



Treasury Laws Amendment (2018 Measures No. 2) Act 2020

No. 8, 2020

**An Act to amend the law relating to corporations,
consumer credit and 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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No. 8, 2020

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

[Assented to 26 February 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2018 Measures No. 2) Act 2020*.

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 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 February 2020
2. Schedule 1	The day after this Act receives the Royal Assent.	27 February 2020
3. Schedule 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2020

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Independent review of operation of Schedule 1

- (1) The Minister must cause an independent review to be conducted of the operation of the amendments made by Schedule 1 to this Act.
- (2) The review must:

-
- (a) start as soon as practicable after the end of 12 months after the commencement of the first regulations made for the purposes of section 926B of the *Corporations Act 2001* that exempt a person or class of persons from subsection 911A(1) of that Act to enable testing of particular financial services; and
 - (b) be completed within 6 months.
 - (3) The persons who conduct the review must give the Minister a written report of the review.
 - (4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Schedule 1—FinTech Sandbox Regulatory Licensing Exemptions

Part 1—Amendment of the Corporations Act 2001

Corporations Act 2001

1 Paragraph 911B(1)(e)

Repeal the paragraph, substitute:

- (e) if the principal (rather than the provider) provided the service, the principal would not need an Australian financial services licence because the provision of the service would be exempt under:
 - (i) subsection 911A(2); or
 - (ii) regulations made for the purposes of subsection 926B(1).

2 At the end of section 926B

Add:

- (3) An exemption that:
 - (a) is made for the purposes of paragraph (1)(a); and
 - (b) exempts a person or class of persons from subsection 911A(1) to enable testing of particular financial services;may apply unconditionally or subject to specified conditions.
- (4) A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (5) An exemption described in subsection (3) may empower ASIC to make decisions relating to how the exemption starts or ceases to apply to a person or class of persons.

Part 2—Amendment of the National Consumer Credit Protection Act 2009

National Consumer Credit Protection Act 2009

3 Paragraph 29(4)(d)

Omit “110(a)”, substitute “110(1)(a)”.

4 Section 110

Before “The”, insert “(1)”.

5 At the end of section 110

Add:

- (2) An exemption that:
 - (a) is made for the purposes of paragraph (1)(a); and
 - (b) exempts a person or class of persons from subsection 29(1) to enable testing of particular credit activities;may apply unconditionally or subject to specified conditions.
- (3) A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (4) An exemption described in subsection (2) may empower ASIC to make decisions relating to how the exemption starts or ceases to apply to a person or class of persons.

6 Subsection 160C(2)

Omit “110(a)”, substitute “110(1)(a)”.

7 Paragraph 160C(3)(c)

Omit “110(a)”, substitute “110(1)(a)”.

Schedule 2—Innovation measures

Part 1—Venture capital investments

Income Tax Assessment Act 1997

1 Subsection 118-408(2) (at the end of the definition of valuation year capital gain)

Add:

Work out the capital gain based on what the *capital proceeds would have been, and on other matters relating to the amount of the gain being determined on a reasonable basis, if the CGT event resulting in the gain had happened at the end of that period.

2 Subparagraph 118-428(1)(c)(ii)

After “other”, insert “pre-owned”.

3 Application of amendments

- (1) The amendment made by item 1 of this Part applies in relation to CGT events happening on or after 1 July 2018.
- (2) The amendment made by item 2 of this Part applies in relation to investments made on or after 1 July 2018.

Part 2—Early stage investor tax offsets

Income Tax Assessment Act 1997

4 Subsection 61-770(3)

Repeal the subsection, substitute:

- (3) If, under the terms and conditions under which the trust or partnership operates, the *member would be entitled to a fixed proportion of any *capital gain from a *disposal:
- (a) relating to the trust or partnership; and
 - (b) of investments made as a result of the contributions that gave rise to the notional tax offset; and
 - (c) happening at the end of the income year to which the notional tax offset relates;
- the percentage determined under subsection (2) must be equivalent to that fixed proportion, and a determination of any other percentage has no effect.

