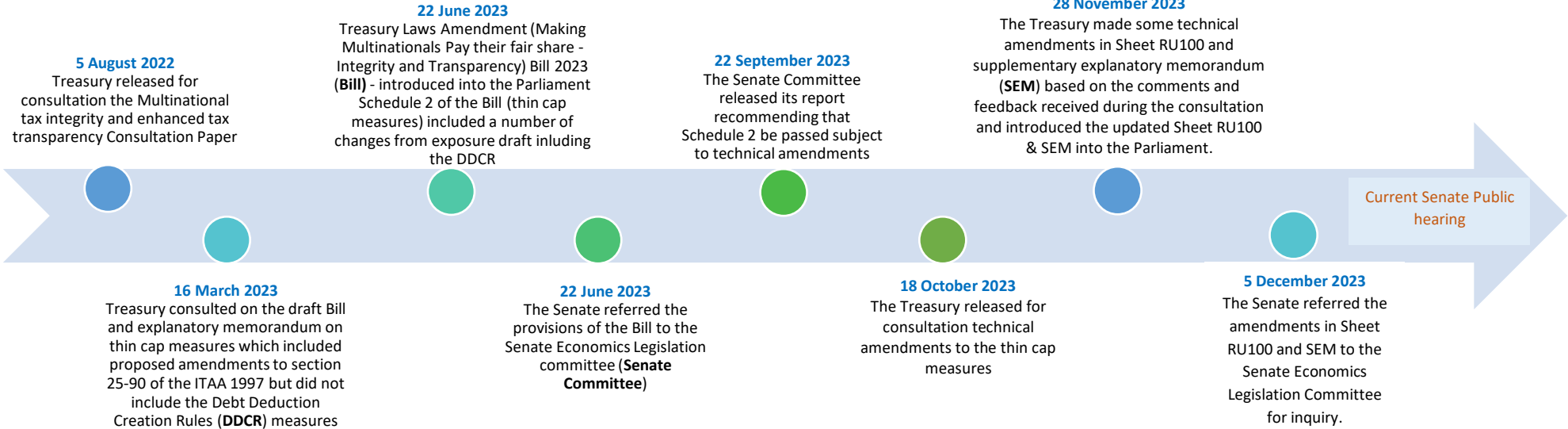


# Background – Timeline

## Summary of key events

27 April 2022 – The Labor Government proposed 4 measures to combat multinational tax avoidance, including capping of debt related deductions by multinational companies at 30% of their profits. The proposal was intended to align with the OECD’s recommended approach. The projected revenue estimate at the time of the election commitment was \$1.89bn over the forward estimates. However, the revenue projection was subsequently revised down and projected to increase Government’s revenue by \$370m in 2024-25 and \$350m in 2025-26.



## Detailed chronology of events

**27 April 2022** – As part of its election commitments, the Labor Party proposed four measures to combat multinational tax avoidance including capping debt-related deductions by multinational companies at 30% of their profits. The proposal was intended to align with the OECD's recommended approach. It was understood that the arm's length test and the worldwide gearing ratio would be maintained.

**5 August – 2 September 2022** – The Treasury [released](#) an initial [consultation paper](#) seeking feedback on the implementation of thin cap measures along with other Multinational Tax Integrity and Tax Transparency measures announced as part of the Government's election commitments.

**2 – 5 September 2022** – [TTI submission](#) and [CA ANZ submission](#) on the consultation paper.

**16 March – 13 April 2023** – The Treasury consulted on the exposure draft [thin cap measures](#).

**13 – 14 April 2023** – [TTI submission](#) and [CA ANZ submission](#) to the Treasury consultation on the draft exposure draft and explanatory memorandum.

### *Summary of key issues and TTI and CA ANZ views*

- The exposure draft and explanatory memorandum proposed amendments to section 25-90 of the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**). The proposed amendments were not supported by the original policy intent of the provisions and were not subject to consultation.
- In view of the 1 July 2023 commencement date for the new rules, the exposure draft should have included a transitional period to exclude interest on certain loans from the application of the new rules so that entities would have reasonable time to restructure existing financing arrangements before the rules come into effect.
- The fixed ratio and group ratio tests needed to be adjusted for practicality of application.
- The external third-party requirements needed to be adjusted to ensure the external third-party debt test (**TPDT**) is more practical, and some flexibility provided for what happens in normal commercial practice

**22 June 2023** – The [Treasury Laws Amendment \(Making Multinationals Pay Their Fair Share Integrity and Transparency\) Bill 2023 \(the Bill\)](#) was introduced into Parliament and Schedule 2 to the Bill, which contains the thin cap measures, included a number of changes since the exposure draft, including the introduction of the debt deduction creation rules (**DDCR**).

