

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 2019

The *Taxation Administration Act 1953* (the Act) sets out the administrative framework for the tax law. This includes rules for the collection and recovery of income tax and other liabilities.

Section 18 of the Act provides 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 2019* (the Regulations) add Curaçao, Lebanon, Nauru, Pakistan, Panama, Peru, Qatar and the United Arab Emirates to the list of foreign countries and foreign territories contained in section 34 of the *Taxation Administration Regulations 2017* as ‘information exchange countries’ for the purposes of subsection 12-385(4) of Schedule 1 to the Act.

All jurisdictions included in the proposed Regulations have established effective exchange of information arrangements with Australia through the Organisation for Economic Co-operation and Development’s (OECD) multilateral *Convention on Mutual Administrative Assistance in Tax Matters* (and Amending Protocol) (the Convention). Exchange of information arrangements promote international tax transparency. For Australia, the legal basis for exchange of information is provided by the exchange of information article in bilateral tax treaties, by a bilateral tax information exchange agreement, or through participation in the Convention.

The list of foreign countries and foreign territories specified for the purposes of subsection 12-385(4) of Schedule 1 to the Act is used for calculating the amount to be withheld by the trustee of a withholding 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. Fund payments made by attribution managed investment trusts are calculated in a similar way. The MIT withholding is the primary taxing point for income, such as rent, generated in a withholding MIT.

The Regulations ensure that, if a ‘fund payment’ (within the meaning given by sections 12-405 and 12A-110 of Schedule 1 to the Act) is made to a recipient with the address or place of payment in a country or a territory added by the 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

generally apply to those payments. Otherwise, the fund payment is subject to the default withholding tax rate of 30 per cent.

However, following amendments made by the *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019*, certain fund payments made to tax residents of ‘information exchange countries’ could still be subject to the withholding tax rate of 30 per cent and will be unaffected by the Regulations.

Exchange of information is the process by which jurisdictions share taxpayer information to help enforce their domestic tax laws.

Exchange of information arrangements allow the Commissioner of Taxation to obtain relevant information from those jurisdictions, for example, to verify an investor’s identity and place of residence or to support taxation compliance activities. Effective exchange of information 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 exchange of information arrangements reinforces Australia’s international reputation for having a strong regulatory system and encourages other jurisdictions to enter into multilateral exchange of information arrangements, consistent with Australia’s tax transparency policy.

Consultation on the amendments was not considered necessary as the list of jurisdictions added by the Regulations was announced in the 2019-20 Budget. Relevant stakeholders, such as peak bodies representing MITs and payment software providers, have been made aware that the update to the list by the amendments is taking place so that they can update their payment systems by 1 January 2020.

Details of the Regulations are set out in [Attachment A](#).

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

The Regulations commence on the day after it is registered.

The date of effect for the relevant foreign countries and foreign territories to be specified as ‘information exchange countries’ for the purposes of subsection 12-385(4) of Schedule 1 to the Act is 1 January 2020.

The Office of Best Practice Regulation (OBPR) has been consulted and a short form regulation impact statement was completed (OBPR ID 25008). The amendments made by Schedule 1 to the Regulations are estimated to have a negligible impact on compliance costs.

A Statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2019

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2019*.

Section 2 - Commencement

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

Section 3 - Authority

This section provides that the Regulations are made under the *Taxation Administration Act 1953*.

Section 4 - Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

The list of foreign countries and foreign territories contained in section 34 of the *Taxation Administration Regulations 2017* which are specified as ‘information exchange countries’ for the purposes of subsection 12-385(4) of Schedule 1 to the Act is used for calculating the amount to be withheld by the trustee of a withholding MIT or custodian, or by another entity, from a ‘fund payment’ to a foreign resident.

All jurisdictions included in the Regulations have established effective exchange of information arrangements with Australia through the Organisation for Economic Co-operation and Development’s (OECD) multilateral *Convention on Mutual Administrative Assistance in Tax Matters* (and Amending Protocol) (the Convention). Exchange of information arrangements promote international tax transparency. For Australia, the legal basis for exchange of information is provided by the exchange of information article in bilateral tax treaties, by a bilateral tax information exchange agreement, or through participation in the Convention.

Establishing transparency and effective exchange of information 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 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.

Linking the eligibility for reduced withholding tax rates to exchange of information arrangements reinforces Australia's international reputation for having a strong regulatory system and encourages other jurisdictions to enter into multilateral exchange of information arrangements, consistent with Australia's tax transparency policy.

Items 1, 2, 3 and 4

Items 1, and 2 in Schedule 1 to the Regulations amend the *Taxation Administration Regulations 2017* to replace references to 'country' with 'foreign country or a foreign territory'.

Item 3 in Schedule 1 to the Regulations amends the *Taxation Administration Regulations 2017* to replace references to 'country' with 'foreign country or the foreign territory'.

Item 4 in Schedule 1 to the Regulations amends the *Taxation Administration Regulations 2017* to replace references to 'country' in the table heading with 'country or territory'.

The amendments are required as the list of 'information exchange countries' includes both countries and territories (for example, the Isle of Man is a territory).

Item 5

Item 5 in Schedule 1 to the Regulations amends the *Taxation Administration Regulations 2017* to add Curaçao, Lebanon, Nauru, Pakistan, Panama, Peru, Qatar and the United Arab Emirates to the list of foreign countries and foreign territories contained in section 34 of the *Taxation Administration Regulations 2017*, which are specified to be 'information exchange countries'.

Item 5 also provides that the date of effect for the newly listed countries is 1 January 2020.

Statement of Compatibility with Human Rights

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

Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2019

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 section 34 of the *Taxation Administration Regulations 2017* to add Curaçao, Lebanon, Nauru, Pakistan, Panama, Peru, Qatar and the United Arab Emirates to the list of foreign countries and foreign territories that are ‘information exchange countries’ for the purposes of subsection 12-385(4) of Schedule 1 to the Act. This list is relevant for calculating the amount to be withheld by the trustee of a withholding 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.