



Explanatory Statement

PAYG Withholding Variation: Variation of amount to be withheld from Indigenous artists when an ABN is not provided

General Outline of Instrument

1. This instrument is made under section 15-15 and 16-180 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies the amount of withholding to nil in certain classes of cases described below.
3. This instrument also removes the requirement to provide payment summaries for those payments.
4. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Date of effect

5. The instrument commences on 1 April 2016.

What is this instrument about

6. Legislative Instrument No. F2006B00477, provided a variation to the rate of withholding to NIL for any payment to an indigenous artist for artistic works where the indigenous artist works or lives in zone A (ordinary or special) and does not quote an Australian Business Number (ABN).
7. This instrument is due for repeal on 1 April 2016, under the sunset provision contained in Section 50 of the *Legislative Instruments Act 2003*. This instrument replaces that instrument from that date.

What is the effect of this instrument

8. This instrument reduces compliance costs for indigenous artists who live in remote areas and the businesses that pay them.
9. The variation provides a NIL withholding amount for indigenous artists who live or work in zone A or special zone A and do not quote an ABN. As a

result, artists who are covered by the instrument are not required to register for an ABN in relation to their artistic activities.

10. Zone A has the meaning given in Schedule 2 of the *Income Tax Assessment Act 1936* as in force from time to time. Special zone A lies within that zone and is defined in subsection 79(3D) of that act. Zone A is an area of Australia which, due to isolation and other factors, suffers disadvantage in comparison with less remote areas. For more information about Special or Ordinary Zone A visit our website www.ato.gov.au and search for 'Indigenous artists who live or work in isolated areas may not need to quote an ABN'.
11. This provides a less onerous arrangement for those artists who, for reasons such as age, language, level of education and isolation, may not be able to fully engage with the complexities of the taxation system. Often the relevant artistic works are a joint product of a number of contributing artists, which further complicates the taxation treatment which may apply.
12. Gallery owners and other relevant payers believe that their businesses would be adversely affected if they were required to withhold where artists are unable to quote an ABN.
13. A withholding rate of NIL will apply to these payments.
14. This rate will be appropriate for most payment recipients.
15. Because the withholding rate is reduced to NIL, the requirement to provide payment summaries in respect of these payments is removed.
16. An assessment of the compliance cost 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

17. The variation is created to lessen the compliance burden on indigenous artists, gallery owners and other relevant payers.

Consultation:

18. The existing instrument was developed following a consultation process which was coordinated by the Ministry for the Arts in 2001. Buyers of indigenous art and the Ministry for the Arts have been consulted and have confirmed that they want the arrangements to continue.
19. Wider consultation was not considered to be necessary because the instrument merely preserves a concession that would otherwise be removed as a consequence of the impending repeal of the existing instrument.

Legislative references:

Taxation Administration Act 1953

Legislative Instruments Act 2003

Income Tax Assessment Act 1936

Human Rights (Parliamentary Scrutiny) Act 2011

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

The variation provides a NIL withholding amount for indigenous artists who live or work in zone A and do not quote an ABN. As a result artists who are covered by the instrument are not required to register for an ABN in relation to their artistic activities.

This instrument provides a less onerous arrangement for those artists who, for reasons such as age, language, level of education and isolation may not be able to fully engage with the complexities of the taxation system. Often the relevant artistic works are a joint product of a number of contributing artists, which further complicates the taxation treatment which may apply.

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.