



Legislative Instrument

PAYG Withholding Variation: Performing Artists

Explanatory Statement

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 enables a variation to 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. F2005B03114 registered on the 14th of October 2005.

Date of effect

5. The instrument applies from 1 April 2016 and will be withdrawn on 31 October 2016.

What is this instrument about?

6. Legislative Instrument No. F2005B03114 provided a variation to the rate of withholding for payments made to performing artists when certain conditions are met. The variation was made in consultation with industry groups to provide a withholding rate in keeping with the irregular work patterns of performing artists.
7. This instrument is due for repeal on 1 April 2016, under the sunset provisions contained in Section 50 of the *Legislation Act 2003*. This instrument replaces that instrument from that date.
8. We are currently consulting with industry bodies about the continuation of the withholding rules set down in that instrument. To enable that consultation to be completed through a proper process, we have used this new instrument to extend the provisions of the current instrument for a further seven months.

What is the effect of this Instrument?

9. The variation will continue to allow a flat 20% rate of withholding for performing artists being paid for performing in a promotional activity.
10. 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

11. The 2005 variation was originally created to tax performing artists at a rate more aligned to their end of year tax liability and to provide simplicity for their payers.
12. The payments covered by this variation are for work that is of a short term or one-off nature.
13. The variation helps avoid unnecessary over withholding that would in most cases be refunded to the artist when they lodge their income tax return.
14. This instrument extends that treatment for a further seven months to enable consultation with industry groups to be completed before we determine what rules should be put in place for the longer term.
15. Due to complications with the consultation process the Office of Best Practice Regulation may not have had time to confirm that a Regulation Impact Statement is not required. Delaying the registration of this Legislative Instrument could lead to the situation where there is not an instrument in force and affected taxpayers would face increased reporting or withholding obligations. To avoid this situation the Commissioner will be registering this Legislative Instrument as an interim measure. This will allow for the continuation of the status quo while the Commissioner finalises consultation and is able to address all stakeholder concerns before reregistering a replacement Legislative Instrument by 31 October 2016.

Consultation

16. Consultation is currently occurring; when complete a new instrument will be made reflecting the requirements of affected industry participants.

Steve Vesperman
Deputy Commissioner of Taxation
Date 29 March 2016

Legislative references:

Taxation Administration Act 1953

Legislation Act 2003

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

This Legislative Instrument varies the withholding rate to 20% for payments to performing artists that perform in a promotional activity that is either:

- conducted in the presence of an audience
- intended to be communicated to an audience by print or electronic media
- for a film or tape
- for a television or radio broadcast.

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.