



Explanatory Statement

PAYG Withholding Variation: Certain superannuation beneficiaries who have not quoted a tax file number

General Outline of Instrument

1. This variation is made by the Commissioner of Taxation (the Commissioner) under section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies the rate of withholding required under the pay as you go withholding system for payments in a certain class of cases.
3. This legislative instrument repeals and replaces legislative instrument *Variation to the rate of withholding for certain superannuation beneficiaries who have not quoted a tax file number* (F2007L02031), registered on 28 June 2007.
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. This instrument commences on the day after its registration on the Federal Register of Legislation.

What is this instrument about?

7. Legislative Instrument No. F2007L02031 varied the rate of withholding to zero for the non-assessable non-exempt component of superannuation payments, when the payee has not quoted a tax file number.

8. That instrument is due for repeal on 1 October 2017, under the sunset provisions contained in section 50 of the *Legislation Act 2003*.
9. Upon commencement, this instrument repeals and replaces F2007L02031 and continues to provide the same treatment for the affected class of cases.

What is the effect of this Instrument?

10. This variation ensures that amounts of non-assessable non-exempt income paid to a superannuation beneficiary are not subject to withholding when the payee has not quoted their tax file number. Without this variation, withholding would be required from these amounts when paid in conjunction with other assessable income.
11. The information in this instrument will be used by superannuation funds, professional advisers, software developers and the Tax Office.
12. 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

13. Certain payments of superannuation benefits are classified as non-assessable non-exempt income of the beneficiary. Payments in this category are not subject to income tax.
14. Some beneficiaries will receive payments of benefits that include both amounts that are subject to income tax along with non-assessable non-exempt amounts.
15. In the absence of this variation, a beneficiary who has not quoted their tax file number would be subject to withholding at the highest marginal rate, plus Medicare levy, from the whole payment, including that part that will not be subject to tax. This is a consequence of the application of section 37 of the *Taxation Administration Regulations 1976*.
16. This instrument acts to ensure that withholding is only applied to the assessable portion of such a payment in these circumstances.

Consultation

17. Broad consultation has occurred. The draft determination and draft explanatory statement were:
 - 1) published on the ATO Legal Database at ato.gov.au on 14 August 2017 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.
 - 2) announced on "What we are consulting about" at ato.gov.au.

3) promoted directly in an alert seeking feedback from superannuation funds regulated by the Australian Prudential Regulation Authority.

18. No comments were received by the due date.

Legislative references:

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Income Tax Assessment Act 1936

Legislation Act 2003

Taxation Administration Act 1953

Taxation Administration Regulations 1976

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 continues to ensure that amounts of non-assessable non-exempt income paid to a superannuation beneficiary are not subject to withholding when the payee has not quoted their tax file number. Without this variation, withholding would be required from these amounts when paid in conjunction with other assessable income.

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.

Conclusion

This legislative instrument does not raise any human rights issues.