5 After subparagraph 360-15(1)(a)(i)

Insert:

- (ia) an *ESVCLP;

6 Paragraph 360-15(1)(f)

Repeal the paragraph, substitute:

- (f) immediately after the issue of those shares, you do not hold equity interests in the company, or in an entity *connected with the company, that carry the right to:
- (i) receive more than 30% of any distribution of income by the company or the entity; or
 - (ii) receive more than 30% of any distribution of capital by the company or the entity; or
 - (iii) exercise, or control the exercise of, more than 30% of the total voting power in the company or the entity.

7 Subsection 360-15(2)

Repeal the subsection, substitute:

Members of trusts or partnerships

- (2) A *member of a trust or partnership (other than a partnership that is an *ESVCLP) at the end of an income year is entitled to a *tax offset for the income year if:
- (a) the trust or partnership would be entitled to a tax offset, under this section, for the income year if the trust or partnership were an individual; and
 - (b) the member is not a *widely held company or a *100% subsidiary of a widely held company.

8 Subsection 360-25(1)

Repeal the subsection, substitute:

- (1) If subsection 360-15(1) applies, the amount of your *tax offset is 20% of the sum of the following:
- (a) an amount equal to any money received, or entitled to be received, by the company referred to in paragraph 360-15(1)(b) for the issue to you of the *shares as described in that paragraph;
 - (b) an amount equal to the *market value of any *non-cash benefit received, or entitled to be received, by the company referred to in paragraph 360-15(1)(b) for the issue to you of the shares as described in that paragraph, as at the time the shares were issued to you.

9 After subsection 360-30(1)

Insert:

- (1A) However, reduce the amount worked out under subsection (1) to the extent necessary to ensure that the sum of the following does not exceed \$200,000:
- (a) the sum of the *tax offsets under this Subdivision for the income year for which the member and the member's *affiliates (if any) are entitled;
 - (b) the sum of the tax offsets under this Subdivision that the member and the member's affiliates (if any) carry forward to the income year.

10 Subsection 360-30(3)

Repeal the subsection, substitute:

- (3) If, under the terms and conditions under which the trust or partnership operates, the *member would be entitled to a fixed proportion of any *capital gain from a *disposal:
- (a) relating to the trust or partnership; and
 - (b) of the *shares that gave rise to the notional tax offset; and
 - (c) happening at the end of the income year to which the notional tax offset relates;
- the percentage determined under subsection (2) must be equivalent to that fixed proportion, and a determination of any other percentage has no effect.

11 Paragraph 360-35(b)

Omit all the words after “the sum of”, substitute “the amounts worked out under section 360-30 (disregarding any reductions under subsection 360-30(1A)) for those tax offsets”.

12 Subparagraph 360-40(1)(a)(ii)

After “those income years”, insert “before the current year”.

13 At the end of subsection 360-40(1)

Add:

- ; and (f) at the test time, the company is not a foreign company (within the meaning of the *Corporations Act 2001*).

Note: For the purposes of paragraph (e), one way a company can demonstrate something is by engaging the services of another entity.

14 Application of amendments

The amendments made by this Part apply in relation to income years commencing on or after 1 July 2018.

Part 3—Managed investment trusts

Income Tax Assessment Act 1997

15 Subsection 275-10(4A)

Omit “a *VCLP or an *ESVCLP”, substitute “an *AFOF, an *ESVCLP or a *VCLP”.

16 Paragraph 275-10(4A)(a)

Omit “VCLP or ESVCLP”, substitute “AFOF, ESVCLP or VCLP”.

17 Application of amendments

The amendments made by this Part apply in relation to income years commencing on or after 1 July 2018.

Part 4—Public trading trusts

Income Tax Assessment Act 1936

18 At the end of section 102R

Add:

- (5) In determining whether a unit trust is a public trading trust under this section, disregard any interest that the trust has that is disregarded under subsection 275-10(4A) of the *Income Tax Assessment Act 1997*.

19 Application of amendment

The amendment made by this Part applies in relation to years of income commencing on or after 1 July 2016.

*[Minister's second reading speech made in—
House of Representatives on 4 July 2019
Senate on 17 October 2019]*

(99/19)
