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## Explanatory Statement

# PAYG Withholding Variation: Performing Artists 2018

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### 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 by a payer under the pay as you go withholding system for payments in a certain class of cases.
3. This is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. This legislative instrument repeals and replaces Legislative Instrument No. F2016L01639 registered on 25 October 2016.
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.F2016L01639 provided a variation to the rate of withholding for payments made to performing artists when certain conditions were met.
8. That instrument made reference to regulation 44 of the *Taxation Administration Regulations 1976*. That reference is now incorrect, with the equivalent provision being sub-regulation 27(c) of the *Taxation Administration Regulations 2017*. This new instrument provides the correct reference.
9. Upon registration this instrument repeals and replaces F2016L01639. It continues to provide the same treatment for the affected class of cases.

## **What is the effect of this Instrument?**

10. The effect of this instrument is to continue the present withholding arrangement varying withholding to a flat rate of 20% for performing artists being paid for performing in a promotional activity.
11. 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**

12. In 2002 a withholding variation was first created to tax performing artists at a rate more aligned to their end of year tax liability and to provide simplicity for their payers when administering these payments.
13. The payments covered by this variation are for work that is generally of a short term or one-off nature.
14. The variation was made in consultation with industry groups to provide a withholding rate in keeping with the irregular work patterns of performing artists.
15. That variation was renewed, most recently in 2016 as Legislative Instrument No.F2016L01639.
16. In 2017 the *Taxation Administration Regulations 1976* were remade. As a result the relevant references contained in the 2016 variation were no longer applicable. This new variation corrects that error by inserting a reference to sub-regulation 27(c) of the *Taxation Administration Regulations 2017*.
17. The variation helps avoid unnecessary over-withholding that would in most cases be refunded to the artist when they lodge their income tax return.
18. This instrument continues that treatment.

## **Consultation**

19. No consultation has been conducted as the effect of the instrument is to support current practices. The only substantial change that was made to the instrument was to correct the reference to the *Taxation Administration Regulations 2017*.

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### **Legislative references:**

*Taxation Administration Act 1953*

*Taxation Administration Regulations 2017*

*Legislation Act 2003*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Acts Interpretation Act 1901*

## **Statement of Compatibility with Human Rights**

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **PAYG Withholding Variation: Performing Artists 2018**

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 varies the withholding rate to 20% for payments made under a contract to an individual engaged as a performing artist to perform in an activity in which the individual:

- (i.) endorses or promotes goods or services; or
- (ii.) appears or participates in an advertisement;

unless the individual is engaged primarily because he or she is a sports person.

The individual engaged as a performing artist has provided the payer with a Tax file number declaration quoting their tax file number.

#### **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 is compatible with human rights as it does not raise any human rights issues.