

TRADE SUPPORT LOANS ACT 2014

Trade Support Loan Rules 2014

Trade Support Loans (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018

EXPLANATORY STATEMENT

PURPOSE

The Trade Support Loans (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018 (the Instrument) amends the *Trade Support Loan Rules 2014* (the Rules) to insert a definition of 'ATO Occupation Code'; and substitutes subitem 7(2) with a method for calculating the standard deduction for an occupation by reference to the ATO Occupation Code, published by the ATO in June 2018. The Instrument also repeals the *Trade Support Loans (Occupation and Occupation Standard Deduction) Determination 2017* (the 2017 Determination).

The Rules were made by the Minister under section 106(1) of the *Trade Support Loans Act 2014* (the Act) for the purpose of subsection 47B(2) of the Act. The 2017 Determination was made under subsection 16(6) of the Rules. The Instrument is made under subsection 106(1) of the Act and subrule 16(6) of the Rules, as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (which, amongst other things, provides that a power to make an instrument of a legislative character shall be construed as including a power to repeal or amend such an instrument).

BACKGROUND

Under Subdivision AA of the Act, a person who has an accumulated Trade Support Loan debt (i.e. a debt to the Commonwealth arising from a student loan made to the person under the Act), and who is a foreign resident during a year (overseas debtor), is liable to pay the Commonwealth a levy. The amount of the levy an overseas debtor has to pay is contingent on the debtor's assessed worldwide income for the year, which is essentially the sum of the debtor's Australian income and foreign-sourced income for the year.

Subsection 47B(2) of the Rules states that the rules may provide for how to work out a person's foreign-sourced income for an income year, including how to convert it into Australian currency.

The Rules provide three methods for working out an overseas debtor's foreign-sourced income. One of these methods, the simple self assessment method, allows an overseas debtor to advise the ATO of their gross (pre-tax) foreign-sourced income and the occupation from which they derived the majority of that income. The ATO then applies a standard deduction against their gross foreign-sourced income based on the nominated occupation in accordance with its own Salary and Wages Occupation Code. The debtor's foreign-sourced income is simply the difference between their gross foreign-sourced income and the standard deduction that applies to the occupation they nominated.

Subrule 16(6) of the Rules allows the Minister, by legislative instrument, to determine a list of occupations and the amount of a standard deduction, or the method by which the standard deduction is derived. The 2017 Determination was made for this purpose.

The Instrument does two things. First, it takes the content of the 2017 Determination and re-makes that as a provision in the Rules (and in doing so, updates a reference to the ATO's Salary and Wages Occupation Code made in 2017 to that made in June 2018). Second, because the content of the 2017 Determination has been brought into the Rules, it repeals the (now redundant) 2017 Determination.

The *Salary and wages occupation codes 2018*, published in June 2018, is publicly available on the ATO web site, at www.ato.gov.au.

DETAILED EXPLANATION

Section 1

This section provides for the name of the Instrument – the *Trade Support Loans (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018*.

Section 2

This section provides for the Instrument to take effect on 1 July 2018.

Section 3

This section provides that the Instrument is made under subsection 106(1) of the Act.

Section 4

This section provides that each instrument specified in the Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to the Instrument has effect according to its terms.

Schedule 1

Item 1 of Schedule 1 to the Instrument inserts the definition of **ATO Occupation code** in subsection 4 of the Rules as the 'Salary and wage occupation codes 2018 document published by the Australian Taxation Office in June 2018'. This new definition is used in the new subrule 16(6) inserted by item 3. It updates an equivalent definition in the 2017 Guidelines, which referred to the version of the ATO's document published in June 2017.

Item 2 of Schedule 1 to the Instrument omits the words “, determined by the Minister under subrule (6),” from paragraph 16(5)(b).

Item 3 of Schedule 1 to the Instruments omits subrule 16(6) and inserts a new subrule 16(6) with a method for calculating the standard deduction for an occupation by reference to the ATO Occupation Code. Item 3 also provides for how to work out the standard deduction where the occupation is not in the ATO Occupation Code. The new subrule replicates the functions and operation of sections 5 and 6 of the 2017 Determination, rendering that Determination redundant.

Item 4 of Schedule 1 to the Instrument inserts an application provision to provide that the amendments to the Rules made by the Instrument apply in respect of any simple self-assessment method chosen (for working out person's foreign-sourced income) after the commencement of the Instrument.

Item 5 of Schedule 1 to the Instrument repeals the 2017 Determination.

CONSULTATION

The amendments made by the Instrument are minor and technical in nature – the lifting and replication of the content of the 2017 Determination into the Guidelines, the updating of a reference to a document, and the consequent repeal of the 2017 Determination – and so no consultation was considered necessary.

REGULATION

The amendments made by the Instrument are minor and technical and have no regulatory impact. (The Regulation Impact Statement for the overseas debt recovery measure has been agreed with the Office of Best Practice Regulation (reference 18482)).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Trade Support Loans (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018.

The Trade Support Loans (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018 (the Instrument) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Trade Support Loans (Overseas Debtor Repayment) Amendment and Repeal Instrument 2018

Under Subdivision AA of the *Trade Support Loan Act 2014* (the Act), a person who has an accumulated Trade Support Loan debt (i.e. a debt to the Commonwealth arising from a student loan made to the person under the Act), and who is a foreign resident during a year (overseas debtor), is liable to pay the Commonwealth a levy. The amount of the levy an overseas debtor has to pay is contingent on the debtor's assessed worldwide income for the year, which is essentially the sum of the debtor's Australian income and foreign-sourced income for the year.

Subsection 47B(2) of the Rules states that the rules may provide for how to work out a person's foreign-sourced income for an income year, including how to convert it into Australian currency.

The Rules provide three methods for working out an overseas debtor's foreign-sourced income. One of these methods, the simple self assessment method, allows an overseas debtor to advise the ATO of their gross (pre-tax) foreign-sourced income and the occupation from which they derived the majority of that income. The ATO then applies a standard deduction against their gross foreign-sourced income based on the nominated occupation in accordance with its own Salary and Wages Occupation Code. The debtor's foreign-sourced income is simply the difference between their gross foreign-sourced income and the standard deduction that applies to the occupation they nominated.

Subrule 16(6) of the Rules allows the Minister, by legislative instrument, to determine a list of occupations and the amount of a standard deduction, or the method by which the standard deduction is derived. The 2017 Determination was made for this purpose.

The Minister will now determine (for the purpose of subsection 47B(2)) a list of occupations and the amount of a standard deduction, or the method by which the standard deduction is derived, in the Rules. The Instrument amends the Rules to reference the ATO document 'Salary and wage occupation codes 2018' as a list of occupations and the amount of a standard deduction for those occupations. The Minister will no longer be required to make a determination by a separate legislative instrument; therefore, the Instrument will repeal the 2017 Determination.

The *Salary and wages occupation codes 2018*, published in June 2018, is publicly available on the ATO web site, at www.ato.gov.au.

Human rights implications

The Instrument is a both an administrative and technical amendment to insert a definition of 'ATO Occupation Code' in the Rules, and specify in those Rules that the occupations and method by which the standard deduction is derived, will be by reference to the ATO document 'Salary and wage occupation codes 2018'. The Instrument will remove the need for the Minister to make such a determination by a further legislative instrument, and as such, the 2017 Determination will be repealed.

The Instrument itself does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This Instrument is compatible with human rights because it does not engage any of those rights.