Variation 35 - Explanatory statement -

Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID 2013/MEI/0013

Taxation Administration Act 1953
PAYG Withholding Variation: Allowances

Explanatory Statement

General Outline of Instrument

1. This instrument enables a variation to the amount of withholding required by a payer under the pay as you go withholding system for allowance payments in a certain class of cases.
2. This instrument is made by the Commissioner of Taxation (the Commissioner) pursuant to section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.
3. This is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
4. This legislative instrument revokes Legislative Instrument No. F2006B00395 registered on the 21st February 2006.

Date of effect

5. The instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

What is this instrument about?

6. Legislative Instrument No. F2006B00395 registered on the 21st February 2006 provided a variation to the rate of withholding from a number of allowances when certain conditions are met. Broadly the variation applies in certain cases when the allowance is expected to be fully expended on tax deductible items and the payee would not be required to substantiate expenditure incurred in relation to the allowance because of the provisions contained in Division 900 of the *Income Tax Assessment Act 1997* (ITAA 1997).
7. This instrument varies from Legislative Instrument No. F2006B00395 in only one respect. The variation for cents per kilometre car expense payments now applies where the rate paid per kilometre does not exceed the approved rate plus 1.5 cents per kilometre.

What is the effect of this instrument?

8. The variation for cents per kilometre car expense payments will now apply where the rate paid exceeds the ATO published rate by no more than 1.5 cents per kilometre travelled up to 5,000 business kilometres.
9. The increase above of the approved rate allows for small variances that may occur because of delays in publishing the ATO approved rates or for other reasons.
10. The instrument will avoid the need for unnecessary withholding where a minor variance in the rate of payment has occurred, making administration of car expenses easier for employers and more equitable for employees.

11. 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:

12. The variation was originally created to lessen reporting burdens on employers for allowance payments that were deductible and expected to be fully expended and to allow employees to receive such allowances without unnecessary withholding.
13. In the absence of this change, employees would be subject to unnecessary withholding on allowances which will be fully expended.

Consultation:

14. This instrument is required to support ATO policy regarding reporting of deductible expenses. The policy is based on the substantiation rules for car expense payments covered in section 28-35 of the ITAA 1997*.*
15. No further consultation has been conducted as the affect of the instrument is to support current practices.

Erin Holland
Deputy Commissioner of Taxation
Date 15 March 2013

Legislative references:

Income Tax Assessment Act 1997

Taxation Administration Act 1953

Legislative Instruments 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 to nil the amount to withhold from the following allowance payments:

- cents per kilometre car expense payments
- award transport payments for deductible transport expenses
- laundry (not dry cleaning) allowance for deductible clothing up to the threshold amount
- award overtime meal allowances up to reasonable allowances amount
- domestic or overseas travel allowance.

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

Erin Holland
Deputy Commissioner of Taxation
Date 15 March 2013