 60-135(1) of the *Tax Agent Services Act 2009* before the commencement of this Part, and maintained for the purposes of that subsection immediately before that commencement, is taken, on and after that commencement, to have been established for the purposes of subsection 60-135(1) of that Act (as amended by this Part).

Information prescribed by regulations

- (2) Regulations made for the purposes 60-135(1) of the *Tax Agent Services Act 2009* (as amended by this Part) may require specified information in respect of an entity to be entered on the register whether the information relates to matters occurring before, on or after the commencement of this Part.

Part 2—Investigations by the Board

Division 1—Period for making decisions

Tax Agent Services Act 2009

3 Paragraph 60-125(3)(a)

Omit “6 months”, substitute “24 months”.

4 Application provisions

- (1) The amendment made by this Division applies in relation to an investigation into conduct under section 60-95 of the *Tax Agent Services Act 2009* if the investigation commences on or after the commencement of this Division.
- (2) The amendment made by this Division also applies in relation to an investigation into conduct under section 60-95 of the *Tax Agent Services Act 2009* if:
 - (a) the investigation commenced before the commencement of this Division; and
 - (b) immediately before the commencement of this Division, the Board had not, in relation to the investigation:
 - (i) made a decision under subsection 60-125(2) of the *Tax Agent Services Act 2009*; or
 - (ii) been taken to have made such a decision; and
 - (c) immediately before the commencement of this Division:
 - (i) the Board had not, in relation to the investigation, determined a period under subsection 60-125(4) of the *Tax Agent Services Act 2009*; or
 - (ii) the Board had, in relation to the investigation, determined a period of less than 24 months under subsection 60-125(4) of that Act.
- (3) If the amendment made by this Division applies in relation to an investigation because of subitem (2), and subparagraph (2)(c)(ii) of this item applies, then for the purposes of the *Tax Agent Services Act 2009* as it applies on and after the commencement of this Division:

- (a) the determination referred to in subparagraph (2)(c)(ii) of this item is to be disregarded; and
- (b) the Board must not, in relation to the investigation, make any further determination under subsection 60-125(4) of the *Tax Agent Services Act 2009*.

Division 2—Publishing results of investigations

Tax Agent Services Act 2009

5 At the end of paragraph 60-125(2)(b)

Add:

- ; (v) decide that the entity (the *contravening entity*) that engaged in the conduct, and the information in respect of the contravening entity prescribed by the regulations for the purposes of this subparagraph, be entered on the register for the period prescribed by the regulations for the purposes of this subparagraph.

6 Subsection 60-125(2) (note)

Omit “Note”, substitute “Note 1”.

7 At the end of subsection 60-125(2)

Add:

Note 2: In this section, *register* means the register kept under section 60-135 (see subsection (10) of this section).

8 After subsection 60-125(2)

Insert:

- (2A) If the Board makes a decision in relation to the contravening entity under subparagraph (2)(b)(v), then the contravening entity, and the information in respect of the contravening entity mentioned in that subparagraph, must be entered on the register for the period mentioned in that subparagraph.

9 At the end of section 60-125

Add:

Definitions

- (10) In this section, **register** means the register kept under section 60-135.

10 After paragraph 70-10(h)

Insert:

- (ha) a decision under subparagraph 60-125(2)(b)(v) that an entity, and certain information in respect of the entity, be entered on the register kept under section 60-135 for a period;

11 Application provisions

- (1) The amendments of section 60-125 of the *Tax Agent Services Act 2009* made by this Division apply in relation to an investigation into conduct under section 60-95 of that Act if the investigation commences on or after the commencement of this Division.
- (2) Those amendments also apply in relation to an investigation into conduct under section 60-95 of the *Tax Agent Services Act 2009* if:
- (a) the investigation commenced on or after 1 July 2022 but before the commencement of this Division; and
 - (b) immediately before the commencement of this Division, the Board had not, in relation to the investigation:
 - (i) made a decision under subsection 60-125(2) of the *Tax Agent Services Act 2009*; or
 - (ii) been taken to have made such a decision.
- (3) Regulations made for the purposes of subparagraph 60-125(2)(b)(v) of the *Tax Agent Services Act 2009*:
- (a) may prescribe information in respect of a contravening entity that relates to matters occurring before, on or after the commencement of this Division; and
 - (b) may prescribe a period that starts before, on or after the commencement of this Division.

