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Australian Government
The Board of Taxation

BoT.

Statutory review of Australia's thin capitalisation reforms Consultation Guide

March 2026

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Statutory review of Australia's thin capitalisation reforms

Recent amendments to Australia's thin capitalisation rules were introduced in Schedule 2 of the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024 (Amending Act)*.

In accordance with Section 4 of the Amending Act, the Government has requested the Board to undertake an independent review of the operation of the amendments to the thin capitalisation rules.

Background

As part of the 2022-23 Budget, the Government announced that amendments would be made to strengthen Australia's thin capitalisation rules. The amendments, applicable to income years commencing on or after 1 July 2023, were introduced by the Amending Act. The Explanatory Memorandum to the Amending Act states:

The amendments address risks to the domestic tax base arising from the excessive use of debt deductions, which amount to base erosion or profit shifting arrangements. The amendments introduce new thin capitalisation earnings-based tests for a certain class of entities, replacing the existing asset-based rules for those entities. The amendments also establish a new arm's length debt test, in the form of a third party debt test.

The [Explanatory Memorandum](#) also notes that the 2022-23 Budget announcement and amendments to the thin capitalisation measures are informed by the Organisation for Economic Cooperation and Development (OECD)'s best practice guidance as part of the OECD Base Erosion and Profit Shifting project.

In the Impact Analysis for the thin capitalisation changes contained in Attachment 2 to the Explanatory Memorandum, the core objective of the policy is stated as follows:

The core objective of this policy is to increase revenue (taxes payable) by limiting the amount of debt deductions entities can claim in Australia for tax purposes. The objective is intended to balance raising more revenue against supporting genuine commercial activities and investment in Australia and minimising compliance burdens on industry.

Section 4 of the Amending Act requires the Treasurer to cause an independent review to be conducted of the operation of the amendments. The review must make provision for public consultation, commence no later than 1 February 2026, with a copy of a written report to be tabled in Parliament within 15 sitting days of receipt by the Treasurer. The Board has been requested to undertake a review that will be conducted in accordance with the Terms of Reference at Appendix A.

Objective

This **Consultation Guide** is designed to support open and constructive engagement with interested stakeholders as part of the Board's public consultation. The Board is seeking submissions early in the review process to identify key areas for further review and analysis.

The Board is interested in receiving feedback from stakeholders who operate within, or advise on, Australia's thin capitalisation regime. Your insights, experiences, and suggestions will help shape our report to government and will assist the Board in assessing, in accordance with the Terms of Reference, whether the amendments are operating in a manner consistent with their policy intent.

As set out in the Terms of reference, the Board is also engaging with the ATO and Treasury.

Consultation Questions

In accordance with the Terms of Reference, the focus of this review is whether the Amendments are operating in a manner consistent with their policy intent which is stated to "*strengthen Australia's thin capitalisation regime to address risks arising from the use of excessive debt deductions, informed by the OECD's best practice guidance.*" We are not seeking submissions on the policy intent underlying these amendments.

In order for the Board to understand the operation of the amendments and to inform our recommendations, submissions should cover the following matters referred to in the Terms of Reference:

- The overall performance of the amendments in strengthening Australia's thin capitalisation regime to address risks arising from the use of excessive debt deductions.
- Any minor and technical drafting changes which are necessary for the practical administration of the laws, with a particular focus on the third-party debt test provisions and related undefined legislative terms.
- If the \$2 million exemption threshold should operate as a net debt deduction concept.
- Whether the default Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) calculation operates to appropriately reflect an entity's economic activity in the income year and across multiple income years, as intended.
- The practical impact on the cost of complying with the debt deduction creation rules after restructures, including whether the rules have effectively discouraged debt creation schemes.

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Additionally, it would be useful for submissions to provide:

- Practical examples of how entities have complied with the amended provisions.
- Details of how Australian entities have integrated the amended provisions and interactions within their group financing arrangements.
- Industry specific issues – are there features of your industry (for example, capital intensity, long asset lives, or reliance on particular financing structures) that have resulted in distinct impacts from the thin capitalisation amendments? Please explain and provide examples.
- The types and number of stakeholders affected.
- Compliance time and costs in restructuring existing, or accessing new, financing facilities.
- Whether entities have reduced their level of debt financing in response to the amendments.
- Suggested solutions (both administrative and legislative, if possible).

The Board will initially be seeking written submissions and will undertake further consultation as required.

Consultation process

Timetable

The timetable below sets out an indicative timeframe for the review. Further information will be made available on www.taxboard.gov.au.

Date	Detail
By Late March 2026	Release consultation guide
18th May 2026	Written submission close date

The Board is expected to report back to Government within 12 months of commencing the review (by **31 January 2027**).

How to participate

The Board invites comments on the matters set out in this consultation guide. Interested parties are invited to contribute to consultation through written submissions.

In addition to public consultation, and consistent with the Terms of Reference, the Board will also engage with Treasury and the Australian Taxation Office throughout the review process.

Timing

The review commenced on 1 February 2026. The Board will provide its final written report to the Government within 12 months of the review starting.

Written Submissions

The Board will accept written submissions to this review until 18 May 2026. Submissions can be made to taxboard@taxboard.gov.au or addressed as follows:

Board of Taxation Secretariat

C/O – The Treasury

Langton Crescent

Parkes ACT 2600

taxboard@taxboard.gov.au

Appendix A

Terms of Reference

The Board of Taxation (Board) is requested to examine the operation of the amendments to Australia's thin capitalisation rules made by Schedule 2 to the Treasury Laws Amendment (*Making Multinationals Pay Their Fair Share—Integrity and Transparency*) Act 2024. This review is a statutory requirement contained in section 4 of that Act.

In conducting the review, the Board will assess whether the amendments are operating in a manner consistent with the policy intent, which was to strengthen Australia's thin capitalisation regime to address risks arising from the use of excessive debt deductions, informed by the OECD's best practice guidance. In considering the operation of the amendments, the Board is requested to consider:

- The overall performance of the amendments in strengthening Australia's thin capitalisation regime to address risks arising from the use of excessive debt deductions.
- Any minor and technical drafting changes which are necessary for the practical administration of the laws, with a particular focus on the third-party debt test provisions and related undefined legislative terms.
- If the \$2 million exemption threshold should operate as a net debt deduction concept.
- Whether the default tax EBITDA calculation operates to appropriately reflect an entity's economic activity in the income year and across multiple income years, as intended.
- The practical impact on the cost of complying with the debt deduction creation rules after restructures, including whether the rules have effectively discouraged debt creation schemes.

The Board's review should clearly address the importance of any recommendations and how they would be implemented to achieve a substantially similar practical effect to those intended by Schedule 2 of the Act, including consideration of complexity and tax integrity trade-offs.

The Board should undertake public consultation processes and engage closely with the Treasury and the Australian Taxation Office. The Board is requested to prepare a written report for Government within 12 months from commencement.