

RITA MEASURES AND ISSUES — STATE OF PLAY

The following table shows the state of play for measures announced by the [Treasurer's Press Release No. 32](#) of 13 May 2003. Also included are issues on which the Government deferred a decision pending further consultation. Measures and issues are ordered by reference to the tranches identified in [Attachment A](#) to the Treasurer's press release.

The table identifies the relevant recommendation number from the Board of Taxation's February 2003 report to the Government on international taxation. Note that the measure or issue as described is the Government's response, which in some cases differed from the Board's [recommendations](#).

Measure/issue (Board of Taxation reference)	Legislative status	Treasury contact	Comments
<i>Tranche 1</i>			
3(a) [<i>Board Recommendation No</i>] – Eliminate attribution of most of the income of a CFC in a broad-exemption listed country (BELC).	<i>Income Tax Amendment Regulations (No. 3) 2004 No. 115</i>). Gazetted 18 June 2004 (Gazette Notice No. S 212)	Robert Graziani 02 6263 4342 rgraziani@treasury.gov.au	Period allowed for disallowance by either House has now ended. The regulations resulted from consultation on potential designated concession income .
4.2 – Increase the balanced portfolio exemption threshold in the foreign investment fund (FIF) rules for all taxpayers from 5 to 10 per cent.	<i>New International Tax Arrangements Act 2004 No. 73, 2004</i> Royal Assent 23 June 2004	Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	Applied with effect to income years beginning on or after 1 July 2003. The <i>New International Taxation Arrangements Bill 2003</i> was referred to the Senate Economics Legislation Committee which reported on 12 May 2004. The documents considered by the Committee are available on the Parliament of Australia website .

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4.4 – Exempt complying superannuation entities from the FIF rules.	As for 4.2 above	Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	The exemption was extended to certain assets of life insurance companies as well as certain fixed trusts.
4.5 – FIF rules not to apply to ‘management of funds’.	As for 4.2 above	Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	Applied with effect to notional accounting periods of FIFs beginning on or after 1 July 2003.
4.8C – Exempt Australian public unit trusts from interest withholding tax on interest paid on widely distributed debentures issued to non-residents.	As for 4.2 above	Jo Laduzko 02 6263 3264 jladuzko@treasury.gov.au	Applied to all qualifying debentures issued on or after the day of Royal Assent.
<i>Tranche 2</i>			
3.2 – Modify the tainted services income definition to exclude certain income from the provision of services to non-resident associates.	<i>New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004 No. 96, 2004</i> Royal Assent 29 June 2004	Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	Applied in relation to statutory accounting periods beginning on or after 1 July 2004.
3.9 – Extend company tax exemption for foreign non-portfolio dividends and certain branch profits to all countries.	As for 3.2	Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	Applied for non-portfolio dividends paid on or after 1 July 2004, and for branch profits to income years commencing on or after 1 July 2004.
3.10(2) – Exclude from the capital gains tax (CGT) regime the sale by	As for 3.2	Haydn Daw 02 6263 2789	Applied to specified CGT events relating to shares

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Australian companies and CFCs of non-portfolio interests in foreign companies with an underlying active business.		hdaw@treasury.gov.au	in foreign companies on or after 1 April 2004.
4.6(1) – Broadly align the CGT treatment of non-resident investors in Australian fixed trusts with the CGT treatment of direct non-resident investors.	<i><u>New International Tax Arrangements (Managed Funds and Other Measures) Act 2005</u></i> Royal Assent 21 March 2005.	John Nagle 02 6263 4461 jnagle@treasury.gov.au	
4.6(2) – Amend the application of treaty deemed source rules in respect of non-resident investors in Australian managed funds.	As for 4.6(1) above	Greg Trigg 02 6263 2945 gtrigg@treasury.gov.au	
4.7 – Exempt from CGT gains made by a non-resident on the disposal of a non-portfolio interest in an Australian managed fund.	As for 4.6(1) above	John Nagle 02 6263 4461 jnagle@treasury.gov.au	The measure has been extended to disposals of interests in all fixed trusts, regardless of whether the trust is a managed fund.
4.8 – Amend the CGT rules so that a distribution of foreign source income to a non-resident investor in an Australian fixed trust does not reduce the cost base of the investor’s interest.	As for 4.6(1) above	John Nagle 02 6263 4461 jnagle@treasury.gov.au	

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4.8A – Set the rate of tax on rental income distributed by Australian property trusts to non-residents at the company tax rate.	<i>Tax Laws Amendment (2007 Measures No. 3) Act 2007</i>	Neena Pai 02 6263 2774 npai@treasury.gov.au	Royal Assent 21 June 2007 Applied in relation to income years beginning on or after 1 July 2007.
4.11(1) – Extend to other financial entities the treatment given to foreign bank permanent establishments. Allow grouping of losses for other financial entities.	<u><i>New International Tax Arrangements (Foreign-Owned Branches and Other Measures) Act 2005</i></u> Royal Assent 26 June 2005.	John Nagle 02 6263 4461 jnagle@treasury.gov.au	
<i>Tranche 3</i>			
3(b) – Eliminate the attribution of the income of non-BELC subsidiaries of BELC CFCs (where the BELC has a broadly comparable CFC regime to Australia’s CFC regime).		Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	To be considered as part of the Review of foreign source income anti-tax deferral rules See <u>RITA – Recent Developments</u>
3.11(1) & 3.10(3) – Introduce a foreign income account applying to all foreign income.	<u><i>Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005</i></u> Royal Assent 14 December 2005.	Peter Peters 02 6263 2969 ppeters@treasury.gov.au	

