

Variation 50 - Explanatory statement -



Explanatory Statement

PAYG Withholding Variation: Labour Hire reimbursements and allowances

General Outline of Instrument

1. This variation is made by the Commissioner of Taxation (the Commissioner) under section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument varies the rate of withholding required by a payer under the pay as you go withholding system for payments in a certain class of cases to nil.
3. This instrument repeals and replaces instrument *PAYG Withholding Variation: Labour hire reimbursements and allowances* (F2016L00436), registered on 30 March 2016.
4. This is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. 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

6. This instrument commences on the day after its registration on the Federal Register of Legislative Instruments.

What is this instrument about

7. Legislative Instrument No. F2016L00436 provided a variation to the rate of withholding for payments made to labour hire workers to nil in certain class of cases.
8. That instrument is due for repeal on 1 November 2016 under the sunset provisions contained in section 50 of the *Legislation Act 2003*.
9. From the day after it is registered on the Federal Register of Legislative Instrument, this instrument replaces that instrument and continues to provide the same treatment for the affected class of cases.

What is the effect of this instrument

10. This instrument applies to a payment by a labour hire entity to a labour hire worker within the class of cases described below:

- A payment for reimbursement of actual expenses incurred, and
 - A payment for allowances of expected expenses incurred.
11. For example, a labour hire entity is not required to withhold where:
- a payment is to compensate exactly for an expense already incurred by a labour hire worker, provided that:
 - i. the expense that the labour hire worker incurs is related directly to their work or services performed under the labour hire arrangement
 - ii. the labour hire worker is advised they must keep the necessary written evidence to substantiate the deduction claimed for the expenses
 - iii. the amount and nature of the reimbursement is shown separately in the accounting records of the payer, and
 - iv. the reimbursement received must be included in the gross payment field on the payment summary,
 - a payment made to the labour hire worker for work expenses such as travel between work sites where the usage is up to 5,000 business kilometres, provided that:
 - i. the labour hire worker is expected to incur expenses that could be claimed as a tax deduction at least equal to the amount of the allowance
 - ii. the labour hire worker is advised that they must keep the necessary written evidence to substantiate the deductions claimed for car expenses and travel expenses, and
 - iii. the amount and nature of the allowance is shown separately in the accounting records of the payer.
12. The variation will continue to allow a nil rate of withholding from these payments.
13. 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

14. This instrument has been developed to avoid the need for unnecessary withholding and to lessen reporting burdens on the labour hire entity for reimbursement and allowance payments to labour hire workers. Withholding is not justified in cases where workers are expected to be entitled to tax deductions equal to the amounts received.

Consultation:

15. The ATO has consulted extensively with a major industry body.
16. Through this consultation process, there has been no opposition to continue to provide the same treatment for the affected class of cases.

Legislative references:

Taxation Administration Act 1953

Legislation Act 2003

Acts Interpretation Act 1901

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*.

PAYG Withholding Variation: Labour Hire reimbursements and allowances

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 labour hire worker in certain class of cases:

- i. A payment for reimbursement of actual expenses incurred by the labour hire worker, and
- ii. A payment for allowances of expected expenses incurred by the labour hire worker.

This instrument has been developed to avoid the need for unnecessary withholding and to lessen reporting burdens on the labour hire entity for reimbursement and allowance payments to labour hire workers.

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.