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## Explanatory Statement

# Taxation Administration – Payment Summary Deferral: Employment Termination and Departing Australia Superannuation Payments Deferral 2022

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### General outline of instrument

1. This Instrument is made under section 388-55 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).
2. This Instrument defers the due date for providing the Commissioner with copies of payment summaries in respect of employment termination payments or departing Australia superannuation payments to 14 August following the end of the financial year in which the payments are made.
3. This is a Legislative Instrument for the purposes of the *Legislation Act 2003*.
4. 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

5. This Instrument commences on 1 April 2022.
6. Under section 12(2) of the *Legislation Act 2003* this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth.

### What is the effect of this instrument

7. The effect of this Instrument is payers are not required to give copies of payment summaries to the Commissioner within 14 days of making employment termination payments or departing Australia superannuation payments where they have withheld amounts from payments in accordance with Subdivision 12-C, section 12-85 or Subdivision 12-FA, section 12-305 of the TAA 1953. They are however required to provide copies but within a timeframe aligned with their other reporting obligations.
8. This instrument does not defer the due date for providing the payee the payment summaries in respect of employment termination payments or departing Australia superannuation payments. The payer is still required to provide the payment summaries to the payee within 14 days of making the payments.
9. This legislative instrument repeals *Taxation Administration Act 1953 – PAYG Withholding – Payment summary deferral – Employment termination and departing Australia superannuation payments* (F2012L00584) registered on 2 March 2012.

## Compliance cost assessment

10. 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

11. Paragraphs 16-165(1)(b) and 16-166(b) of Schedule 1 to the TAA 1953 require a copy of the payment summary relating to these payments to be provided to the Commissioner within 14 days of making the payments.
12. This deferral has been in place since 16 November 2006, provided by:
  - (a) *Pay As You Go (PAYG) Withholding: Notice of exemption from requirement to give a copy of payment summary to the Commissioner within 14 days under section 16-165(1)(b) and section 16-166(b) of Schedule 1 to the Taxation Administration Act 1953* (F2006B11584) registered on 16 November 2006, and
  - (b) *Taxation Administration Act 1953 – PAYG Withholding – Payment summary deferral – Employment termination and departing Australia superannuation payments* (F2012L00584) registered 15 March 2012.
13. This instrument continues to defer the due date for providing the payment summary until 14 August following the end of the financial year in which the payments are made.
14. The deferral facilitates the efficient administration of payment summary reporting to the Commissioner as it aligns with the due date of the majority of other payment summaries. It also removes an unnecessary administrative burden on employers and other payers in having to provide the Commissioner separate payment summaries throughout the financial year.

## Consultation

15. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.
16. Broad consultation has occurred. The draft determination and draft explanatory statement were published on the ATO Legal Database at [ato.gov.au](http://ato.gov.au) on 7 March 2022 seeking feedback and comments for a period of two weeks. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders. Consultation on the draft determination and draft explanatory statement was also announced on “What we are consulting about” at [ato.gov.au](http://ato.gov.au). No comments were received by the due date.

## Legislative references

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Income Tax Assessment Act 1997*

*Legislation Act 2003*

*Taxation Administration Act 1953*

## **Statement of compatibility with Human Rights**

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 of the Legislative Instrument**

This instrument defers the due date for providing the Commissioner with copies of payment summaries in respect of employment termination payments and departing Australia superannuation payments to 14 August after the end of a financial year for any payment made. These copies would otherwise have to be provided to the Commissioner 14 days after the date of making the payment.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

This Instrument defers the requirement for an employer or other payer to provide the Commissioner with a copy of a payment summary for a withholding payment until 14 August of the following year.

The 14-day reporting timeframe is not required for effective administration and places an unnecessary burden on employers and other payers.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.