

Taxation Administration Amendment Regulations 2002 (No. 1)

2002 No. 102

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 102

Issued by authority of the Minister for Revenue and Assistant Treasurer

Taxation Administration Act 1953

Taxation Administration Amendment Regulations 2002 (No. 1)

Section 18 of the *Taxation Administration Act 1953* (the Act), provides that the GovernorGeneral may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the proposed Regulations is to specify the rates of withholding tax that would apply when a 'departing Australia superannuation payment' is made.

Recent amendments to the Superannuation Industry (Supervision) Regulations and the Retirement Savings Account Regulations allow superannuation benefits that are normally required to be preserved until retirement to instead be paid to a temporary resident after they have permanently departed Australia.

As these payments will not be preserved until retirement it is not appropriate that they receive concessional taxation treatment. Accordingly the payments will be defined as 'departing Australia superannuation payments' under subsection 27A(1) of the *Income Tax Assessment Act 1936* and be subject to special rates of taxation set out in the *Income Tax (Superannuation Payments Withholding Tax) Act 2002*. Collection of the tax on these payments is to be achieved through the payer being required to withhold tax before making the 'departing Australia superannuation payment'.

Section 12-305 of Schedule 1 to the Act provides that an entity must withhold an amount from a 'departing Australia superannuation payment'. Section 15-35 of Schedule 1 to the Act provides scope for regulations to be made to specify the rates of withholding tax that will apply. These rates would be identical to those set out in the *Income Tax (Superannuation Payments Withholding Tax) Act 2002*. In most cases this would mean a 30% withholding tax would apply, though this may vary depending on the components of the benefit.

Details of the amending Regulations are set out in the Attachment.

The amending Regulations commenced on 1 July 2002.

ATTACHMENT

Taxation Administration Amendment Regulations 2002 (No. 1)

Explanation of the amendments

Regulation 1 - specifies the name of the Regulations as the Taxation Administration Amendment Regulations 2002 (No. 1).

Regulation 2 - provides that the Regulations commenced on 1 July 2002.

Regulation 3 - provides that Schedule 1 amends the Taxation Administration Regulations 1976.

Schedule 1 amendments

Item 1 of Schedule 1 - amends the heading of Division 4, Part 5 of the Taxation Administration Regulations 1976 to reflect new Regulation 43A which is inserted by item 2.

Item 2 of Schedule 1 - inserts new Regulation 43A. This specifies the withholding tax rates to apply when a 'departing Australia superannuation payment' is made. For that part of a 'departing Australia superannuation payment' that represents undeducted contributions or a post-June 1994 invalidity component the withholding rate is nil. For that part that represents an untaxed element of the post-June 1983 component the withholding rate is 40%. For the remainder of the payment the withholding rate is 30%.

The terms used to define the components of the benefit are already defined in section 27A of the Act and have the same meaning in relation to a 'departing Australia superannuation payment' as they do in relation to other existing superannuation payments.