



Australian Government
Australian Taxation Office

Taxation Administration (Withholding Variation for Personal Services Income) Legislative Instrument 2023

I, Ben Kelly, Deputy Commissioner of Taxation, make the following legislative instrument.

Dated 15 March 2023

Ben Kelly
Deputy Commissioner of Taxation

Contents

1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Schedules	2
6 Variation of withholding for alienated personal services income	2
Schedule 1—Repeals	3
<i>Variation of withholding for personal services income (15/03/2013)</i>	3

1 Name

This instrument is the *Taxation Administration (Withholding Variation for Personal Services Income) Legislative Instrument 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2023.	1 April 2023.

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 15-15 of Schedule 1 to the Act.

4 Definitions

Note 1: A number of expressions used in this instrument have the same meaning as in the Act, including the following:

- (a) alienated personal services payment;
- (b) amount required to be withheld;
- (c) PAYG payment period;
- (d) personal services entity;
- (e) personal services income;
- (f) withholding payment.

Note 2: Expressions in Schedule 1 to the Act have the same meaning as in the *Income Tax Assessment Act 1997* (see section 3AA of the Act).

In this instrument:

Act means the *Taxation Administration Act 1953*.

net personal services income percentage means the percentage worked out using the following method statement:

Step 1 – subtract any allowable deductions (excluding salary or wages paid in accordance with subsection 86-15(4) of the *Income Tax Assessment Act 1997*) for the previous income year from the personal services entity's

gross personal services income (exclusive of GST) for the previous income year;

Step 2 – divide the result by the personal services entity's gross personal services income (exclusive of GST) for the previous income year; and

Step 3 – multiply the result by 100 to give a percentage.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

6 Variation of withholding for alienated personal services income

An amount that a personal services entity must pay to the Commissioner under section 13-5 of Schedule 1 to the Act is varied to nil in cases where:

- (a) the personal services entity receives an alienated personal services payment that relates to one or more individuals' personal services income;
- (b) the personal services entity pays salary or wages to the individual or individuals within 14 days after the end of the PAYG payment period in which it receives the alienated personal services payment; and
- (c) the salary or wages paid by the personal services entity is equal to or greater than either:
 - (i) 70 per cent of the gross personal services income (exclusive of GST) received by the personal services entity during the PAYG payment period; or
 - (ii) the net personal services income percentage applied to the gross personal services income (exclusive of GST) received by the personal services entity during the PAYG payment period.

Note: Under Division 13 of Schedule 1 to the Act, an entity that receives an alienated personal services payment may be obliged to pay an amount to the Commissioner. When an entity is required to pay an amount to the Commissioner under Division 13 (including under section 13-5), the alienated personal services payment can be treated as a 'withholding payment'. Further, the amount the entity must pay to the Commissioner is an 'amount required to be withheld' from a withholding payment (see relevant definitions in subsection 995-1(1) of the *Income Tax Assessment Act 1997*).

Schedule 1—Repeals

Variation of withholding for personal services income (15/03/2013)

1 The whole of the instrument

Repeal the instrument.