



New International Tax Arrangements Act 2004

No. 73, 2004

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

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No. 73, 2004

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

[Assented to 23 June 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *New International Tax Arrangements Act 2004*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Income Tax Assessment Act 1936

1 Paragraph 96A(1)(c)

After “Division 8”, insert “or 11A”.

2 Section 470

Insert:

complying superannuation entity has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Section 470

Insert:

fixed entitlement has the same meaning as in the *Income Tax Assessment Act 1997*.

4 Section 470

Insert:

fixed trust has the same meaning as in the *Income Tax Assessment Act 1997*.

5 Section 470

Insert:

segregated exempt assets has the same meaning as in the *Income Tax Assessment Act 1997*.

6 Section 470

Insert:

trustee, in relation to a fund that has no trustee, means a person who is a trustee of the fund for the purposes of Part IX.

7 Section 470

Insert:

virtual PST asset has the same meaning as in the *Income Tax Assessment Act 1997*.

8 After Division 11 of Part XI

Insert:

Division 11A—Exemption for virtual PST assets, segregated exempt assets and interests held by complying superannuation entities etc.

519A Objects of Division

The objects of this Division are:

- (a) to exempt taxpayers from taxation under this Part in respect of foreign investment fund income that would otherwise be taken to accrue from virtual PST assets or segregated exempt assets; and
- (b) to exempt taxpayers who are trustees of complying superannuation entities or certain fixed trusts from taxation under this Part in respect of foreign investment fund income.

519B Exemption

Virtual PST assets and segregated exempt assets

- (1) The operative provision does not apply to a taxpayer in respect of an interest in a FIF that is a virtual PST asset or a segregated exempt asset of the taxpayer.

Complying superannuation entities

- (2) If a taxpayer is the trustee of a complying superannuation entity in relation to a year of income, the operative provision does not apply to the taxpayer in relation to a FIF in respect of the notional accounting period of the FIF that ends in the year of income.

Fixed trusts with various fixed entitlements

- (3) If:
 - (a) a taxpayer is the trustee of a fixed trust (an *interposed fixed trust*) at the end of a year of income; and

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- (b) one of the following subparagraphs (whether or not the same subparagraph) applies in relation to each of the fixed entitlements to shares of the income and capital of the trust at the end of the year of income:
- (i) it is a virtual PST asset;
 - (ii) it is a segregated exempt asset;
 - (iii) it is held by the trustee of a complying superannuation entity;
 - (iv) it is held by the trustee of an interposed fixed trust within the meaning of this subsection or subsection (4);
- the operative provision does not apply to the taxpayer in relation to a FIF in respect of the notional accounting period of the FIF that ends in the year of income.

Fixed trusts with some fixed entitlements held by former complying superannuation entities

- (4) If a taxpayer is the trustee of a fixed trust (an ***interposed fixed trust***) at the end of a year of income, where:
- (a) some of the fixed entitlements to shares of the income and capital of the trust are held by the trustees of entities that:
 - (i) are not complying superannuation entities in relation to the year of income; but
 - (ii) acquired their fixed entitlements in previous years of income and were complying superannuation entities in relation to those years; and
 - (b) one of the following subparagraphs (whether or not the same subparagraph) applies in relation to each of the other fixed entitlements to shares of the income and capital of the trust at the end of the year of income:
 - (i) it is a virtual PST asset;
 - (ii) it is a segregated exempt asset;
 - (iii) it is held by the trustee of a complying superannuation entity;
 - (iv) it is held by the trustee of an interposed fixed trust within the meaning of this subsection or subsection (3); and
 - (c) the market value at the end of the year of income of the fixed entitlements to which paragraph (a) applies is not more than
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5% of the market value at that time of all of the fixed entitlements to income and capital of the trust;

the operative provision does not apply to the taxpayer in relation to a FIF in respect of the notional accounting period of the FIF that ends in the year of income.

