



Taxation Administration Act 1953

Variation to remove the requirement to withhold from payments for certain US resident entertainers and sport persons

Explanatory Statement

General Outline of Instrument

1. This instrument ensures that withholding is not required from payments made to entertainers and sport persons who are residents of the United States of America, when no income tax is payable in Australia due to the operation of the international tax agreement between Australia and the United States.
2. This instrument is made by the Commissioner of Taxation (the Commissioner) pursuant to sections 15-15 and 16-180 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
3. This is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Date of effect

4. The instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

What is this instrument about?

5. The purpose of the instrument is to remove the requirement to withhold from the payments to entertainers and sportspersons who are residents in the United States when working in Australia in circumstances where no income tax is payable in Australia on the relevant income.
6. It also removes the requirement to issue payment summaries to those United States residents in respect of the withholding payments.

What is the effect of this Instrument?

7. The instrument removes the need for payers and payees to complete unnecessary paperwork in relation to payments which will not be subject to income tax in Australia.
8. The administrative requirements are unjustified in circumstances where there is clearly no income tax liability and may act as a disincentive to those considering working in Australia.
9. Compliance cost impact: No change. The legislative instrument will reduce the compliance cost burden for affected taxpayers, but the aggregate impact will be negligible given the very small scale of the change and the population size.

Background

10. With effect from 1 July 2004, withholding was introduced for payments relating to entertainment and sports activities carried on in Australia by foreign residents,
11. When a resident of the United States is paid for entertainment and sports activities in Australia, no Australian tax is payable unless their earnings exceed US \$10,000 or its equivalent in Australian dollars for that income year. This is a result of the operation of Paragraph 1 of Article 17 of the Australia and United States international tax agreement.
12. Currently, a foreign resident entertainer or sportsperson 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.
13. This notice allows the payer to determine whether the conditions are met without the need to refer the issue to the ATO.
14. We have worked closely with entertainment and sports industry representatives to design processes that minimise costs of compliance and reduce unnecessary obstacles to doing business in Australia. This instrument will greatly reduce the compliance burden for payers and payees in the entertainment and sports industry.

Consultation

Due to the specialised nature of this instrument, consultation has been with a limited number of key stakeholders. They are in agreement with the arrangements, and are appreciative of the reduction in paperwork.

Steve Vesperman
Deputy Commissioner of Taxation
31 March 2014

Legislative references:

Taxation Administration Act 1953
Legislative Instruments Act 2003

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 instrument ensures that withholding is not required from payments made to entertainers and sport persons who are residents of the United States of America, when no income tax is payable in Australia because of the operation of the international tax agreement between Australia and the United States. No Australian income tax is payable unless their earnings exceed US \$10,000 or it's equivalent in Australian dollars for the income year.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms as it has been developed to greatly reduce the compliance burden for payers and payees in the entertainment and sports industry and 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.

Steve Vesperman
Deputy Commissioner of Taxation
31 March 2014