12 Investigations that have concluded—Board may make new decision to publish findings

- (1) This item applies in relation to an investigation into conduct under section 60-95 of the *Tax Agent Services Act 2009* if:
-

- (a) the investigation commenced before the commencement of this Division; and
 - (b) before the commencement of this Division, the Board had made a finding that the conduct breached that Act; and
 - (c) on or after 1 July 2022, but before the commencement of this Division, the Board had made a decision, within the period under subsection 60-125(3) of that Act, that no further action would be taken; and
 - (d) the Board made that decision because, at the time the decision was made, the entity (the **contravening entity**) who engaged in the conduct had ceased to be a registered tax agent or BAS agent.
- (2) The Board may, within the period of 6 months after the commencement of this Division, decide that:
- (a) the contravening entity; and
 - (b) the information in respect of the contravening entity prescribed by the regulations for the purposes of subparagraph 60-125(2)(b)(v) of the *Tax Agent Services Act 2009*;
- be entered on the register for the period prescribed by the regulations for the purposes of that subparagraph.
- (3) If the Board makes a decision (a **publication decision**) under subitem (2) then, for the purposes of the *Tax Agent Services Act 2009* as it applies in relation to the investigation on and after the time when the publication decision is made:
- (a) the publication decision is taken to have been validly made under subparagraph 60-125(2)(b)(v) of that Act (and subsections 60-125(3) and (7) of that Act are to be disregarded); and
 - (b) the period prescribed by the regulations for the purposes of subparagraph 60-125(2)(b)(v) of that Act is taken to be a period of 5 years starting on the day when the Board made the decision that no further action would be taken (as mentioned in paragraph (1)(c) of this item); and
 - (c) except for the purposes of paragraph (b) of this subitem, the Board's decision that no further action would be taken is to be disregarded.
-

Schedule 3 PwC response—Tax Practitioners Board reform

Part 2 Investigations by the Board

Note: The effects of subitem (3) include that the Board must give notice of, and reasons for, the publication decision under subsection 60-125(8) of the *Tax Agent Services Act 2009*, and that an application may be made to the Administrative Appeals Tribunal under section 70-10 of that Act for review of the publication decision.

Part 3—Delegations by the Board

Tax Agent Services Act 2009

13 Before subsection 70-30(1A)

Insert:

Functions and powers that must not be delegated

14 Subsection 70-30(2)

Repeal the subsection, substitute:

Powers to make reviewable decisions

- (2) A power to make a reviewable decision (other than a decision covered by subsection (2A)):
- (a) must not be delegated under paragraph (1)(a), (c) or (d); and
 - (b) may be delegated to a *committee under paragraph (1)(b) only if:
 - (i) the committee has 3 members or more; and
 - (ii) all members of the committee are *Board members.

Note: For *reviewable decision*, see subsection (5).

- (2A) This subsection covers the following reviewable decisions:
- (a) a decision to terminate the registration of an individual under subsection 40-5(2);
 - (b) a decision to terminate the registration of a partnership under subsection 40-10(2);
 - (c) a decision to terminate the registration of a company under subsection 40-15(2).

Other matters

15 At the end of section 70-30

Add:

Definitions

(5) In this section:

reviewable decision means a decision in respect of which an application for review may be made to the Administrative Appeals Tribunal under section 70-10.

Schedule 4—PwC response—Information sharing

Part 1—Amendments

Taxation Administration Act 1953

1 Subsection 355-65(8) in Schedule 1 (at the end of the table)

Add:

- 14 the Secretary of the Department (a) is of information that concerns:
- (i) a breach of an obligation of confidence by an entity (the *first entity*) against the Commonwealth or a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
 - or
 - (ii) if the taxation officer reasonably suspects that such a breach has occurred—the suspected breach;
- where the obligation arose in connection with the first entity providing advice, or otherwise providing services, to a Commonwealth entity either:
- (iii) as an entity engaged by the Commonwealth entity for that purpose; or
 - (iv) as an entity representing a taxpayer; and
- (b) is for the purpose of enabling or assisting in the consideration, development or implementation of any measure, or the taking of
-

Schedule 4 PwC response—Information sharing
Part 1 Amendments

any action, directed at dealing with the breach or suspected breach; and

- (c) does not include:
- (i) the *ABN; or
 - (ii) the name; or
 - (iii) contact details; or
 - (iv) personal information (within the meaning of the *Privacy Act 1988*);

of any entity other than the first entity, unless the Commissioner is satisfied that the inclusion of the information is necessary for the purpose mentioned in paragraph (b); and

- (d) if the taxation officer is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—is authorised by:
- (i) the Commissioner; or
 - (ii) a Second Commissioner; or
 - (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

