



# **Taxation Administration Amendment Regulations 2003 (No. 1)<sup>1</sup>**

**Statutory Rules 2003 No. 74<sup>2</sup>**

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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

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**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*.

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**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.

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- (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.