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## Explanatory Statement

# Taxation Administration (Withholding Variation for Payment of Certain Allowances) Legislative Instrument 2025

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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* (the Act).
2. This instrument reduces the amount required to be withheld by a payer under the pay as you go (PAYG) withholding system from payments of certain allowances to nil in certain circumstances.
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 the day after it is registered on the Federal Register of Legislation.
6. This instrument repeals and replaces the legislative instrument *Taxation Administration Act 1953 – Pay as you go withholding – PAYG Withholding Variation: Allowances – Legislative Instrument* (2015 instrument), which would otherwise sunset on 1 October 2025. This instrument has the same effect as the 2015 instrument.

### Background

7. A payer would ordinarily be required to withhold from the payment of certain allowances to payees in accordance with withholding schedules made under section 15-25 of Schedule 1 to the Act. This includes withholding from allowance payments relating to deductible expenses where the payee is expected to claim a deduction for the full amount of the allowance.
8. Under section 15-15 of Schedule 1 to the Act, the Commissioner may vary the amount required to be withheld by an entity (through a written notice) or classes of entity (by legislative instrument) from a withholding payment.
9. Varying the amount to be withheld to nil allows a payee to receive the full amount of the allowance and helps to better align withholding during the year to their likely end of year tax position (taking into account the deductions they are likely to be entitled to).

### Effect of this instrument

10. This instrument reduces the amount a payer must withhold from payments of specified allowances to nil in certain circumstances.

11. Under section 6, withholding is varied to nil where the payer:
  - (a) makes a payment that relates to an allowance that is specified in section 7
  - (b) reasonably expects that the payee will incur deductible work expenses related to the allowance that in total are no less than the amount of the allowance, and
  - (c) records the amount and nature of the payment separately in their accounting records.
12. Section 7 specifies the allowances to which a variation in section 6 applies.
13. Section 7 also specifies any limits on the amount of the payment that can be varied to nil. Where the payment exceeds an allowance limit in section 7, the variation only applies up to that limit.
14. Normal withholding rates will apply to any part of the paid allowance that exceeds the limit.

### **Allowances specified in section 7**

15. Section 7 specifies the following allowances and limits.

#### ***An allowance for car expenses***

16. Car expenses are defined in section 28-13 of the *Income Tax Assessment Act 1997* (ITAA 1997). A deduction for car expenses can be calculated by various methods, including the cents per kilometre method in section 28-25 of the ITAA 1997.
17. Commonly, car expense allowances paid to employees are also calculated using the cents per kilometre method.
18. Withholding from a payment that relates to a car expense allowance is reduced to nil where:
  - (a) the allowance is calculated on a cents per kilometre basis
  - (b) the rate of cents per kilometre used to calculate the allowance does not exceed the cents per kilometre rate determined by the Commissioner under subsection 28-25(4) of the ITAA 1997 for the year, and
  - (c) the total number of business kilometres in respect of which an allowance is paid during the financial year does not exceed the number of business kilometres provided for in subsection 28-25(2) of the ITAA 1997.
19. Normal withholding rates will apply to any part of the payment that exceed the limit in paragraph 7(a).

#### ***Example 1 – car expense allowance***

*Joanne has a car that she uses in performing her job during the 2025–26 financial year. She records the dates and distances she travels each time she travels for work and this equates to 100 kilometres per week.*

*Joanne provides this information to her employer during the year and each week is paid an allowance for car expenses in arrears. The allowance is calculated using the cents per kilometre method with a rate equal to the cents per kilometre amount set by the Commissioner for the 2025–26 financial year.*

*Withholding is varied to nil for the payments of this allowance to Joanne during the first 50 weeks of the 2025–26 financial year because:*

- (i) *the allowance is calculated by multiplying the business kilometres travelled by Joanne by a set rate per kilometre*

- (ii) *the set rate used in the calculation is the cents per kilometre rate set by the Commissioner for the 2025–26 financial year, and*
- (iii) *Joanne has travelled 5,000 business kilometres during those 50 weeks and this does not exceed the number of business kilometres provided for in subsection 28-25(2) of the ITAA 1997 (5,000 kilometres for 2025–26).*

*However, withholding will not be varied with regard to the payment of the allowance in the 51<sup>st</sup> week and Joanne's employer must apply normal withholding rates to that payment. This is because Joanne has now travelled 5,100 business kilometres which exceeds the limit in subparagraph 7(a)(iii).*