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3.13 – Amend the law so that a non-resident for treaty purposes is treated as a non-resident for all purposes of the income tax law.	Yet to be legislated	Belinda Robilliard 02 6263 3328 brobilliard@treasury.gov.au	A consultation and legislative strategy is currently being developed.
4.9 – Simplify the taxation of foreign trusts.		Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	To be considered as part of the Review of foreign source income anti-tax deferral rules
4.10 – Tighten the transferor trust rules and provide an amnesty.		Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	To be considered as part of the Review of foreign source income anti-tax deferral rules
4.11(2) – Tax unfranked dividends received by foreign-owned branches on assessment instead of by the withholding tax system.	<u>New International Tax Arrangements (Foreign-Owned Branches and Other Measures) Act 2005</u> Royal Assent 26 June 2005.	Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	
<i>Measures or issues still to be decided not included in specific tranches</i>			
3.3 – Develop and publish BELC criteria and review the BELC list.	N/A	Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	To be considered as part of the Review of foreign source income anti-tax deferral rules.
3.4 – Consider and address issues on the CFC Issues register.	Ongoing although some issues addressed in <u>New International Tax Arrangements</u>	Robert Graziani 02 6263 4342 rgraziani@treasury.gov.au	Royal Assent 26 June 2005. Other issues addressed by the 2005 Budget announcement relating to the removal of foreign

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	<i>(Foreign-Owned Branches and Other Measures) Act 2005</i>		loss and foreign tax credit quarantining. Issues on the CFC register will also be considered as part of the Review of foreign source income anti-tax deferral rules.
3.5 – Move towards a more residence-based treaty policy in substitution for the treaty model based on the source taxation of income.	N/A	Paul McBride 02 6263 2854 pmcbride@treasury.gov.au	Royal Assent 12 December 2006 Applied to CGT events occurring on or after royal assent.
3.6 – Consider applying CGT to the sale by non-residents of non-resident interposed entities with underlying Australian assets.	<i>Tax Laws Amendment (2006 Measures No. 4) Act 2006</i>	John Nagle 02 6263 4461 jnagle@treasury.gov.au	Under consideration by Parliament.
3.7 – Review and update current tax treaties, and prioritise new treaty negotiations according to investment relationship.	N/A	Paul McBride 02 6263 2854 pmcbride@treasury.gov.au	To be applied in future treaty programme.
3.8 – Improve the consultation processes on negotiating tax treaties by adopting processes similar to domestic tax legislation.	N/A	Paul McBride 02 6263 2854 pmcbride@treasury.gov.au	Consultations have begun with the Tax Treaties Advisory Panel.
3.9 – Review of section 404.		Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	To be considered as part of the Review of foreign source income anti-tax deferral rules

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3.10(1) – Consider a specific conduit CGT exemption for disposals by non-residents of non-portfolio interests in Australian companies to the extent there is an underlying foreign source.	N/A	John Nagle 02 6263 4461 jnagle@treasury.gov.au	No further action required, see 3.6 above.
3.12 – Consider treating a company as resident in Australia only if incorporated in Australia.	N/A	Belinda Robilliard 02 6263 3328 brobilliard@treasury.gov.au	The Government deferred consideration of recommendation 3.12 until the release of a tax ruling. The relevant ruling was issued as TR2004/15 on 20 October 2004 by the Australian Taxation Office, and is intended to clarify the operation of the central management and control test for corporate residency
4.1(2) – A comprehensive review of the FIF rules.		Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	To be considered as part of the Review of foreign source income anti-tax deferral rules
4.2 – Subject to development of an acceptable design, amend the balanced portfolio FIF exemption for managed funds to apply where the value of non-exempt FIF interests is 10% or less of the total value of a fund's net assets (as opposed to FIF interests).		Haydn Daw 02 6263 2789 hdaw@treasury.gov.au	To be considered as part of the Review of foreign source income anti-tax deferral rules (One aspect of 4.2 was implemented as part of Tranche 1, see above.)

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5.1 – Do not proceed with the RBT recommendation that residents departing Australia provide security for their deferred CGT liabilities.	N/A	John Nagle 02 6263 4461 jnagle@treasury.gov.au	Government agreed with the recommendation. No further action is required.
5.2 – Remove the potential for double taxation of employee share options by adopting OECD developed approach in treaties and consider changes to the domestic law.	<i><u>New International Tax Arrangements (Foreign-Owned Branches and Other Measures) Act 2005</u></i> Royal Assent 26 June 2005.	Jo Laduzko 02 6263 4430 jladuzko@treasury.gov.au	
5.3 – Do not proceed with the RBT recommendation to treat ceasing to be an Australian resident as a taxing point in relation to employee share benefits.	N/A	Jo Laduzko 02 6263 4430 jladuzko@treasury.gov.au	Government agreed with the recommendation. No further action is required.
5.4 – Establish a specialist cell within the ATO for the tax administration concerns of foreign expatriate and their employers.	N/A	Jo Laduzko 02 6263 4430 jladuzko@treasury.gov.au	Being progressed by the ATO.