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# PAYG Withholding Variation: Performing Artists

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## Explanatory Statement

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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 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. F2016L00435 registered on the 30<sup>th</sup> of March 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 Legislative Instruments.

### What is this instrument about?

7. Legislative Instrument No.F2016L00435 provided a variation to the rate of withholding for payments made to performing artists when certain conditions are met.
8. Upon registration this instrument repeals and replaces F2016L00435 and continues to provide the same treatment for the affected class of cases.

### What is the effect of this Instrument?

9. The effect of this instrument is to continue the present withholding arrangement and vary withholding to a flat 20% rate 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. A 2002 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 when administering these payments.
12. The payments covered by this variation are for work that is of a short term or one-off nature.
13. The variation was made in consultation with industry groups to provide a withholding rate in keeping with the irregular work patterns of performing artists.
14. The variation helps avoid unnecessary over withholding that would in most cases be refunded to the artist when they lodge their income tax return.
15. This instrument continues that treatment.

## **Consultation**

16. In March 2016 a draft of this instrument was referred to a peak industry body for media, entertainment and the arts for dissemination to their members and for feedback, if any. No feedback was received.
17. No further consultation has been conducted as the effect of the instrument is to support current practices.

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### ***Legislative references:***

*Taxation Administration Act 1953*

*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**

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.