### **Example 2 – car expense allowance paid in next financial year**

*On 2 July 2026, Joanne is again paid an allowance for car expenses relating to kilometres travelled in her car during the 52<sup>nd</sup> week of the 2025–26 financial year. Withholding is varied to nil for this payment because:*

- (i) *the allowance is calculated by multiplying the business kilometres travelled by Joanne by a set rate per kilometre*
- (ii) *the set rate used in the calculation is the cents per kilometre rate set by the Commissioner for the 2026–27 financial year, and*
- (iii) *the total number of business kilometres that Joanne has travelled, in respect of which an allowance has been paid during the 2026–27 financial year, is 100 kilometres. This distance does not exceed the number of business kilometres provided for in subsection 28-25(2) of the ITAA 1997.*

### **An allowance for laundry expenses**

20. Laundry expenses are defined in section 900-40 of the ITAA 1997 and relate to washing, drying or ironing (but not dry cleaning) clothing that is:

- (i) occupation-specific clothing
- (ii) protective clothing
- (iii) a compulsory uniform, or
- (iv) a non-compulsory uniform registered on the Register of Approved Occupational Clothing.

21. Laundry expenses do not include expenses relating to washing, drying, ironing or dry cleaning everyday (or conventional) clothing such as black trousers, business attire worn by office workers, or jeans worn by tradespeople.

22. Withholding from a payment that relates to an allowance for laundry expenses is varied to nil for payments that do not exceed the amount that can be deducted without substantiation under section 900-40 of the ITAA 1997.

23. Under section 900-40 of the ITAA 1997, deductions for laundry expenses up to \$150 in a financial year do not require written evidence. The withholding variation applies where the total amount paid during a financial year that relates to this allowance does not exceed this amount.

24. Normal withholding rates will apply to any payments after the \$150 limit is reached.

### **Example 3 – laundry allowances**

*Rick works at a supermarket. His employer's uniform policy requires him to buy and wear a shirt with the supermarket's logo embroidered on it. If he shows up to work not wearing this shirt he is sent home and issued with a warning.*

*Every payday Rick receives an allowance for laundry expenses relating to the washing, drying or ironing (but not dry cleaning) of the compulsory uniform shirt. Rick's employer does not need to withhold from these payments until the total amount paid during the financial year reaches \$150.*

*After this \$150 limit is reached, Rick's employer must withhold from payments of this allowance using normal withholding rates.*

### **An allowance for domestic travel allowance expenses**

25. Travel allowances are defined in section 900-30 of the ITAA 1997 and are amounts paid to employees to cover travel allowance expenses incurred when travelling away from the payee's ordinary place of residence. Paragraph 7(c) applies to domestic travel allowance expenses.

26. Withholding from a payment that relates to domestic travel allowance expenses is varied to nil for amounts that do not exceed the amount the Commissioner considers reasonable, for the income year, for the purposes of section 900-50 of the ITAA 1997.

27. The amounts the Commissioner considers reasonable, for the purposes of section 900-50 of the ITAA 1997, is published annually on [ato.gov.au](http://ato.gov.au).

### **Example 4 – domestic travel allowances**

*Ayana travels to Darwin on business and is paid a travel allowance of \$373 per day (made up of \$34 for 1 breakfast, \$39 for 1 lunch, \$66 for 1 dinner, \$24 for incidentals and \$210 for accommodation).*

*Ayana's employer consults the amounts that the Commissioner considers reasonable and determines that, for an employee with Ayana's annual salary, each of these amounts is less than the amount the Commissioner considers reasonable for travel to Darwin.*

*As the travel allowance paid to Ayana does not exceed the amounts that the Commissioner considers reasonable, Ayana's employer does not need to withhold from the allowance.*

### **An allowance for overseas travel allowance expenses**

28. Travel allowances are defined in section 900-30 of the ITAA 1997 and are amounts paid to employees to cover travel allowance expenses incurred when travelling away from the payee's ordinary place of residence. Paragraph 7(d) applies to overseas travel allowance expenses.

29. Withholding from a payment that relates to overseas travel allowance expenses is varied to nil for amounts that do not exceed the amount the Commissioner considers reasonable, for that income year, for the purposes of section 900-55 of the ITAA 1997.