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| 15 | a professional disciplinary body that is prescribed for the purposes of this table item (a <i>prescribed disciplinary body</i>) | (a) is of information that concerns an entity (the <i>first entity</i>) and an act or omission (or a suspected act or omission) of the first entity that the taxation officer reasonably suspects may constitute a breach by the first entity of the prescribed disciplinary body's code of conduct or professional standards, however described; |
|----|--|--|
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and

(b) is for the purpose of enabling or assisting the prescribed disciplinary body to perform one or more of its functions in respect of the first entity; and

(c) does not include:

- (i) the *ABN; or
- (ii) the name; or
- (iii) contact details; or
- (iv) personal information (within the meaning of the *Privacy Act 1988*);

of any entity other than the first entity, unless the Commissioner is satisfied that the inclusion of the information is necessary for the purpose mentioned in paragraph (b); and

(d) if the taxation officer is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—is authorised by:

- (i) the Commissioner; or
- (ii) a Second Commissioner; or
- (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

2 After section 355-180 in Schedule 1

Insert:

355-181 Exception—on-disclosure to Ministers in relation to breach of confidence and related matters

Section 355-155 does not apply if:

- (a) the entity is the Secretary of the Department or an SES employee of the Department authorised by the Secretary for the purposes of this section (the *first entity*); and
- (b) the information was obtained by the first entity under the exception in subsection 355-65(1) operating in relation to item 14 in the table in subsection 355-65(8); and
- (c) the record is made for, or the disclosure is to, the Minister or the *Finance Minister; and
- (d) the record or disclosure is for the purpose of providing advice to the Minister or the Finance Minister in relation to:
 - (i) a breach, or a suspected breach, of an obligation of confidence by another entity (the *second entity*) against the Commonwealth or a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or
 - (ii) any proposed measure or action directed at dealing with such a breach or suspected breach.

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3) of the *Criminal Code*.

3 Section 355-210 in Schedule 1

After “355-180”, insert “, 355-181”.

Tax Agent Services Act 2009

4 At the end of section 70-40

Add:

Disclosures to the Secretary of the Department

- (5) Subsection 70-35(1) does not apply if:
 - (a) the person (the *first person*) makes the record for, or the disclosure to, the Secretary of the Department; and
 - (b) the record or disclosure is of information that concerns:

- (i) a breach of an obligation of confidence by another person (the **second person**) against the Commonwealth or a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or
- (ii) if the first person reasonably suspects that such a breach has occurred—the suspected breach; and
- (c) the obligation arose in connection with the second person providing advice, or otherwise providing services, to a Commonwealth entity either:
 - (i) as an entity engaged by the Commonwealth entity for that purpose; or
 - (ii) as an entity representing a taxpayer; and
- (d) the record or disclosure is for the purpose of:
 - (i) enabling or assisting in the consideration, development or implementation of any measure or the taking of any action directed at dealing with the breach or suspected breach; or
 - (ii) enabling or assisting the Secretary or an SES employee of the Department to advise the Minister and the *Finance Minister in relation to the breach or suspected breach; and
- (e) the record or disclosure is of information that does not include:
 - (i) the *ABN; or
 - (ii) the name; or
 - (iii) contact details; or
 - (iv) personal information (within the meaning of the *Privacy Act 1988*);of any person other than the second person, unless the Board is satisfied that the inclusion of the information is necessary for a purpose mentioned in paragraph (d).

Note: A defendant bears an evidential burden in relation to the matters in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Disclosures to a prescribed professional disciplinary body

- (6) Subsection 70-35(1) does not apply if:
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- (a) the person (the **first person**) makes the record for, or the disclosure to, a professional disciplinary body that is prescribed by the regulations for the purposes of this subsection (a **prescribed disciplinary body**); and
- (b) the record or disclosure is of information that concerns another person (the **second person**) and an act or omission (or a suspected act or omission) of the second person that the first person reasonably suspects may constitute a breach by the second person of the prescribed disciplinary body's code of conduct or professional standards, however described; and
- (c) the record or disclosure is made for the purpose of enabling or assisting the prescribed disciplinary body to perform one or more of its functions in respect of the second person; and
- (d) the record or disclosure is of information that does not include:
 - (i) the *ABN; or
 - (ii) the name; or
 - (iii) contact details; or
 - (iv) personal information (within the meaning of the *Privacy Act 1988*);of any person other than the second person, unless the Board is satisfied that the inclusion of the information is necessary for the purpose mentioned in paragraph (c).

Note: A defendant bears an evidential burden in relation to the matters in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

Part 2—Application of amendments

5 Application—record or disclosure of information

- (1) The amendments of Schedule 1 to the *Taxation Administration Act 1953* made by this Schedule apply in relation to records and disclosures of information made on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
- (2) The amendments of the *Tax Agent Services Act 2009* made by this Schedule apply in relation to records and disclosures of information made on or after the commencement of this item, whether the information was obtained before, on or after that commencement.

