

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Taxation Administration Act 1953

Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2018

Section 18 of the *Taxation Administration Act 1953* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Act.

The *Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2018* (the Regulations) add Albania, Andorra, Austria, Azerbaijan, Bahrain, Barbados, Brazil, Brunei, Bulgaria, Cameroon, Chile, Colombia, Costa Rica, Croatia, Cyprus, Dominica, Estonia, Faroe Islands, Georgia, Ghana, Greece, Greenland, Grenada, Guatemala, Iceland, Israel, Kazakhstan, Kenya, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Marshall Islands, Moldova, Montserrat, Nigeria, Niue, Philippines, Portugal, Saint Lucia, Samoa, Saudi Arabia, Senegal, Seychelles, Sint Maarten, Slovenia, Switzerland, Tunisia, Turkey, Uganda, Ukraine, Uruguay and Vanuatu to the list of foreign countries and foreign territories contained in the *Taxation Administration Regulations 2017* as 'information exchange countries' for the purposes of subsection 12-385(4) of Schedule 1 to the Act.

The list of foreign countries is used for calculating the amount to be withheld by the trustee of a managed investment trust (MIT) or custodian, or by another entity, from a 'fund payment' to a foreign resident. A 'fund payment' is, broadly, a component of a payment made by a MIT that represents a distribution of Australian source net income (other than dividends, interest and royalties) of the trust. The MIT withholding rate is the primary taxing point for passive income, such as rent, generated in a MIT.

The Regulations ensure that, if a fund payment is made to a tax resident of a country added by the proposed regulations as an 'information exchange country', the lower MIT income withholding tax rate of 15 per cent, under Subdivision 840-M of the *Income Tax Assessment Act 1997*, would apply to those payments. Otherwise, the fund payment is subject to the default withholding tax rate of 30 per cent.

Establishing transparency and effective exchange of information (EOI) internationally is a key objective of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), which is organised and supported by the Organisation for Economic Co-operation and Development's (OECD). Australia is a member of the Global Forum and a long-standing and active supporter of international tax transparency initiatives. The OECD and Australia have been promoting tax transparency through multilateral initiatives that allow countries to transfer

information easily, and by assessing jurisdictions' adherence to global tax transparency standards and publishing those results.

Over the last few years, there has been an improvement in effective EOI around the world. EOI is the process by which countries share taxpayer information to help enforce their domestic tax laws. For Australia, the legal basis for EOI is provided by the EOI article of bilateral tax treaties, by a bilateral tax information exchange agreement, or through participation in the OECD's multilateral *Convention on Mutual Administrative Assistance in Tax Matters (and Amending Protocol)* (the Convention). The majority of jurisdictions included in the Regulations have established effective EOI arrangements with Australia through the Convention.

EOI arrangements also allow the Commissioner of Taxation to obtain relevant information from those jurisdictions, for example, to verify the investor's identity and place of residence or to support taxation compliance activities. Effective EOI requires a jurisdiction to have the legal capacity to obtain and provide information to Australia that is relevant to tax matters in Australia. Linking the eligibility for reduced withholding tax rates to EOI arrangements reinforces Australia's international reputation for having a strong regulatory system and encourages other jurisdictions to enter into multilateral EOI arrangements, consistent with Australia's tax transparency policy.

Consultation does not generally take place on updates to this list because consultation with industry and the Australian Taxation Office was undertaken in the initial development of both the legislation and the *Taxation Administration Amendment Regulations 2008 (No. 2)* for the list of jurisdictions that are considered to be 'effective exchange of information countries' in 2008. Relevant stakeholders, such as peak bodies representing MITs and payment software providers, have been made aware that the update is taking place so that they can update their payment systems by 1 January 2019. Stakeholders noted that they would have no difficulty implementing the necessary changes to their payment systems.

The Regulations commence on 1 January 2019.

A Regulation Impact Statement was not required. Compliance costs were assessed as low.

The Regulations apply in relation to a fund payment (within the meaning given by sections 12-405 and 12A-110 of Schedule 1 to the Act) made to a resident of a country that has been added to the *Taxation Administration Regulations 2017* on or after 1 January 2019.

Statement of Compatibility with Human Rights

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

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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

This Legislative Instrument amends the *Taxation Administration Regulations 2017* to add the Albania, Andorra, Austria, Azerbaijan, Bahrain, Barbados, Brazil, Brunei, Bulgaria, Cameroon, Chile, Colombia, Costa Rica, Croatia, Cyprus, Dominica, Estonia, Faroe Islands, Georgia, Ghana, Greece, Greenland, Grenada, Guatemala, Iceland, Israel, Kazakhstan, Kenya, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Marshall Islands, Moldova, Montserrat, Nigeria, Niue, Philippines, Portugal, Samoa, Saint Lucia, Saudi Arabia, Senegal, Seychelles, Sint Maarten, Slovenia, Switzerland, Tunisia, Turkey, Uganda, Ukraine, Uruguay and Vanuatu to the list of foreign countries and foreign territories contained in Regulation 34 that are ***information exchange countries*** for the purposes of s 12-385(4) of Schedule 1 to the *Taxation Administration Act 1953*. This list is relevant for calculating the amount to be withheld by the trustee of a managed investment trust or custodian, or by another entity, from a fund payment to a foreign resident.

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.