30. However, there is no reasonable amount relating to overseas accommodation because subsection 900-55(2) of the ITAA 1997 requires the Commissioner to disregard losses or outgoings relating to overseas accommodation when determining the reasonable amount.

31. As a consequence (and unlike for domestic accommodation), the variation provided by this instrument does not apply to travel allowances for overseas accommodation and payers must withhold from them.

32. The amount the Commissioner considers reasonable for the purposes of section 900-55 of the ITAA 1997 is published annually on [ato.gov.au](http://ato.gov.au).

### **Example 5 – overseas travel allowances**

*Prashant travels to China on business and is paid a travel allowance of \$550 per day (made up of \$300 for meals and incidentals and \$250 for accommodation).*

*Prashant's employer consults the amounts that the Commissioner considers reasonable and determines that, for an employee with Prashant's annual salary, the relevant reasonable amount for meals and incidentals when travelling to China is \$340 per day.*

*Prashant's employer does not withhold from the \$300 allowance paid for meals and incidentals, as the amount of the allowance does not exceed the amount the Commissioner considers reasonable. However, Prashant's employer must still withhold from the allowance payment of \$250 relating to overseas accommodation.*

### **An allowance for overtime meal allowance expenses**

33. Under section 900-60 of the ITAA 1997, overtime meal allowance expenses are paid under an industrial instrument to enable a payee to buy food and drink in connection with overtime that they work.

34. Withholding from an allowance that relates to an overtime meal allowance expense is varied to nil for amounts that do not exceed the amount the Commissioner considers reasonable. The amount the Commissioner considers reasonable for an income year is published annually on [ato.gov.au](http://ato.gov.au).

35. Whether or not an allowance that relates to an overtime meal allowance expense exceeds the amount the Commissioner considers reasonable is determined on each occasion that overtime is worked for which an allowance is paid.

### **Example 6 – overtime meal allowances**

*Samantha works for the local government. Every July she is asked to work overtime for three nights to complete year end tasks. Samantha works her 8-hour day followed by 4 hours of overtime. Samantha receives an allowance for overtime meal allowance expenses of \$38 under her relevant industrial instrument in relation to each of the three occasions she works overtime.*

*For the 2025–26 income year, the reasonable amount for overtime meal expenses is \$38.65.*

*Withholding is varied to nil for each of the \$38 allowance payments made to Samantha as the amount of the overtime meal allowance is below the reasonable amount set by the Commissioner.*

### **Award transport payments**

36. An award transport payment is defined in section 900-220 of the ITAA 1997. These are payments made for the purpose of covering transport expenses in relation to particular travel and paid under an industrial instrument that was in force on 29 October 1986.

37. Withholding is varied to nil for award transport payments.

### **Example 7 – award transport payments**

*Tran works in the building and construction industry. In the course of performing his work, he incurs transport expenses.*

*In recognition of employees incurring these expenses, Tran's award provides for the payment of an allowance of \$22 per day. This allowance was payable to employees covered by the award on 29 October 1986 and has remained in place ever since, with the only change being to the amount of the allowance.*

*As the allowance payment is made for the purpose of covering transport expenses in relation to particular travel and paid under an industrial instrument that was in force on 29 October 1986, it is an award transport payment and Tran's employer does not withhold from payment of this allowance.*

### **Compliance cost assessment**

38. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (OIA25-09739).

### **Consultation**

39. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner be satisfied that appropriate and reasonably practicable consultation has been undertaken.

40. Public consultation was undertaken on drafts of this instrument and explanatory statements for a period of 4 weeks from 25 June to 23 July 2025.

41. 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 to their subscribers and members. This ensures advice of the draft is disseminated widely across the tax professional community, and that they are in an informed position to provide comments and feedback.

42. The legislative instrument and explanatory statement were amended to reflect feedback received through consultation. Several changes were made, primarily to the explanatory statement, to provide additional clarity about the allowances to which the variation applies and the application of the limits outlined in section 7.

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

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Taxation Administration (Withholding Variation for Payment of Certain Allowances) Legislative Instrument 2025**

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 reduces to nil the amount that a payer must withhold from certain allowance payments in certain circumstances. This allows a payee to receive the full amount of the allowance and helps to better align withholding during the year to their likely end of year tax position (taking into account the deductions they are likely to be entitled to).

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms. It merely varies withholding to nil for payments of specified allowances in certain circumstances.

#### **Conclusion**

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