

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 No. 2) 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 allows the Governor-General to make regulations not inconsistent with the Act, prescribing all matters that the Act requires or permits to be prescribed, or that are necessary or convenient to be prescribed to give effect to the Act.

The *Taxation Administration Amendment (Updating the List of Exchange of Information Countries No. 2) Regulations 2021* (the Regulations) amend section 34 of the *Taxation Administration Regulations 2017* to add Armenia, Cabo Verde, Kenya, Mongolia, Montenegro, and Oman to the list of information exchange countries for the purposes of subsection 12-385(4) of Schedule 1 to the Act.

Exchange of information (EOI) is the process by which jurisdictions share taxpayer information to promote international tax transparency and safeguard against offshore tax avoidance and evasion. For example, EOI arrangements allow Australia's Commissioner of Taxation to obtain relevant information from other jurisdictions to verify an investor's identity and address, or to support taxation compliance activities.

A foreign country or foreign territory can only be listed in the Regulations as an information exchange country where it has an effective information exchange arrangement with Australia. An effective EOI arrangement requires a jurisdiction to have the legal capacity to obtain and provide information to Australia that is relevant to tax matters (both criminal and civil) in Australia, unimpeded by domestic laws, such as bank secrecy laws.

Under section 12-385 of Schedule 1 to the Act, recipients of fund payments with an address or place of payment in an information exchange country are eligible to access the reduced Managed Investment Trust (MIT) withholding tax rate of 15 per cent on certain distributions, instead of the default rate of 30 per cent. Fund payments made by a Clean Building MIT are subject to a withholding rate of 10 per cent where the recipient's address or place for payment is in an information exchange country.

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.

Linking eligibility for reduced Australian MIT withholding tax rates with 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, as amended by the 2010 Protocol (the Convention). The six jurisdictions added to the list of information exchange countries in the Regulations have established effective EOI arrangements with Australia by ratifying the Convention.

Australia also supports international tax transparency initiatives as a member of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). The Global Forum promotes transparency and effective exchange of information by monitoring the implementation of international standards, conducting peer reviews, and providing technical assistance to members.

The Australian Taxation Office was consulted on the amendments to the list of EOI countries, which were announced in the 2021-22 Budget. Affected stakeholders, such as the Australian Custodial Services Association, which represents members of the investment administration sector, were also notified of the update. Public consultation was not considered necessary as the amendments are a routine update to reflect jurisdictions that have entered into effective information exchange arrangements with Australia.

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

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

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

The amendments to the list of information exchange countries apply from 1 January 2022 to provide sufficient time for stakeholders, such as peak bodies representing MITs and payment software providers, to update their payment systems.

The Office of Best Practice Regulation (OBPR) was consulted and advised that a regulation impact statement is not required as the proposal is non-regulatory (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 instrument is the *Taxation Administration Amendment (Updating the List of Exchange of Information Countries No. 2) Regulations 2021* (the Regulations).

Section 2 – Commencement

The table in this section provides that the Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that 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 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 information exchange countries in section 34 of the *Taxation Administration Regulations 2017* is used to determine the amount to be withheld from a fund payment to a foreign resident by the trustee of a withholding managed investment trust (MIT) or custodian, or by another entity (see subsection 12-385(4) of Schedule 1 to the Act).

A ‘fund payment’ is generally 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 of non-resident MIT members, such as rent, generated in a withholding MIT.

If a fund payment (within the meaning of sections 12-405 and 12A-110 of Schedule 1 to the Act) is made to a recipient with an address or place for payment in an information exchange country, the lower MIT income withholding tax rate of 15 per cent will generally apply to those payments under Subdivision 840-M of the *Income Tax Assessment Act 1997*. 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.

Item 1

Item 1 in Schedule 1 amends subsection 34(2) of the *Taxation Administration Regulations 2017* to add Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman to the list of information exchange countries for the purpose of subsection 12-385(4) of Schedule 1 to the Act. Each of these six countries has established an effective EOI arrangement with Australia by ratifying the Organisation for Economic Co-operation and Development's multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol (the Convention).

The *Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2021* removed Kenya from the list of information exchange countries as Kenya had not established an information exchange arrangement with Australia at the time of a previous annual assessment. A further assessment was undertaken on 1 January 2021, at which time Kenya had established an effective information exchange arrangement with Australia by ratifying the Convention. In recognition of this arrangement, Item 1 in Schedule 1 to the Regulations reinstates Kenya as an information exchange country.

Item 1 of Schedule 1 provides that 1 January 2022 is the date of effect for the amendments to the list of information exchange countries. Where a recipient's address or place for payment is in one of the six newly listed jurisdictions, the recipient may be eligible for the reduced MIT withholding tax rate of 15 per cent on certain distributions made on and after 1 January 2022.

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 No. 2) 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 Armenia, Cabo Verde, Kenya, Mongolia, Montenegro, and Oman to the list of information exchange countries.

Under section 12-385 of Schedule 1 to the *Taxation Administration Act 1953*, recipients of fund payments with an address or place of payment in an information exchange country are eligible to access the reduced Managed Investment Trust (MIT) withholding tax rate of 15 per cent on certain distributions, instead of the default rate of 30 per cent. Fund payments made by a Clean Building MIT are subject to a withholding rate of 10 per cent, where the recipient's address or place for payment is in an information exchange country.

A foreign country or foreign territory can only be listed in the Regulations as an information exchange country where it has an effective information exchange arrangement with Australia. For example, a jurisdiction may establish an effective EOI arrangement with Australia through ratification of the Organisation for Economic Co-operation and Development's multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol (the Convention).

The Convention is a freestanding multilateral agreement that provides for administrative co-operation between the parties in the assessment and collection of taxes (including exchange of information) to combat tax avoidance and evasion. As of 15 July 2021, 141 jurisdictions had signed the Convention, including Australia. The list of signatories includes some jurisdictions for which the Convention has not yet entered into force.

Linking eligibility for reduced Australian MIT withholding tax rates with EOI arrangements encourages jurisdictions to establish EOI relationships with Australia.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

The instrument does not engage the right to freedom from interference with privacy in Article 17 of the *International Covenant on Civil and Political Rights* because it does

not authorise the sharing of personal information between Australia and other jurisdictions. Instead, section 23 of the *International Tax Agreements Act 1953* gives legal force to the parts of the Convention that provide for the sharing of information between signatories. This instrument does not make any changes to that Act.

Conclusion

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