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Passive investment companies excluded from lower tax rate

The Turnbull Government has today introduced a Bill clarifying that passive investment companies will not qualify for the lower company tax rate.

The Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, said the change will make it easier for companies to determine their eligibility for the 27.5 per cent rate.

"This Bill will provide certainty about eligibility for the lower company tax rate, by excluding passive investment companies," Minister O'Dwyer said.

The *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017* will amend the tax law to ensure that a company will not qualify for the lower company tax rate if more than 80 per cent of its assessable income is passive income (such as interest, dividends or royalties). This is a 'bright line' test that will replace the previous requirement that a company be 'carrying on a business'.

The amendment will apply prospectively from the 2017-18 income year. In the 2016-17 income year, a company will need to be carrying on a business and have a turnover under $10 million to qualify for the 27.5 per cent tax rate.

The Australian Taxation Office (ATO) intends to release detailed guidance today on when a company 'carries on a business', which will include examples of common scenarios.

The ATO has advised that it will adopt a facilitative approach to compliance in relation to the 'carrying on a business' test for the 2016-17 year. That is, it will not select companies for audit based on their determination of whether they were carrying on a business in the 2016-17 income year, unless their decision is plainly unreasonable.

"The ATO's approach will assist companies to finalise their tax affairs for the 2016-17 income year. From the 2017-18 income year, there will be a clearer 'bright line' test," Minister O'Dwyer said.