- (5) In determining for the purposes of subparagraph (4)(a)(ii) whether an entity was a complying superannuation entity in relation to the year of income in which it acquired the fixed entitlements mentioned in that subparagraph, disregard any notice issued after the end of that year of income under section 40 of the *Superannuation Industry (Supervision) Act 1993* to the effect that the entity was not a complying superannuation entity in relation to the year of income.

9 Division 14 of Part XI (heading)

Repeal the heading, substitute:

Division 14—Exemption for interests in FIFs the value of which is not more than 10% of the value of all taxpayers' interests in FIFs

10 Section 524

Omit “5%”, substitute “10%”.

11 Paragraph 525(1)(c)

Omit “5%”, substitute “10%”.

12 Paragraph (f) of Schedule 4

Repeal the paragraph.

13 Application

- (1) The amendments made by items 1 to 11 apply to assessments for years of income beginning on or after 1 July 2003.
- (2) The amendment made by item 12 applies in relation to notional accounting periods beginning on or after 1 July 2003.

Schedule 2—Interest withholding tax exemption for certain unit trusts

Income Tax Assessment Act 1936

1 Subsection 25(2)

After “company”, insert “or an eligible unit trust within the meaning of section 128FA”.

2 After paragraph 128AAA(2)(b)

Insert:

(ba) section 128FA; and

3 Subparagraph 128B(3)(h)(iv)

After “128F,”, insert “128FA,”.

4 Section 128D

After “section 128F,”, insert “section 128FA,”.

5 After section 128F

Insert:

128FA Division does not apply to interest on certain publicly offered unit trust debentures

Interest to which this section applies

- (1) This section applies to interest paid by the trustee of an eligible unit trust in respect of a debenture issued by the trustee if the issue of the debenture satisfies the public offer test (see subsection (6)).
- (2) If:
 - (a) some or all of the transfer price (within the meaning of section 128AA) of a debenture issued by the trustee of an eligible unit trust is taken under that section to be income that consists of interest; and
 - (b) the issue of the debenture satisfies the public offer test (see subsection (6));

this section applies to the interest.

Note: Subsection (4) does not apply to the interest because that subsection deals only with interest paid on a debenture by the issuing eligible unit trust.

Tax not payable

- (3) Tax is not payable under this Division in respect of interest to which this section applies.

No exemption for interest paid to certain associates of the issuing trustee

- (4) This section does not apply to interest paid by the trustee of an eligible unit trust to a person in respect of the debenture if, at the time of the payment, the trustee knows, or has reasonable grounds to suspect, that:
- (a) the person is an associate of the trustee; and
 - (b) either:
 - (i) the associate is a non-resident and the payment is not received by the associate in respect of a debenture that the associate acquired in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or
 - (ii) the associate is a resident of Australia and the payment is received by the associate in respect of a debenture that the associate acquired in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and
 - (c) the associate does not receive the payment in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme.

Debentures issued through certain non-resident subsidiaries can also get the exemption

- (5) If:
- (a) the trustee of an eligible unit trust holds all of the issued shares in the capital of a company that is not a resident of Australia; and
 - (b) the company's only business is raising finance for the purposes of the eligible unit trust; and

- (c) the company raises finance in a country specified in the regulations (but not Australia) by issuing a debenture in that country; and
- (d) when the debenture is issued, the company is treated as a resident of that country for the purposes of the tax law (see subsection (8)) of the country;

then this section has effect as if the trustee had raised the finance and issued the debenture.

