

Variation 40 - Explanatory statement -



Explanatory Statement

PAYG WITHHOLDING VARIATION: Company Directors and Office Holders

General Outline of Instrument

1. This instrument is made under sections 15-15 and 16-180 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies the rate of withholding required by a payer under pay as you go withholding for payments in a certain class of cases.
3. This instrument also removes the requirement to provide payment summaries for those payments.
4. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Date of effect

5. The instrument commences on 1 April 2016.

Repealing of existing instrument

6. This legislative instrument repeals the following legislative instruments:
 - PAYG Withholding Variation: Office Holders – F2006B00295, registered on 10 February 2006.
 - PAYG Withholding Variation: Partnerships – F2006B00404, registered on 21 February 2006.

What is this instrument about

7. Legislative Instruments numbers F2006B00295 and F2006B00404 were registered on 10 and 21 February 2006 respectively, provided variations to the rate of withholding for payments made to company directors or office holders to nil in certain cases.
8. Those instruments are due for repeal on 1 April 2016 under the sunset provisions contained in section 50 of the *Legislative Instrument Act 2003*. This instrument replaces those instruments from that date, and continues to provide the same treatment for the affected class of cases.

What is the effect of this instrument

9. This instrument applies to a payment to an individual (who is a partner in a partnership, or a director or employee of another entity) appointed as:
 - a director
 - a member of a committee of management of a company, or

- an office holder

who is required to pay those payments to the entity of which they are a partner, director or employee.

10. For example, a medical research entity contracts a hospital for a specialised medical practitioner to join its board to manage a medical research project. The hospital provides a specialised medical practitioner as its representative to join the board. The medical research entity makes payments to the specialised medical practitioner who is required, under his contract with the hospital, to pass those payments on to the hospital. Although the payments are for the services of the specialised medical practitioner, the medical research entity is not required to:
 - withhold from these payments, and
 - issue a payment summary to the specialised medical practitioner.
11. The variation will continue to allow a nil rate of withholding from payments to company directors or office holders for their services on behalf of the other entity.
12. 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

13. This instrument has been developed to avoid the need for unnecessary withholding and reporting where the payments are effectively made to the other entity.

Consultation:

14. No further consultation has been conducted as the effect of the instrument is to support current practices.

Steve Vesperman

Deputy Commissioner of Taxation

24 February 2016

Legislative references:

Taxation Administration Act 1953

Legislative Instruments Act 2003

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: Company Directors and Office Holders

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 nil for payments to a company director and an office holder in certain cases.

A company director or an office holder:

- is an individual who is a partner in a partnership, or a director or employee of another entity, and
- is appointed as a director, member of a committee of management of a company, or an office holder.

The variation applies in certain cases where payments are made to a company director or an office holder who is required to pay those payments to another entity (the partnership or the other entity). This avoids the need for unnecessary withholding and reporting where the payments are effectively made to the other entity.

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.