



# **Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018**

**No. 94, 2018**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018

No. 94, 2018

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

[Assented to 31 August 2018]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
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 August 2018
2. Schedule 1, Part 1	Immediately after the commencement of Part 2 of Schedule 1 to the <i>Treasury Laws Amendment (Enterprise Tax Plan) Act 2017</i> .	1 July 2017
3. Schedule 1, Part 2	The day this Act receives the Royal Assent.	31 August 2018
4. Schedule 2, Part 1	Immediately after the commencement of Part 2 of Schedule 1 to the <i>Treasury Laws Amendment (Enterprise Tax Plan) Act 2017</i> .	1 July 2017
5. Schedule 2, Part 2	At the same time as Part 5 of Schedule 1 to the <i>Treasury Laws Amendment (Enterprise Tax Plan No. 2) Act 2018</i> commences. However, the provisions do not commence at all if that Part does not commence.	Never commenced

Note: This table relates only to the provisions of this Act as originally enacted.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.

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### Part 1—Amendments applying from the 2017-18 year of income

#### *Income Tax Rates Act 1986*

##### 1 Subsection 3(1)

Insert:

*base rate entity passive income* has the meaning given by section 23AB.

##### 2 Section 23AA

Repeal the section, substitute:

##### 23AA Meaning of *base rate entity*

An entity is a *base rate entity* for a year of income if:

- (a) no more than 80% of its assessable income for the year of income is base rate entity passive income; and
- (b) its aggregated turnover (within the meaning of the *Income Tax Assessment Act 1997*) for the year of income, worked out as at the end of that year, is less than \$25 million.

##### 23AB Meaning of *base rate entity passive income*

- (1) *Base rate entity passive income* is assessable income that is any of the following:
  - (a) a distribution (within the meaning of the *Income Tax Assessment Act 1997*) by a corporate tax entity (within the meaning of that Act), other than a non-portfolio dividend (within the meaning of section 317 of the Assessment Act);
  - (b) an amount of a franking credit (within the meaning of the *Income Tax Assessment Act 1997*) on such a distribution;
  - (c) a non-share dividend (within the meaning of the *Income Tax Assessment Act 1997*) by a company;



- (d) interest (or a payment in the nature of interest), royalties and rent;
  - (e) a gain on a qualifying security (within the meaning of Division 16E of Part III of the Assessment Act);
  - (f) a net capital gain (within the meaning of the *Income Tax Assessment Act 1997*);
  - (g) an amount included in the assessable income of a partner in a partnership or of a beneficiary of a trust estate under Division 5 or 6 of Part III of the Assessment Act, to the extent that the amount is referable (either directly or indirectly through one or more interposed partnerships or trust estates) to another amount that is base rate entity passive income under a preceding paragraph of this subsection.
- (2) However, if an entity has assessable income that is interest (or a payment in the nature of interest):
- (a) treat the assessable income as not being interest (or a payment in the nature of interest) of the entity for the purposes of paragraph (1)(d) if:
    - (i) the entity is a financial institution (within the meaning of section 202A of the Assessment Act); or
    - (ii) the entity is a registered entity (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) that carries on a general business of providing finance (within the meaning of that Act) on a commercial basis; or
    - (iii) the entity holds an Australian credit licence (within the meaning of the *National Consumer Credit Protection Act 2009*), or is a credit representative (within the meaning of that Act) of another entity that holds such an Australian credit licence; or
    - (iv) the entity is a financial services licensee (within the meaning of the *Corporations Act 2001*) whose licence covers dealings in financial products mentioned in paragraph 764A(1)(a) of that Act (securities), or is an authorised representative (within the meaning of section 761A of that Act) of such a financial services licensee; or

**Schedule 1** Main amendments

**Part 1** Amendments applying from the 2017-18 year of income

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- (v) the entity is an entity of a kind specified in a legislative instrument made under subsection (3); and
  - (b) treat the assessable income as not being interest (or a payment in the nature of interest) of the entity for the purposes of paragraph (1)(d) to the extent that it is a return on an equity interest in a company.
- (3) The Minister may, by legislative instrument, specify one or more kinds of entities for the purposes of subparagraph (2)(a)(v).

## **Part 2—Application of amendments**

### **3 Application of amendments**

The amendments made by Part 1 of this Schedule apply to the 2017-18 year of income and later years of income.

## Schedule 2—Consequential amendments

### Part 1—Amendments applying from the 2017-18 income year

#### *Income Tax Assessment Act 1997*

#### **1 Subsection 995-1(1) (definition of *corporate tax rate for imputation purposes*)**

Repeal the definition, substitute:

*corporate tax rate for imputation purposes*, of an entity for an income year, means:

- (a) unless paragraph (b) applies—the entity’s \*corporate tax rate for the income year, worked out on the assumptions that:
  - (i) the entity’s \*aggregated turnover for the income year is equal to its aggregated turnover for the previous income year; and
  - (ii) the entity’s base rate entity passive income (within the meaning of the *Income Tax Rates Act 1986*) for the income year is equal to its base rate entity passive income for the previous income year; and
  - (iii) the entity’s assessable income for the income year is equal to its assessable income for the previous income year; or
- (b) if the entity did not exist in the previous income year—the rate of tax in respect of the taxable income of a company covered by paragraph 23(2)(a) of the *Income Tax Rates Act 1986*.

#### **2 Application of amendment**

The amendment made by this Part applies to the 2017-18 income year and later income years.

## **Part 2—Contingent amendments**

### ***Income Tax Rates Act 1986***

#### **3 Subsection 3(1) (definition of *base rate entity passive income*)**

Repeal the definition.

#### **4 Section 23AB**

Repeal the section.

#### **5 Application of amendments**

The amendments made by this Part apply to the 2023-24 year of income and later years of income.

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*[Minister's second reading speech made in—  
House of Representatives on 18 October 2017  
Senate on 12 February 2018]*

(242/17)

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