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## Explanatory Statement

# Taxation Administration: Withholding Variation to Nil for Low Income Minors Legislative Instrument 2022

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### General outline of instrument

1. This instrument is made under section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies to nil the amount of pay as you go (PAYG) withholding for low income minors who do not provide a tax file number (TFN) declaration or quote their Australian business number (ABN) to a person making a payment to them.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. 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

5. This instrument commences on 1 October 2022.

### Effect of instrument

6. The instrument varies to nil the amount required to be withheld by a payer who makes relevant payments to a payee who is a low income minor, and who does not provide a TFN declaration or quote an ABN.
7. It removes the requirement that a low income minor provide a TFN declaration or quote an ABN when their earnings are below the tax-free threshold.
8. This instrument has been designed to give timely effect to the tax-free thresholds for low income minors.

### Compliance cost assessment

Compliance cost impact: Minor – The Legislative Instrument is minor or machinery in nature.

### Background

9. Under the PAYG Withholding system, income tax and other liabilities (e.g., Medicare levy and Higher Education Contribution Scheme liabilities) must be withheld by a person making certain payments. This includes payments for work or services (such as payments of salary or wages to employees or contractors). It also includes payments where a recipient has not quoted an ABN in

relation to a supply. The payer must then remit withheld amounts to the ATO on behalf of the recipient.

10. The purpose of this legislative instrument is to vary to nil the amount of withholding required by a payer in relation to a relevant payment made to a payee or supplier who is under 18 years of age at the time of payment (low income minors) and does not quote their TFN or ABN to the payer before the payment is made. This legislative instrument has been designed to give timely effect to the tax-free thresholds for low income minors.

11. This is a remake of Legislative Instrument No. F2012L00884, which is to sunset on 1 October 2022. The administrative treatment by the Commissioner has been consistent since 21 February 2006.

## **Consultation**

12. Subsection 17(1) of the *Legislation Act 2003* requires that a rule-maker undertake an appropriate level of consultation before making a legislative instrument.

13. Broad public consultation was undertaken on this instrument for a period of 2 weeks.

14. The draft instrument and draft explanatory statement were published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on [ato.gov.au](http://ato.gov.au). Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters that they provide to their subscribers and members.

15. No comments were received as part of this consultation process.

## **Legislative references**

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Income Tax Assessment Act 1997*

*Legislation Act 2003*

*Taxation Administration Act 1953*

## **Statement of compatibility with Human Rights**

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 of the legislative instrument**

This legislative instrument is beneficial for low income minors who do not have a tax file number (TFN) or Australian Business Number (ABN), and are therefore unable to quote a TFN or ABN to a person making a payment to them. Without this instrument, a person making certain payments to low income minors who do not have a TFN or ABN would have to withhold amounts from the payments at the top rate of tax.

This instrument will ensure that low income minors will receive all their income, rather than have amounts withheld from payments made to them at the top rate of tax. The low income thresholds are in line with the tax-free threshold that all resident taxpayers are entitled to upon assessment of their income tax return.

Payers will also have lower compliance costs because the instrument eliminates the requirement for them to withhold amounts from payments to low income minors.

There has been a legislative instrument varying withholding to nil for payments made to low income minors who have not quoted a TFN or ABN since 21 February 2006. This is a remake of Legislative Instrument No. F2012L00884, which is to sunset on 1 October 2022.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms. It ensures that payers are not required to withhold amounts from withholding payments to low income minors, minimising compliance costs and enabling low income minors to immediately receive all income that they earn (rather than having some amounts withheld until they have lodged their income tax returns).

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.