Schedule 5—Petroleum resource rent tax deductions cap

Petroleum Resource Rent Tax Assessment Act 1987

1 Section 2 (definition of *apportionment percentage figure*)

Repeal the definition, substitute:

apportionment percentage figure:

- (a) in relation to a year of tax—has the meaning given by subsection 2C(2); and
- (b) in relation to any other period—has the meaning given by subsection 2C(3).

2 At the end of section 2C

Add:

- (3) For the purposes of this Act, ***apportionment percentage figure***, in relation to a period of days that is not a year of tax, means the amount worked out under subsection (2) as if the period were a year of tax.

3 At the end of section 22

Add:

Deemed taxable profit for certain liquefied natural gas projects

- (3) If:
 - (a) a person derives assessable petroleum receipts or assessable tolling receipts in relation to a petroleum project in a year of tax; and
 - (b) sales gas is, or will be, produced from some or all of the petroleum that is, or will be, recovered from the project; and
 - (c) the person is a party to an arrangement (within the meaning of section 50); and
 - (d) it is intended, as a result of carrying out the arrangement, that sales gas (which may or may not be the sales gas mentioned

in paragraph (b)) is to be wholly or primarily processed into liquefied natural gas; and

- (e) the person enters, or will enter, into such arrangements on a regular or consistent basis; and
- (f) the person is not taken under subsection (1) or (2) to have a taxable profit in relation to the project and the year of tax; and
- (g) the project is not excluded under subsection (5) for the year of tax;

the person is taken for the purposes of this Act to have a taxable profit in relation to the project and the year of tax of an amount (the **denied deduction amount**) equal to 10% of the assessable receipts derived by the person in relation to the project in the year of tax.

- (4) However, if the project is a Greater Sunrise project, the person is taken for the purposes of this Act to have a taxable profit in relation to the project and the year of tax of an amount (the **denied deduction amount**) worked out using the following formula:

$$\frac{\text{Initial taxable profit} \times \text{Apportionment percentage figure}}{100}$$

where:

apportionment percentage figure has the meaning given by subsection 2C(2).

initial taxable profit means the amount of taxable profit worked out under subsection (3) ignoring this subsection.

- (5) For the purposes of paragraph (3)(g), a project is excluded for a year of tax if:
 - (a) the year of tax is the first financial year in which assessable petroleum receipts are derived by the person in relation to the project or one of the subsequent 7 financial years; or
 - (b) the person incurs resource tax expenditure or starting base expenditure in the year of tax in relation to the project; or
 - (c) the person is not taken to incur any amounts under subsection 33(3), 34(3), 34A(4), 35(3), 35C(5), 35E(3),

35F(2) or 36(1) (including because of section 48 or 48A) in relation to the project:

- (i) on the first day of the year of tax; or
- (ii) on the first day of a previous year of tax (other than the first year of tax in which the person incurred deductible expenditure in relation to the project).

4 After paragraph 32(fc)

Insert:

- (fd) augmented denied deductible expenditure;

5 After section 35E

Insert:

35F Augmented denied deductible expenditure

- (1) For the purposes of this Act, a reference to the augmented denied deductible expenditure incurred by a person in a financial year in relation to a petroleum project is a reference to:
 - (a) if the petroleum project is not a combined project—any amount that is taken by subsection (2) or Division 5 to be augmented denied deductible expenditure incurred by the person in relation to the project in the financial year; or
 - (b) if the petroleum project is a combined project:
 - (i) any amount that is taken by subsection (2) or Division 5 to be augmented denied deductible expenditure incurred by the person in relation to the project in the financial year; or
 - (ii) if the financial year is the year in which the project combination certificate in relation to the project came into force—each amount that is taken by subsection (2) or Division 5 to be augmented denied deductible expenditure incurred by the person in relation to the pre-combination projects in the financial year.

Amounts uplifted from previous financial year

- (2) If:
-

- (a) a person has a denied deduction amount worked out under subsection 22(3) or (4) in relation to a project and a financial year (the *assessable year*); and
- (b) the sum of:
- (i) the deductible expenditure incurred by the person in relation to the project in the assessable year; and
 - (ii) the total of the amounts (if any) transferred by the person to the project in relation to the assessable year under section 45A; and
 - (iii) the total of the amounts (if any) transferred by another person to the person in relation to the project and the assessable year under section 45B;
- equals or exceeds the assessable receipts derived by the person in the assessable year in relation to the project;
- the person is taken to incur, in relation to the project and on the first day of the next financial year, an amount of augmented denied deductible expenditure worked out in accordance with the formula:

Available excess \times LTBR

where:

available excess means the sum of:

- (a) so much of the excess as does not exceed the amount (if any) of augmented denied deductible expenditure incurred by the person in relation to the project in the assessable year; and
- (b) the denied deduction amount.

