

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Taxation (Interest on Overpayments and Early Payments) Act 1983

Taxation (Interest on Overpayments and Early Payments) Regulations 2018

Section 15 of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Taxation (Interest on Overpayments and Early Payments) Regulations 2018* (the Regulations) is to remake and improve the operation of the *Taxation (Interest on Overpayments and Early Payments) Regulations 1992* (the Previous Regulations). The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. Legislative instruments generally cease to have effect after 10 years unless their operation is extended such as by remaking the instrument. The Previous Regulations are to be automatically repealed on 1 October 2018.

The Regulations remake and improve the Previous Regulations by repealing redundant provisions, simplifying language, and restructuring provisions for ease of navigation.

The key changes to the instrument are:

- adopting modern drafting practices such as referring to ‘sections’ rather than ‘regulations’;
- changing the structure from that used in the Previous Regulations to make the provisions easier to understand and navigate; and
- ensuring that all specified double tax agreement names and relevant articles prescribed are up-to-date, including by removing unnecessary references.

These changes are not intended to affect the substantive meaning or operation of the provisions other than updating the relevant double tax agreement names and relevant articles.

Further details of the Regulations are set out in Attachment A.

Targeted consultation on the Regulations was undertaken, however, pursuant to section 17 of the *Legislation Act 2003*, no public consultation was undertaken as the Regulations are machinery in nature. Several minor additions were included in this Explanatory Statement following targeted consultation to confirm that the operation of the Regulations is to preserve the effect of the Previous Regulations.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the day after the instrument was registered on the Federal Register of Legislation.

The Office of Best Practice Regulation considered the Regulations have a minor impact on business, community organisations or individuals and has certified that the remaking of the Regulations does not require a Regulatory Impact Statement (OBPR ID No 23957).

A Statement of Compatibility with Human Rights is at [Attachment B](#). The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the Taxation (Interest on Overpayments and Early Payments) Regulations 2018

This Attachment sets out further details of the Regulations. All references are to the Regulations unless otherwise stated.

Changes of a minor or machinery nature, such as references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practices, or updates to headings, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

Part 1—Preliminary

Section 1—Name

This section provides that the title of the Regulations is the *Taxation (Interest on Overpayments and Early Payments) Regulations 2018*.

Section 2—Commencement

This section provides that the Regulations commence on the day after the instrument is registered.

Section 3—Authority

This section provides that the Regulations are made under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

Section 4—Schedules

This section provides that each instrument identified in a Schedule to the Regulations is amended or repealed in accordance with the Regulations.

Section 5—Definitions

This section contains defined expressions used in the Regulations. As part of the remake of the Previous Regulations, a number of terms that were undefined have been added and are defined in the Regulations.

‘Contracting State’ is defined to have the same meaning as in subsection 3(12) of the *International Tax Agreements Act 1953*.

‘Permanent establishment’ is defined to have the same meaning as in subsection 3(12) of the *International Tax Agreements Act 1953*.

‘Resident of Australia’ is defined to have the same meaning as in the *Income Tax Assessment Act 1936*.

In addition, a provision is inserted so that a reference to a double tax agreement by name in the instrument is a reference to the agreement as described in section 3AAA or 3AAB of the *International Tax Agreements Act 1953*. Section 3AAA of that Act

deals with current agreements and section 3AAB of that Act deals with agreements for earlier periods.

Part 2—Provisions for the purposes of providing correlative relief

Section 6—Correlative relief for juridical double taxation—double tax agreements applying to Australia

This section corresponds to section 6 and Schedules 2 and 3 of the Previous Regulations. It prescribes the manner of operation of specified provisions of double tax agreements in relation to which a decision can be made to provide correlative relief from juridical double taxation.

There has been no change to the manner of operation of the provisions prescribed.

The treaties and relevant articles prescribed in subsections 6(3) and 6(5) have been updated to reflect the double tax agreements currently in force that contain business profits articles.

The treaties in force that have a business profits article with the manner of operation set out in subsection 6(1) are prescribed in subsection 6(3), which corresponds to subsection 6(1) and Schedule 2 of the Previous Regulations respectively. The treaties in force that have a business profits article with the manner of operation set out in subsection 6(4) are prescribed in subsection 6(5), which corresponds to subsection 6(3) and Schedule 3 of the Previous Regulations respectively.

As a result of updating the treaties that are listed in subsection 6(3), subsection 6(2) has also been amended to remove references to the meaning of ‘profits’ under treaties that are no longer prescribed.

Regulation 5 and Schedule 1 in the Previous Regulations (which deal with correlative relief for economic double taxation) have been omitted, as they are not required. This is because subsection 3A(1A) of the Act already allows correlative relief to be provided for economic double taxation if there is a double tax agreement applying to Australia and a treaty partner, and the treaty partner taxes profits in accordance with the principles of an associated enterprises article.

Section 7—Correlative relief for economic double taxation—no double tax agreement applying to Australia and foreign country

This section corresponds to section 7 of the Previous Regulations, but has been updated in accordance with modern drafting practices.

Section 8—Correlative relief for juridical double taxation—no double tax agreement applying to Australia and foreign country

This section corresponds to section 8 of the Previous Regulations, but has been updated in accordance with modern drafting practices.

Part 3—Application, saving and transitional provisions

Section 9—Application provision relating to the commencement of this instrument

This section sets out that the instrument applies in relation to income derived on or after the day it commences.

The instrument also applies in relation to income derived before the commencement of the instrument, if a double tax agreement referred to in Part 2 of the Regulations was in force at the time income was derived, and the agreement was not referred to in the Previous Regulations. This ensures the instrument applies in relation to any income covered by a prescribed provision, or the manner of operation of a prescribed provision, of a double tax agreement. The instrument applies in this way to ensure that taxpayers are not disadvantaged and that interest can be paid in relation to any overpayment that results from the application of a listed double tax agreement.

The repeal of the Previous Regulations by Schedule 1 to the instrument does not affect the application of those regulations to income derived before the day the instrument commences. This is to ensure that correlative relief is still available in relation to provisions of double tax agreements that are no longer prescribed under the Regulations, but were prescribed under the Previous Regulations at the time the relevant income was derived.

Schedule 1—Repeals

Item 1

This item provides that the Previous Regulations are repealed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Taxation (Interest on Overpayments and Early Payments) Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulations remake and improve the Previous Regulations by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation.

The key changes to the instrument are:

- adopting modern drafting practices such as referring to ‘sections’ rather than ‘regulations’;
- changing the structure from that used in the Previous Regulations to make the provisions easier to understand and navigate;
- ensuring that all specified double tax agreement names and relevant articles prescribed are up to date, including by removing unnecessary references.

These changes are not intended to affect the substantive meaning or operation of the provisions.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.