



Australian Government

The Treasury

TAX LAWS AMENDMENT (FOREIGN SOURCE INCOME DEFERRAL) BILL (NO.1) 2010

SUMMARY OF CONSULTATION PROCESS

Following a comprehensive review by the Board of Taxation, the Government announced in the 2009-2010 Budget its intention to repeal the foreign investment fund (FIF) and deemed present entitlement rules (DPE) (see Assistant Treasurer's Press Release No. 49 of 12 May 2009).

This measure was included in Tax Laws Amendment (Foreign Source Income Deferral) Bill (No.1) 2010, which was introduced into Parliament on 13 May 2010.

The repeal of the FIF and deemed present entitlement rules represents the first instalment in a package of reforms designed to improve the operation of the foreign source income anti-tax-deferral (attribution) rules. The remaining reforms, which were also announced by the Government in the 2009-2010 Budget, will modernise the controlled foreign company (CFC) rules and improve the effectiveness of the transferor trust rules. It is anticipated that these measures will be introduced into Parliament as soon as practicable together with a specific anti-roll-up fund rule that was also announced by the Government as part of these reforms.

Consultation process

Consultation on draft legislation was conducted between 18 December 2009 and 5 February 2010. Consultation meetings with key stakeholders were also held in Sydney and Melbourne after this period. Eight submissions were received.

Discussions with key stakeholders and interested parties have also taken place throughout the period since the reforms to the attribution rules were announced.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

The overwhelming message received from participants during consultation was one of support for the Government's decision to repeal the FIF and DPE rules.

Nevertheless, a range of suggestions were put forward in respect of the detailed aspects of the law.

A number of submissions suggested that the application date for the repeal of the FIF and DPE rules should be brought forward to the 2009-10 income year. This proposal was not adopted primarily because of revenue considerations.

Several submissions raised concerns that the provisions that prevent double taxation (sections 23AK and 23B) would be repealed after a certain period with a sunset clause. In response to these



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concerns, the Government has decided to retain these provisions without a sunset period in order to avoid any possible double taxation outcomes into the future. The continuing need for these provisions should be considered when the *Income Tax Assessment Act 1936* (ITAA 1936) is rewritten into the *Income Tax Assessment Act 1997* (ITAA 1997).

One submission also requested that equivalent amendments be made to section 401 of the ITAA 1936 as is being done to section 461 regarding consideration received from the disposal of an asset to ensure there is no double taxation in relation to a disposal of an interest in a CFC. This change was also adopted.

Many submissions suggested that taxpayers should, for a limited time, be able to revoke elections previously made under section 485AA of the ITAA1936 (foreign hybrid election). This proposal will receive further consideration in the context of further reforms to the attribution rules.

Some submissions suggested that consultation on the anti-roll-up fund provisions should commence before the FIF exposure draft is finalised. Concerns were raised in relation to the timing of the repeal of the FIF provisions and the application of the anti-roll-up rule. The anti-roll-up fund rule had not been sufficiently developed at the time of the introduction of this Bill. It is anticipated that consultation on the anti-roll-up fund rule will occur before the repeal of the FIF rules takes effect.

One submission suggested that certain provisions that currently provide relief from Australian taxation for trust income that is explicitly exempt from the FIF rules under Divisions 8 and 11A of Part XI of the ITAA 1936 should be replicated. Further, this should apply in relation to the anti-roll-up rule. This proposal has not been adopted. As a result of the repeal of the FIF rules, the policy justification for the retention of the exemptions was not evident.

Some submissions suggested that the existing exemption within the Taxation of Financial Arrangement (TOFA) rules should be reinstated (or an equivalent be provided). Submissions reasoned that, without such an exemption, FIF interests would move from one accruals regime and placed into another. This proposal has not been incorporated into the Bill. The exemption from the application of TOFA was intended to be temporary until the review of the attribution rules was undertaken. The TOFA Explanatory Memorandum explained that an interest in a foreign investment fund includes an interest in a foreign company or foreign trust. An interest in a foreign company includes an interest in a company that is a CFC. Therefore the exception covers not only an interest in a foreign company to which the FIF rules apply, but also includes an interest in a foreign company to which the CFC rules apply. With the repeal of the FIF rules, this exception will now only apply to CFCs.

One submission expressed concern that the Bill contained little in the way of change to the transferor trust provisions. Time constraints prevented substantive changes being made to the transferor trust rules. Changes to the transferor trust rules will be considered in the context of further reforms to the attribution rules.



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One submission requested clarification regarding the treatment of foreign trusts and that the Government should consult further with industry regarding this issue before finalising the FIF changes. This proposal has not been incorporated into the Bill due to time constraints in finalising this measure. The issue will be considered in the context of further reforms to the attribution rules.

One submission requested urgent review of the current list of Approved Stock Exchanges and suggested that the regulations be changed so that any exchange/trading system located in a country with which Australia has a tax treaty and/or a tax information exchange agreement is automatically an Approved Stock Exchange. This proposal has not been incorporated into the Bill as the term is no longer relevant for FIF purposes nor is it used in the CFC rules.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Haydn Daw on 6263 2789.

Thank you to all participants in the consultation process.