LTBR means the long-term bond rate in relation to the assessable year plus 1.

6 Paragraph 97(1A)(b)

After “35E(3)”, insert “, 35F(2)”.

7 After subsection 97(1B)

Insert:

- (1BA) However, if a person was taken under subsection 22(3) or (4) to have a taxable profit in relation to the project and the financial year immediately preceding the year of tax, then:

- (a) subsection (1) of this section does not apply to the person in relation to the project and the year of tax; and
- (b) subject to subsection (2) of this section, the notional tax amount of the person, in relation to the project and an instalment period in the year of tax, is the tax that would, if the instalment period were a year of tax, be payable on the amount worked out in accordance with the formula:

$$\left(\text{Current period receipts} - \text{Previous period receipts} \right) \times 0.1$$

where:

current period receipts means:

- (a) if the project is not a Greater Sunrise project—the assessable receipts derived by the person in relation to the project in the instalment period; or
- (b) if the project is a Greater Sunrise project—the assessable receipts derived by the person in relation to the project in the instalment period multiplied by the apportionment percentage figure for the instalment period.

previous period receipts means:

- (a) if the instalment period is the first instalment period in the year of tax—nil; or
- (b) if paragraph (a) does not apply—the current period receipts for the instalment period that ended most recently before the end of the instalment period.

(1BB) For the purposes of subsection (1BA), if the whole or a part of the assessable petroleum receipts that would be taken into account in working out the current period receipts were determined under paragraph 24(1)(d) or (e) (the *special calculation provisions*), then, in calculating the current period receipts:

- (a) any assessable petroleum receipts determined under the special calculation provisions are to be excluded; and
- (b) the amount worked out in accordance with the regulations in respect of those assessable petroleum receipts is to be included.

8 Subsection 97(1C)

Omit “subsection (1B)”, substitute “subsections (1B) and (1BA)”.

9 Subsection 97(2)

After “subsection (1)”, insert “or (1BA)”.

10 Clause 5 of Schedule 1 (definition of *notional taxable profit*)

After “would be the taxable profit”, insert “under subsection 22(1) or (2)”.

11 Clause 5 of Schedule 1 (paragraph (a) of the definition of *notional taxable profit*)

After “starting base expenditure”, insert “, augmented denied deductible expenditure”.

12 Clause 9 of Schedule 1 (definition of *notional taxable profit*)

After “would be the taxable profit”, insert “under subsection 22(1) or (2)”.

13 Clause 9 of Schedule 1 (paragraph (a) of the definition of *notional taxable profit*)

After “starting base expenditure”, insert “, augmented denied deductible expenditure”.

14 Clause 14 of Schedule 1

Before “Amounts”, insert “(1)”.

15 At the end of clause 14 of Schedule 1

Add:

- (2) Augmented denied deductible expenditure taken to be incurred by a person in a financial year in relation to the notional project is not deductible expenditure actually incurred by the person in relation to the notional project in the financial year.

16 Clause 19 of Schedule 1 (definition of *notional taxable profit*)

After “would be the taxable profit”, insert “under subsection 22(1) or (2)”.

17 Clause 27 of Schedule 1 (definition of *notional taxable profit*)

After “would be the taxable profit”, insert “under subsection 22(1) or (2)”.

18 Application of amendments

- (1) The amendments to the *Petroleum Resource Rent Tax Assessment Act 1987* made by this Schedule, other than the amendments made by items 7 to 9, apply in relation to assessable receipts derived by a person in relation to a petroleum project in a year of tax beginning on or after 1 July 2023 (whether or not assessable receipts were also derived by a person in relation to the project in an earlier year of tax).
- (2) In determining, under subsection 22(5) of the *Petroleum Resource Rent Tax Assessment Act 1987* as inserted by this Schedule, whether a project is excluded for a year of tax beginning on or after 1 July 2023, apply paragraph (a) and subparagraph (c)(ii) of that subsection with regard to financial years including financial years before that year of tax.
- (3) The amendments to the *Petroleum Resource Rent Tax Assessment Act 1987* made by items 7 to 9 of this Schedule apply in relation to a petroleum project and a year of tax beginning on or after 1 July 2024.

[Minister’s second reading speech made in—
House of Representatives on 16 November 2023
Senate on 18 March 2024]

(141/23)
