



Taxation Administration Amendment Regulations 2010 (No. 3)

Select Legislative Instrument 2010 No. 189

I, QUENTIN BRYCE, 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 29 June 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

NICK SHERRY
Assistant Treasurer

1 Name of Regulations

These Regulations are the *Taxation Administration Amendment Regulations 2010 (No. 3)*.

2 Commencement

These Regulations commence on the commencement of Part 1 of Schedule 2 to the *Tax Laws Amendment (2010 Measures No. 2) Act 2010*.

3 Amendment of *Taxation Administration Regulations 1976*

Schedule 1 amends the *Taxation Administration Regulations 1976*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 2, after definition of *tax-related liability*

insert

top rate means the sum of:

- (a) the highest rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986*; and
- (b) the rate of levy specified in subsection 6 (1) of the *Medicare Levy Act 1986*.

[2] Subregulation 34 (4), definition of *top rate*

omit

[3] Subregulation 34 (4), at the foot

insert

Note For *top rate*, see regulation 2.

[4] Subregulation 37 (2), at the foot

insert

Note For *top rate*, see regulation 2.

[5] Subregulation 37 (3)

omit

[6] Subregulation 38 (2), at the foot

insert

Note For *top rate*, see regulation 2.

[7] Subregulation 38 (3)

omit

[8] Part 5, after Division 3

insert

**Division 3A Withholding arrangements —
closely held trusts**

38A Prescribed trusts

- (1) For subparagraph 12-175 (1) (c) (iii) in Schedule 1 of the Act, the following trusts are prescribed:
 - (a) a trust that is a discretionary mutual fund;
 - (b) an employee share trust for an employee share scheme;
 - (c) a law practice trust.

(2) In this regulation:

discretionary mutual fund means:

- (a) a discretionary mutual fund (within the meaning of subsections 5 (5) and (6) of the *Financial Sector (Collection of Data) Act 2001*); or
- (b) a fund that provides professional indemnity insurance or insurance like cover to a legal practitioner, including a fund established under legislation or by a State or Territory law society to provide professional indemnity cover to its members.

employee share trust, for an employee share scheme, has the meaning given by subsection 130-85 (4) of the *Income Tax Assessment Act 1997*.

law practice trust means a trust that is:

- (a) created and maintained for the purposes of, or in connection with:
 - (i) the provision of legal services by a duly qualified legal practitioner; or
 - (ii) the deposit of money of a kind described in column 1 of item 4 of the table in subsection 202D (1) of the *Income Tax Assessment Act 1936*; and
- (b) regulated by a State or Territory law for the regulation of legal practices or legal services.

38B Threshold amounts for exceptions

For subsection 12-185 (1) of the Act, the amount of the threshold, below which payments are not required to be withheld under sections 12-175 and 12-180 of the Act, is:

- (a) if the payment is for the whole of a financial year — \$120;
- (b) if the payment is for part of a financial year — the amount worked out using the formula:

$$\frac{P \times \$120}{365}$$

where:

P is the number of days in the financial year for which the amount is payable.

38C Amount to be withheld from distribution of income of closely held trust

For subsection 15-10 (2) of the Act, the amount to be withheld by a trustee of a closely held trust from a distribution to a beneficiary of the trust under subsection 12-175 (2) of the Act is the amount worked out using the formula:

distribution to be made to the beneficiary × top rate

Note 1 The amount of a distribution in a financial year is affected by the operation of subsection 12-175 (4) of the Act.

Note 2 For *top rate*, see regulation 2.

38D Amount to be withheld if beneficiary is presently entitled to income of closely held trust

For subsection 15-10 (2) of the Act, the amount to be withheld by a trustee of a closely held trust from a beneficiary's share of the net income of the trust under subsection 12-180 (2) of the Act is the amount worked out using the formula:

beneficiary's share of the net income of the trust × top rate

Note 1 The amount of an entitlement in a financial year is affected by the operation of subsection 12-180 (4) of the Act.

Note 2 For *top rate*, see regulation 2.