

LI 2024/D7 - Explanatory statement -



Explanatory Statement

Taxation Administration (Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes) Legislative Instrument 2024

General outline of instrument

1. This instrument is made under sections 15-15 and 16-180 in Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies the amount a payer must withhold (to nil) from certain withholding payments made to entertainers who are residents of the United States of America (US). It replaces the instrument titled *Taxation Administration Act 1953 – Pay as you go withholding – Variation to remove the requirement to withhold from payments for certain US resident entertainers and sport persons* (F2014L00379).
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.

Effect of this instrument

6. This instrument varies amounts a payer must withhold (to nil) from withholding payments covered by paragraph 1 of Article 17 of the Australia and US international tax agreement, where:
 - (a) the payee is a US resident entertainer (including a theatrical, motion picture, radio or television artiste, musician, and athlete);
 - (b) the payment is for activities the payee undertakes in Australia as an entertainer; and
 - (c) the sum of all such payments does not exceed 10,000 US dollars (or the equivalent amount in Australian dollars) for the relevant income year.
7. For the purposes of the instrument, 'Australia and US international tax agreement' means the 'United States convention', as defined in section 3AAA of the *International Tax Agreements Act 1953*.
8. This instrument also provides payers with an exemption from having to give a payment summary for payments to US resident entertainers, where no amount was withheld from those payments in a financial year.

Compliance cost assessment

9. To be assessed by the ATO's Revenue Analysis Branch.

Background

10. Since 1 July 2004, withholding has applied to payments relating to entertainment and sports activities carried on in Australia by foreign residents. This instrument was first made in 2014 to remove withholding requirements for certain payments made to US resident entertainers (including athletes or sports people) carrying on entertainment activities in Australia within an income year.

11. When a US resident is paid for entertainment activities (including athletics or sports) in Australia, no Australian income tax is payable unless their earnings exceed US \$10,000 (or its equivalent in Australian dollars) for that income year. This is a result of the operation of the first paragraph of Article 17 of the Australia and United States international tax agreement.

12. Without a withholding variation, a foreign resident entertainer whose income is not taxable in Australia is required to apply to the Australian Taxation Office (ATO) to obtain a formal notice varying their withholding to nil. This process creates unnecessary compliance costs for both the person concerned and their Australian payer.

13. This instrument allows a payer to determine whether the conditions for withholding variation specified in the instrument are met, without the need to refer the issue to the ATO. It will continue to provide a withholding variation for US resident entertainers (including athletes or sports people) who receive payments in the circumstances described in section 6 of the instrument.

14. This instrument will reduce the compliance burden on payers and payees in entertainment and athletics.

15. In this instrument, the expression 'athletes' is intended to cover 'sports persons', which is the term that was used in the previous instrument (*Taxation Administration Act 1953 – Pay as you go withholding – Variation to remove the requirement to withhold from payments for certain US resident entertainers and sport persons* (F2014L00379)). This change is to ensure consistency with the terminology used in the Australia and US international tax agreement.

Consultation

16. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a legislative instrument.

17. As part of the consultation process, you are invited to comment on the draft instrument and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

Due date:	6 June 2024
Contact officer:	Joanna Yiu
Email:	joanna.yiu@ato.gov.au
Phone:	(03) 9275 4717

Legislative references

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

International Tax Agreements Act 1953

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*

Taxation Administration (Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes) Legislative Instrument 2024

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 instrument exempts employers or payers from having to withhold amounts, in certain circumstances, from payments made to entertainers (including theatrical, motion picture, radio or television artistes, musicians and athletes) who are residents of the United States of America (US). It also provides payers with an exemption from having to give a payment summary for payments to US resident entertainers, where no amount was withheld from those payments in a financial year.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. The instrument reduces the compliance burden on US resident entertainers and their employers or payers.

Conclusion

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