



Taxation Administration Amendment Regulations 2004 (No. 1)¹

Statutory Rules 2004 No. 112²

I, PHILIP MICHAEL JEFFERY, 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 27 May 2004

P. M. JEFFERY
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 2004 (No. 1)*.

2 Commencement

These Regulations commence on 1 July 2004.

3 Amendment of *Taxation Administration Regulations 1976*

Schedule 1 amends the *Taxation Administration Regulations 1976*.

4 Application

The amendments made by Schedule 1 apply to payments made or received on or after 1 July 2004.

Schedule 1 Amendments

(regulation 3)

[1] Part 5, Division 5, heading

substitute

Division 5 Withholding — payment for work or services

[2] Part 5, after Division 5

insert

**Division 6 Withholding — payments to
foreign residents etc**

44A Gaming junkets

- (1) For paragraph 12-315 (1) (b) of Schedule 1 to the Act, a payment for operating or promoting a junket is prescribed.
- (2) For subsection 15-10 (2) of Schedule 1 to the Act, the amount to be withheld from a payment mentioned in subregulation (1) is 3% of the total payment.
- (3) In this regulation:

gaming means playing a game of chance or a game that is partly a game of chance and partly a game of skill.

junket means an arrangement for the promotion or organising of gaming in 1 or more casinos, whether or not any of the casinos is required by an agreement to make a payment, by which:

- (a) an individual or a group of people comes to Australia for the purpose of gaming at particular casinos; and
- (b) the entity receives payment, from 1 or more of the casinos, that is:
 - (i) a reward made in relation to arranging for the individual or the people to go to a casino for gaming; or
 - (ii) a commission based on the gaming or losses of the individual or group of people.

44B Entertainment or sports activities

- (1) For paragraph 12-315 (1) (b) of Schedule 1 to the Act, payment to an entity for entertainment or sports activities is prescribed.

Examples of payments

Appearance fees, award for player of the series, bonuses, endorsement fees, expense reimbursements, match payments, non-cash prizes, performance fees, preparation fees, prize money, promotional fees, sponsorship.

- (2) For subregulation (1), the activities may include giving a speech or a sports commentary.
- (3) For subsection 15-10 (2) of Schedule 1 to the Act, the amount to be withheld from a payment mentioned in subregulation (1) is:
- (a) if the entity is a company — the amount worked out by applying to the payment the rates mentioned in section 23 of the *Income Tax Rates Act 1986*; or
 - (b) if the entity is an individual — the amount worked out by applying to the payment the rates mentioned in Part II of Schedule 7 of the *Income Tax Rates Act 1986*.

- (4) In this regulation:

entertainment or sports activities means the activities of:

- (a) a performing artist or a sportsperson within the meaning given by section 405-25 of the *Income Tax Assessment Act 1997*; or
- (b) support staff relating to the activity, including:
 - (i) bodyguard;
 - (ii) choreographer;
 - (iii) coach;
 - (iv) costume designer;
 - (v) director;
 - (vi) director of photography;
 - (vii) doctor;
 - (viii) film editor;
 - (ix) hairdresser;
 - (x) musical director;
 - (xi) personal trainer;

- (xii) physiotherapist;
- (xiii) producer;
- (xiv) production designer;
- (xv) set designer;
- (xvi) sports psychologist;
- (xvii) the provider of any other similar services.

44C Construction and related activities

- (1) For paragraph 12-315 (1) (b) of Schedule 1 to the Act, payment under a contract entered into after 30 June 2004 (including payments to subcontractors) for works or related activities is prescribed.
- (2) For subsection 15-10 (2) of Schedule 1 to the Act, the amount to be withheld from a payment mentioned in subregulation (1) is 5% of each payment under a contract.
- (3) In this regulation:

related activities includes activities associated with the construction, installation and upgrading of buildings, plant and fixtures.

Examples

Administration, assembly, de-commissioning plant, design, commissioning and operation of facilities, costing, engineering, erection, fabrication, hook-up, installation, project management, site management, supervision and provision of personnel, supply of plant and equipment, warranty repairs.

works includes the construction, installation and upgrading of buildings, plant and fixtures.

Examples

Dam, electricity links, mine site development, natural gas field development, natural resource infrastructure, oilfield development, pipeline, power generation infrastructure, railway or road, residential building, resort development, retail or commercial development, upgrading airport, upgrading telecommunications equipment, water treatment plant.

44D Limits on amount withheld under this Division

- (1) This regulation applies to an amount that is required by this Division to be withheld from a payment if any amounts are already withheld under Subdivision 12-FB of the Act from the payment.
- (2) The amount is reduced by the amounts already withheld from the payment.

Example

A payer is required to withhold an amount under section 12-315 of Schedule 1 to the Act from a payment made to a foreign resident. However, if the foreign resident has an agent who is an intermediary, the intermediary is required to withhold an amount under section 12-317 of that Schedule from that payment. The amount to be withheld under section 12-317 of that Schedule is reduced by the amount already withheld under section 12-315 of that Schedule.

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; 2003 No. 74.
2. Notified in the *Commonwealth of Australia Gazette* on 3 June 2004.