On the same day, the Senate [referred](#) the Bill to the Senate Economics Legislation Committee (**Senate Committee**) for inquiry and report.

**22 June 2023 – 21 July 2023** – Senate Committee sought submissions in respect of the inquiry.

**21 – 26 July 2023** – [TTI submission](#) and [CA ANZ submission](#) to the Senate Committee in respect of the inquiry into the Bill.

*Summary of key issues and TTI and CA ANZ views*

- Schedule 2 to the Bill should be deferred by a period of at least 12 months from the proposed start date to provide taxpayers with sufficient time to understand their obligations.
- Schedule 2 of the Bill introduced a new Subdivision 820-EAA of the ITAA 1997 (containing the DDCR). This new subdivision was not part of the exposure draft legislation and was not subject to consultation.
- Since the DDCR was not part of the exposure draft consultation, separate consultation should be undertaken to ensure that its practical impact is proportionate to the intended policy outcome.
- Concerns that proposed DDCR may have a retrospective impact. It would be an inappropriate outcome for these rules to apply retrospectively to pre-existing arrangements that are compliant with the current thin capitalisation regime.
- Proposed calculation of tax EBITDA is overly restrictive (in cases where an entity that is subject to thin capitalisation borrows money to acquire interests in another company, partnership, or trust) due to the exclusion of trust or partnership distributions (where the investor has a mere 10% control interest) or all dividends.
- The drafting of the TPDT conditions is not practical and will preclude access to the TPDT for some commercial structures commonly found in certain industries such as large property trusts and joint venture arrangements.

**22 September 2023** – The Senate Committee released its [report](#) recommending that Schedule 2 (containing the thin cap measures) to the Bill be passed subject to technical amendments.

**18 – 30 October 2023** – The Treasury released for [consultation](#) technical amendments to the thin cap measures.

**30 October – 3 November 2023** – [TTI submission](#) and [CA ANZ submission](#) to the Treasury consultation on draft technical amendments to Sheet RU100 (**RU100**) and supplementary explanatory memorandum (**SEM**).

*Summary of key issues and TTI and CA ANZ views*

- The eight-working day consultation period made it difficult for stakeholders to adequately consider the complexities of the proposed amendments.
- While the Government updated the Bill based on the feedback received from the stakeholders, some outstanding significant concerns required further consideration and amendment before the proposed changes could be progressed, including the need to:
  - allow general class investors holding an interest of 10%-49.9% in a trust to be able to recognise their share of tax EBITDA from the trust;
  - extend the concept of 'excess tax EBITDA' beyond trusts to companies and partnerships where dividends and partnership income is excluded from tax EBITDA;
  - consult further on the DDCR to resolve significant issues;

- amend the DDCR to include measures equivalent to those of the conduit financing rules such that back-to-back debt arrangements involving a loan between an entity and its associate that are back-to-back with a loan from an unrelated lender and the associate are not caught by the DDCR;
- correct technical issues in the drafting in respect of guarantees, security or other forms of credit support provided for the purposes of the TPDT;
- consider the appropriateness of requiring prior year tax losses to be utilised given that the objective of the new 30% EBITDA fixed ratio test is to reflect that an entity's interest deductions are directly linked to the taxable income generated by its economic activities in an income year; and
- defer the proposed start date so that taxpayers have enough time to understand and ensure compliance with the new rules.

**28 November 2023** – An updated [RU100](#) and [supplementary explanatory memorandum](#) were introduced into Parliament with some amendments based on feedback and submissions received.

*Summary of key issues and TTI and CA ANZ views*

- The updates to RU100 and the SEM addressed some of the concerns raised by the stakeholders such as extending the concept of excess tax EBITDA to entities other than only trusts (i.e., to companies and partnerships), deferring the application date for the new DDCR to income years starting on or after 1 July 2024; and further narrowing of the scope of the DDCR through designated exclusions. However, certain important issues continually raised by stakeholders remained unresolved.

**5 December 2023**

The Senate [referred](#) the Government's amendments on sheet RU100 to the Senate Committee for inquiry and report by 5 February 2024.

**12 December 2023 – 5 January 2024** – Senate Committee sought submissions in respect of its inquiry.

**5 January 2024** – [Joint submission](#) by TTI and CA ANZ.

*Summary of key issues and TTI and CA ANZ views*

- Though some of the concerns have been addressed in the update to RU100 and SEM, certain important issues remain, namely:
  - retrospective commencement of thin cap rules;
  - impact on holdings between 10%-49.9% that are unable to access excess tax EBITDA;
  - further changes needed to the TPDT to align with policy objectives; and
  - lack of consultation on DDCR, potential to apply to certain ordinary and commercial transactions (e.g. in respect of acquisitions of trading stock), effective retrospective application despite the deferred start date.