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## Explanatory Statement

# Taxation Administration (Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes) Legislative Instrument 2024

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### General outline of instrument

1. This instrument is made under sections 15-15 and 16-180 in Schedule 1 of the *Taxation Administration Act 1953*.
2. This instrument varies the amount an Australian payer must withhold (to nil) from certain withholding payments made to entertainers who are residents of the United States of America (US) when they undertake activities as an entertainer in Australia. It replaces the instrument titled *Taxation Administration Act 1953 – Pay as you go withholding – Variation to remove the requirement to withhold from payments for certain US resident entertainers and sport persons* (F2014L00379).
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 amounts a payer must withhold (to nil) from withholding payments covered by paragraph 1 of Article 17 of the Australia and US international tax agreement, where:
  - (a) the payee is a US resident entertainer (including a theatrical, motion picture, radio or television artiste, musician, and athlete);
  - (b) the payment is for activities the payee undertakes in Australia as an entertainer; and
  - (c) the sum of all such payments does not exceed 10,000 US dollars (or the equivalent amount in Australian dollars) for the relevant income year.
7. For the purposes of the instrument, 'Australia and US international tax agreement' means the 'United States convention', as defined in section 3AAA of the *International Tax Agreements Act 1953*.
8. This instrument also provides payers with an exemption from having to give a payment summary for payments to US resident entertainers, where no amount was withheld from those payments in a financial year.

## Compliance cost assessment

9. Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (The Office of Impact Analysis reference: OIA24-07525).

## Background

10. To help taxpayers meet their annual income tax liability, they are required to pay amounts of their income at regular intervals as it is earned during the year. The system for collecting these amounts is called 'Pay as you go' (PAYG). Under PAYG withholding, amounts are collected by payers in respect of particular kinds of payments or transactions to payees. The amount withheld is then paid to the Commissioner of Taxation.

11. Since 1 July 2004, the requirement to withhold tax from earnings has applied to payments relating to entertainment and sports activities carried on in Australia by foreign residents. An instrument was first made in 2014 to remove withholding requirements for certain payments made to US resident entertainers (including athletes or sports people) carrying on entertainment activities in Australia within an income year. This instrument has the same substantive effect as the instrument made in 2014. It repeals and replaces that instrument, which would otherwise sunset on 1 October 2024.

12. When a US resident is paid for entertainment activities (including athletics or sports) in Australia, no Australian income tax is payable unless their total earnings exceed US \$10,000 (or its equivalent in Australian dollars) for that income year. This is a result of the operation of the first paragraph of Article 17 of the Australia and United States international tax agreement.

13. Without a withholding variation, a US resident entertainer whose income is not taxable in Australia is required to apply to the Australian Taxation Office (ATO) to obtain a formal notice varying their withholding to nil. This process creates unnecessary compliance costs for both the person concerned and their Australian payer.

14. This instrument allows a payer to determine whether the conditions for withholding variation specified in the instrument are met, without the need to refer the issue to the ATO. It will continue to provide a withholding variation for US resident entertainers (including athletes or sports people) who receive payments in the circumstances described in section 6 of the instrument.

15. The instrument also exempts payers from the related requirement to issue payment summaries to those United States residents entertainers where no amount was withheld from payments to them in a income year.

16. This instrument will reduce the compliance burden on payers and payees in entertainment and athletics.

17. In this instrument, the expression 'athletes' is intended to cover 'sports persons', which is the term that was used in the previous instrument (*Taxation Administration Act 1953 – Pay as you go withholding – Variation to remove the requirement to withhold from payments for certain US resident entertainers and sport persons* (F2014L00379)). This change is to ensure consistency with the terminology used in the Australia and US international tax agreement.

## Consultation

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

19. Broad public consultation was undertaken on drafts of this instrument and explanatory statements for a period of 4 weeks from 9 May to 6 June 2024.

20. The draft instrument and draft explanatory statement were published to the ATO Legal database and advertised via the database's 'What's new' page. Major tax and superannuation publishers and associations commonly monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.

21. No submissions were received during the consultation period.

**Legislative references**

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Income Tax Assessment Act 1997*

*International Tax Agreements Act 1953*

*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*

### **Taxation Administration (Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes) Legislative Instrument 2024**

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 exempts employers or payers from having to withhold amounts from certain payments made to entertainers (including theatrical, motion picture, radio or television artistes, musicians and athletes) who are residents of the United States of America (US), when they undertake activities as an entertainer in Australia. It also provides payers with an exemption from having to give a payment summary for payments to US resident entertainers, where no amount was withheld from those payments in a financial year.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms. The instrument reduces the compliance burden on US resident entertainers and their employers or payers.

#### **Conclusion**

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