



Explanatory Statement

Taxation Administration (Withholding Variation for Occasional Payroll Donations to Deductible Gift Recipients) Legislative Instrument 2024

General outline of instrument

1. This instrument is made under section 15-15 in Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. This instrument varies the amount a payer is required to withhold under the pay as you go (PAYG) system for payees who make payroll donations to a deductible gift recipient under an occasional giving arrangement. It replaces the legislative instrument *Taxation Administration Act 1953 – Pay as you go withholding – Occasional payroll donations to deductible gift recipients No. 4* (F2014L00012).
3. The instrument 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 the day after it is registered on the Federal Register of Legislation.

Effect of this instrument

6. This instrument varies the amount that a payer is required to withhold from a withholding payment to a payee under Subdivision 12-B in Schedule 1 to the Act where:
 - (a) all or part of the withholding payment has been made, or will be made, as a donation to a deductible gift recipient under an occasional giving arrangement; and
 - (b) the payee of the withholding payment has not advised the payer that they do not want a variation of the amount withheld.
7. The varied amount required to be withheld must be worked out in accordance with the method statement in section 6 of the instrument. If the amount calculated using the method statement is zero or negative, the amount that the payer must withhold from the payment is varied to nil.
8. Step 2 (in paragraph 6(2)(b)) of the method statement requires the payer to multiply the amount of the donation to the deductible gift recipient under the occasional giving arrangement by 0.32. This rate has been chosen as it is approximately the mid-point tax rate (after accounting for the Medicare levy) for Australian residents for tax purposes.

Compliance cost assessment

9. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature (OIA23-05768).

Background

10. There is another legislative instrument – *PAYG Withholding Variation: Donations to deductible gift recipients* – which provides a reduction in withholding when a payer makes a donation at the direction of a payee under a regular planned giving arrangement. That instrument is not suitable for cases where a payee wishes to make a one-off or occasional donation.

11. The 2009 Victorian bushfires resulted in a demand from payers and payees who sought a streamlined withholding variation arrangement for one-off or occasional donations made to deductible gift recipients through payroll systems that was comparable to the arrangement provided in respect of regular workplace giving arrangements. To facilitate this, a PAYG withholding variation legislative instrument for occasional or irregular donations was drafted and first registered in 2009 and remade in 2014.

12. There is an ongoing need for a simple withholding variation mechanism to facilitate one-off or occasional donations through payroll systems to deductible gift recipients. This instrument will continue to provide a simple withholding variation mechanism for a payer (such as an employer) who, at the direction of the payee (such as an employee), makes donations to deductible gift recipients under occasional giving arrangements.

Consultation

13. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make an instrument.

14. Broad public consultation was undertaken on this instrument for a period of 4 weeks from 3 October to 31 October 2023.

15. The draft instrument and draft explanatory statement were published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters that they provide to their subscribers and members.

16. No submissions were received during this consultation process.

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 provides a simple mechanism to vary the amount a payer is required to withhold under the pay as you go (PAYG) system for a payee who makes a one-off or occasional payroll donation to a deductible gift recipient under an occasional giving arrangement.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. The instrument provides a simple mechanism for calculating the amount required to be withheld when an occasional donation is made, and reduces compliance costs for those involved in making a donation.

Conclusion

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