



Explanatory Statement

PAYG Withholding - Variation to the rate of withholding for certain foreign resident staff who provide support to those engaged in entertainment or sports activities

General outline of instrument

1. This variation is made by the Commissioner of Taxation under section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies to nil the amount required to be withheld from payments made to foreign resident support staff who provide support to those engaged in entertainment or sports activities, where those support staff are normally resident in countries which have an international tax agreement with Australia.
3. This instrument repeals and replaces legislative instrument F2017L01228, registered on 21 September 2017.
4. This is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

6. The instrument commences on the day after its registration with the Federal Register of Legislation.

What is this instrument about?

7. Legislative Instrument F2017L01228 varies to nil the amount required to be withheld from payments made to certain foreign resident staff who provide support to those engaged in entertainment and sports activities.
8. That instrument made reference to regulation 44 and paragraph 44B (4) (b) of the *Taxation Administration Regulations 1976*. That reference is now incorrect, with the equivalent provision being paragraph 32 (3) (b) of the *Taxation Administration Regulations 2017*. This new instrument provides the correct reference.
9. Upon registration this instrument repeals and replaces F2017L01228 and continues to provide the same treatment for the affected class of cases.

What is the effect of this instrument?

10. The only change being made in this instrument is to update the reference to a regulation within the instrument to the correct regulation number following the remaking of the *Taxation Administration Regulations 1976* into the *Taxation Administration Regulations 2017*.
11. An assessment of the compliance cost impact 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

12. From 1 July 2004 foreign resident withholding was introduced to payments relating to entertainment or sports activities, including support staff.
13. In 2007 legislative instrument F2007L03532 was created to remove the requirement to withhold tax from payments to support staff that would be exempt from tax in Australia due to the operation of an international tax agreement.
14. That variation was renewed in 2017 as legislative instrument No. F2017L01228.
15. In 2017, shortly after the registration of that instrument, the *Taxation Administration Regulations 1976* were re-made. As a result the relevant references contained in the 2017 variation were no longer applicable. This new variation updates the references by inserting a reference to paragraph 32(3)(b) of the *Taxation Administration Regulations 2017*.

Consultation

16. No consultation has been conducted as the effect of the instrument is to continue the current withholding variation for these payments. The only change that is being made in this instrument is to update a regulation reference within the instrument to the correct regulation.

Legislative references:

Taxation Administration Act 1953

Legislation Act 2003

Acts Interpretation Act 1901

Taxation Administration Regulations 1976

Taxation Administration Regulations 2017

Human Rights (Parliamentary Scrutiny) Act 2011

International Tax Agreements Act 1953

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

This legislative instrument removes the requirement to withhold amounts from payments made to support staff from the relevant countries, who are engaged in entertaining and sports activities, because the international tax agreements made with those countries act to ensure that the income earned will not be subject to tax in Australia.

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. This instrument avoids unnecessary withholding in circumstances where no tax will be payable.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.