



Taxation Administration Amendment Regulations 2003 (No. 1)¹

Statutory Rules 2003 No. 74²

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Taxation Administration Act 1953*.

Dated 16 April 2003

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

HELEN COONAN

Minister for Revenue and Assistant Treasurer

1 Name of Regulations

These Regulations are the *Taxation Administration Amendment Regulations 2003 (No. 1)*.

2 Commencement

These Regulations are taken to have commenced on 20 May 2002.

3 Amendment of *Taxation Administration Regulations 1976*

Schedule 1 amends the *Taxation Administration Regulations 1976*.

Schedule 1 Amendments

(regulation 3)

[1] Regulations 39 and 40

substitute

39 Definitions

In this Division:

dividend includes part of a dividend.

double tax agreement means an agreement within the meaning of the *International Tax Agreements Act 1953*.

double tax country has the meaning given by regulation 39A.

interest means any amount that is, or is taken to consist of, interest for Division 11A of Part III of the *Income Tax Assessment Act 1936*.

international tax sharing treaty has the same meaning as in subsection 136AA (1) of the *Income Tax Assessment Act 1936*.

other party, to a double tax agreement or international tax sharing treaty, means:

- (a) if the agreement or treaty was made between Australia and another country — the other country; and
- (b) if the agreement or treaty was made between the government of Australia and the government of another country — the other country.

tax sharing country has the meaning given by regulation 39B.

39A Meaning of *double tax country*

- (1) If a double tax agreement includes provisions that have the force of law because of the *International Tax Agreements Act 1953*, and relate to a withholding payment:
 - (a) on income derived by a non-resident on or after a particular day; or
 - (b) in respect of dividends derived on or after a particular day; the other party to the agreement is a *double tax country* for this Division on and after that day.
- (2) If a double tax agreement, not being an agreement to which subregulation (1) applies, includes a provision that has the force of law because of the *International Tax Agreements Act 1953*, and limits the amount of Australian tax payable in respect of a dividend, the other party to the agreement is a *double tax country* for this Division.
- (3) The Netherlands, as defined in Article 3 of the Netherlands agreement referred to in the *International Tax Agreements Act 1953*, is a *double tax country* for this Division.

39B Meaning of *tax sharing country*

- (1) If an international tax sharing treaty includes provisions that have the force of law because of an Act, and relate to a withholding payment:
 - (a) on income derived by a non-resident on or after a particular day; or

- (b) in respect of dividends derived on or after a particular day; the other party to the treaty is a *tax sharing country* for this Division on and after that day.
- (2) If an international tax sharing treaty, not being a treaty to which subregulation (1) applies, includes a provision that has the force of law because of an Act, and limits the amount of Australian tax payable in respect of a dividend, the other party to the treaty is a *tax sharing country* for this Division.

40 Dividend payments

- (1) The amount to be withheld from a dividend to which section 12-210 of Schedule 1 to the Act applies is:
 - (a) if an address mentioned in paragraph 12-210 (a), or a place mentioned paragraph 12-210 (b), of Schedule 1 to the Act is in a tax sharing country and the relevant international tax sharing treaty applies to the dividend — an amount calculated at the rate provided for in the treaty; and
 - (b) if paragraph (a) does not apply, but that address or place is in a double tax country — an amount calculated at the rate provided for in the relevant double tax agreement; and
 - (c) if paragraphs (a) and (b) do not apply — an amount equal to 30% of the amount of the dividend.
- (2) The amount to be withheld from a dividend to which section 12-215 of Schedule 1 to the Act applies is:
 - (a) if a foreign resident mentioned in paragraph 12-215 (1) (b) of Schedule 1 to the Act is a resident of a tax sharing country and the relevant international tax sharing treaty applies to the dividend — an amount calculated at the rate provided for in the treaty; and
 - (b) if paragraph (a) does not apply, but that foreign resident is a resident of a double tax country — an amount calculated at the rate provided for in the relevant double tax agreement; and
 - (c) if paragraphs (a) and (b) do not apply — an amount equal to 30% of the amount of the dividend.

(3) However, paragraphs (1) (b) and (2) (b) do not apply in relation to a dividend that is:

- (a) paid to a resident of the United States of America; and
- (b) included in a class of dividends that is exempt from tax under the law of that country.

[2] Regulation 42

substitute

42 Royalty payments

The amount to be withheld under section 12-280 or 12-285 of Schedule 1 to the Act from a royalty is:

- (a) if the person to whom the royalty is paid, or a foreign resident mentioned in paragraph 12-285 (1) (b) of that Schedule, is a resident of the other party to an international tax sharing treaty that applies to the royalty — the amount calculated at the rate provided for in the treaty; and
- (b) if paragraph (a) does not apply, but the person to whom the royalty is paid, or a foreign resident mentioned in paragraph 12-285 (1) (b) of Schedule 1 to the Act, is a resident of the other party to a double tax agreement — the amount calculated at the rate provided for in the agreement; and
- (c) if paragraphs (a) and (b) do not apply, but the person to whom the royalty is paid, or a foreign resident mentioned in paragraph 12-285 (1) (b) of that Schedule, is a resident of a country other than Australia — 30% of the amount of the royalty; and
- (d) if the person to whom the royalty is paid is a resident of Australia — 30% of the amount of the royalty.

Notes

1. These Regulations amend Statutory Rules 1976 No. 129, as amended by 1984 Nos. 407 and 415; 1989 No. 73; 1992 No. 317; 1993 No. 194; 1994 Nos. 55, 198 and 340; 1996 No. 347; 2000 Nos. 73, 109, 152 and 184; 2001 Nos. 164, 289, 321 and 354; 2002 Nos. 102 and 128.
2. Notified in the *Commonwealth of Australia Gazette* on 28 April 2003.