When the issue of a debenture satisfies the public offer test

- (6) For the purposes of working out under this section whether the issue of a debenture by the trustee of an eligible unit trust **satisfies the public offer test**, subsections 128F(3) to (5) apply to the trustee of the eligible unit trust in a corresponding way to the way in which those subsections apply to a company, subject to subsection (7) of this section.
- (7) For the purposes of applying subsections 128F(3) to (5) as mentioned in subsection (6) of this section:
 - (a) a reference in any of those subsections to a company knowing, suspecting or having reasonable grounds to suspect something, or it being reasonable for a company to have regarded something, is taken to be a reference to the trustee of the eligible unit trust knowing, suspecting or having reasonable grounds to suspect that thing, or it being reasonable for the trustee of the eligible unit trust to have regarded that thing; and
 - (b) a reference in any of those subsections to an associate is taken to be a reference to an associate within the meaning of this section; and
 - (c) a reference in any of those subsections to a global bond is taken to be a reference to a global bond within the meaning of subsection 128F(10).

Definitions

- (8) In this section:

associate has the meaning given by section 318, except that:

- (a) paragraphs (1)(b), (2)(a) and (4)(a) of that section must be disregarded; and

- (b) subsection (5) of that section applies to a unit trust mentioned in paragraph (b) of the definition of *eligible unit trust* in this subsection in the same way as that subsection applies in relation to a public unit trust.

clearing house has the same meaning as in section 128F.

company has the same meaning as in section 128F.

debenture:

- (a) in relation to the trustee of an eligible unit trust, includes debenture stock, bonds, promissory and other notes, bills of exchange and any other securities issued by the trustee, whether constituting a charge on the assets of the eligible unit trust or not; and
- (b) in relation to a company, has the same meaning as in section 128F.

eligible unit holder means:

- (a) the trustee of a public unit trust; or
- (b) the trustee (within the meaning of Part IX) of a complying superannuation fund, within the meaning of the *Income Tax Assessment Act 1997*, that has 50 or more members; or
- (c) the trustee of a pooled superannuation trust within the meaning of the *Income Tax Assessment Act 1997*; or
- (d) the trustee (within the meaning of Part IX) of a complying approved deposit fund within the meaning of the *Income Tax Assessment Act 1997*; or
- (e) a life insurance company within the meaning of the *Income Tax Assessment Act 1997*; or
- (f) a public company within the meaning of section 103A; or
- (g) the trustee of a unit trust in which all of the issued units are held by 2 or more entities that are eligible unit holders because of:
 - (i) the application of another paragraph of this definition (whether or not the same paragraph); or
 - (ii) a previous application of this paragraph; or
 - (iii) any combination of subparagraphs (i) and (ii).

eligible unit trust means:

- (a) a public unit trust; or

- (b) a unit trust in which all of the issued units are held by 2 or more eligible unit holders.

public unit trust has the same meaning as in section 102G.

registered scheme has the same meaning as in section 128F.

responsible entity has the same meaning as in section 128F.

tax law has the same meaning as in section 128F.

- (9) For the purposes of this section, a trust or fund of a kind mentioned in any of paragraphs (a) to (d) of the definition of *eligible unit holder* in subsection (8) in relation to a year of income is taken to be a trust or fund of that kind at all times during the year of income.

Note: The heading to section 128F is amended by inserting “**company**” after “**publicly offered**”.

6 Application

The amendments made by this Schedule apply to debentures issued on or after the day on which this Act commences.

Schedule 3—Attributable income of CFCs

Income Tax Assessment Act 1936

1 Subparagraphs 385(2)(a)(ii) and (d)(ii)

After “income or other amounts”, insert “, of a kind specified in the regulations,”.

2 Application

The amendments made by this Schedule apply in relation to statutory accounting periods beginning on or after 1 July 2004.

Schedule 4—Preventing double taxation of royalties subject to withholding tax

Income Tax Assessment Act 1936

1 Paragraph 136AF(3)(b)

After “interest”, insert “or royalties”.

2 Application

The amendment made by this Schedule applies to an application of section 136AD of the *Income Tax Assessment Act 1936* that occurs on or after the day on which this Act receives the Royal Assent.

*[Minister’s second reading speech made in—
House of Representatives on 4 December 2003
Senate on 8 March 2004]*

(193/03)
