

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing**

#### *Taxation Administration Act 1953*

#### *Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2021*

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 2021* (the Regulations) amends section 34 of the *Taxation Administration Regulations 2017* to:

- add Dominican Republic, Ecuador, El Salvador, Hong Kong, Jamaica, Kuwait, Morocco, Republic of North Macedonia and Serbia to the list of foreign countries and foreign territories, which are ‘information exchange countries’ for the purposes of subsection 12-385(4) of Schedule 1 to the Act; and
- remove Kenya from the list of information exchange countries.

Exchange of information (EOI) is the process by which jurisdictions share taxpayer information to help enforce their domestic tax laws. EOI arrangements allow the Commissioner of Taxation to obtain relevant information from those jurisdictions, for example, to verify an investor’s identity and address or to support taxation compliance activities. Effective information exchange requires a jurisdiction to have the legal capacity to obtain and provide information to Australia that is relevant to tax matters in Australia.

EOI arrangements promote international tax transparency and safeguard against offshore tax avoidance and evasion. Linking the eligibility for reduced Australian managed investment trust (MIT) withholding tax rates to EOI arrangements encourages jurisdictions to establish EOI relationships with Australia. This is consistent with Australia’s tax transparency policy and reinforces our international reputation for having a strong regulatory system.

For Australia, the legal basis for EOI is provided by the EOI article in bilateral taxation treaties, through a bilateral taxation information exchange agreement, or through participation in the Organisation for Economic Co-operation and Development’s (OECD) multilateral *Convention on Mutual Administrative Assistance in Tax Matters* (the Convention). Establishing transparency and effective EOI internationally is also 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 supports international tax transparency initiatives.

The nine jurisdictions added to the list of information exchange countries in the Regulations have established effective EOI arrangements with Australia through their ratification of the Convention.

Kenya has been removed from the list of information exchange countries as, at the time the annual assessment was undertaken on 1 January 2020 to determine the updates to be made to the list, it had not established an effective information exchange arrangement with Australia.

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 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. A ‘fund payment’ made to a recipient with an address or place for payment in a foreign country or foreign territory that is listed as an ‘information exchange country’ may be subject to the lower MIT income withholding tax rate of 15 per cent, instead of the default withholding tax rate of 30 per cent. 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.

Consultation was undertaken with the Australian Taxation Office. Public consultation on the amendments to the list of information exchange countries was not considered necessary as they were announced in the 2020-21 Budget and are routine in nature to reflect the jurisdictions that have entered into information exchange arrangements with Australia. The amendments commence in April 2021 to allow sufficient time for relevant stakeholders, such as peak bodies representing MITs and payment software providers, to update their payment systems before the amendments to the Regulations start to apply to payments made from 1 July 2021.

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

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 date of effect for the changes to the list of foreign countries and foreign territories specified as ‘information exchange countries’ for the purposes of subsection 12-385(4) of Schedule 1 to the Act is 1 July 2021.

The Office of Best Practice Regulation (OBPR) has been consulted and advised that as the proposal is non-regulatory, a regulation impact statement is not required (OBPR ID 26055). The amendments 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 2021**

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2021* (the Regulations).

**Section 2 – Commencement**

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

The Regulations are made under the *Taxation Administration Act 1953* (the Act).

**Section 4 – Schedule**

This section provides that each instrument that is specified in a Schedule to this instrument will be 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 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 MITs are calculated in a similar way. The MIT withholding tax 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 where the address or place for payment is in a foreign country or foreign territory that is 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.

### **Items 1, 2 and 3**

Item 1 in Schedule 1 to the Regulations amends the *Taxation Administration Regulations 2017* to remove Kenya from the list of existing information exchange countries. Kenya was added to the list of information exchange countries on 1 January 2019 in anticipation of it successfully implementing the Convention as a signatory shortly thereafter. However, as of 1 January 2020, when the annual assessment was undertaken to determine the updates to be made to the list, Kenya had not ratified the Convention to establish an information exchange arrangement with Australia. The removal of Kenya from the list of information exchange countries will result in all fund payments made on and after 1 July 2021 to a recipient in Kenya being subject to the default MIT withholding tax rate of 30 per cent.

Item 2 in Schedule 1 to the Regulations amends the *Taxation Administration Regulations 2017* to add the Dominican Republic, Ecuador, El Salvador, Hong Kong, Jamaica, Kuwait, Morocco, Republic of North Macedonia and Serbia to the list of foreign countries and foreign territories contained in subsection 34(2) of the *Taxation Administration Regulations 2017* as ‘information exchange countries’ for the purposes of subsection 12-385(4) of Schedule 1 to the Act. Each of these nine jurisdictions have established effective EOI arrangements with Australia by ratifying the OECD multilateral Convention. Where the address or place for payment of a recipient is in an information exchange country, the recipient may be eligible to access the reduced MIT withholding tax rate of 15 per cent on certain distributions.

Item 3 in Schedule 1 provides that the date of effect for the changes to the list of information exchange countries and foreign territories is 1 July 2021.

**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 2021***

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 Dominican Republic, Ecuador, El Salvador, Hong Kong, Jamaica, Kuwait, Morocco, Republic of North Macedonia and Serbia 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; and
- remove Kenya from the list of foreign countries and foreign territories that are information exchange countries, on the basis that, as of 1 January 2020, it had not established an information exchange arrangement with Australia.

The list of foreign countries and foreign territories that are ‘information exchange countries’ 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.