



Explanatory Statement

PAYG Withholding Variation: Variation of amount to be withheld from certain payments made by external administrators and trustees of bankrupt estates

General Outline of Instrument

1. This instrument is made under section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies the amount of withholding required by a payer under the pay as you go withholding system for payments to employees in certain classes of cases.
3. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Date of effect

4. The instrument commences on 1 October 2015.

What is this instrument about

5. Legislative Instrument No. F2005L01215 and Legislative Instrument No F2005L01216, which were registered on the 24 May 2005, provided a variation to the rate of withholding for certain payments made by external administrators and trustees in bankruptcy, respectively. The variations provided a flat rate of withholding of 31.5% for certain types of payments to employees which accrued prior to the administrator or trustee being appointed to that role.
6. Those instruments are due for repeal on 1 October 2015, under the sunset provisions contained in Section 50 of the *Legislative Instruments Act 2003*. This instrument replaces those two instruments from that date.

What is the effect of this instrument

7. The variation provides a simple withholding calculation for external administrators and trustees in bankruptcy, when paying entitlements that accrued prior to their appointment. This provides a less onerous arrangement

for these payers in addressing the historical payment obligations of the entity which is under administration or bankruptcy.

8. A flat rate of 34.5% will apply to these payments. This is the marginal tax rate which applies to annual incomes between \$37,000 and \$80,000 for the 2015-16 income year. That rate is comparable to the rate of 31.5% which applied under the existing instruments. When those instruments were made, in the 2004-05 income year, that rate applied to incomes between \$21,600 and \$58,000.
9. That rate will be appropriate for most recipients of these payments.
10. An assessment of the compliance cost indicates that the impact will be minor for both implementation and on-going compliance costs. The new instrument is of a minor or machinery nature.

Background

11. The variation is created to lessen the compliance burden on administrators and trustees when paying entitlements to employees of the entity which is under administration or bankruptcy.

Consultation:

12. The existing instruments were developed in close consultation with the peak body representing insolvency practitioners. That body has confirmed that they want the arrangements to continue.
13. Wider consultation was not considered to be necessary because the instrument merely preserves a concession that would otherwise be removed as a consequence of the impending repeal of the existing instruments.

Sally Jane Druhan
Deputy Commissioner of Taxation

25 September 2015

Legislative references:

Taxation Administration Act 1953
Legislative Instruments Act 2003

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The variation provides a simple withholding calculation for external administrators and trustees in bankruptcy, when paying entitlements that accrued prior to their appointment. This provides a less onerous arrangement for these payers in addressing the historical payment obligations of the entity which is under administration or bankruptcy.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because the new instrument is of a minor or machinery nature. The variation provides for a flat rate of withholding from certain payments.

Conclusion

This legislative instrument does not raise any human rights issues.