



PAYG Withholding Variation: Donations to deductible gift recipients

Explanatory Statement

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 enables a variation to the rate of withholding required by a payer under the pay as you go withholding system for payments in a certain class of cases.
3. This legislative instrument repeals and replaces legislative instrument *PAYG Withholding Variation: Donations to deductible gift recipients* (F2016L00439), 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. F2016L00439 provided a variation that reduced the amount used to calculate withholding if the payer had made a payment to a deductible gift recipient on behalf of the payee.
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. Upon commencement this instrument repeals and replaces F2016L00439 and continues to provide the same treatment for the affected class of cases.

What is the effect of this Instrument?

10. This instrument continues to allow a payer to reduce a withholding payment by the amount they pay to a deductible gift recipient on a payee's behalf.
11. That enables the participant in the workplace giving program to receive the benefit of the tax deductibility of their gift at the time of the donation, rather than wait until their annual income tax assessment. As a result a workplace giving program may be more attractive to potential participants.
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 provide a reduction in withholding when payers make donations at the direction of payees under a regular planned workplace arrangement.

Consultation

14. Broad consultation has occurred. The draft determination and draft explanatory statement were published on the ATO Legal Database at ato.gov.au on 15 September 2016 seeking feedback and comments for a period of two weeks. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders. Consultation on the draft determination and draft explanatory statement was also announced on "What we are consulting about" at ato.gov.au. No comments were received by the due date.

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*.

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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 continues to allow a payer to reduce a withholding payment by the amount they pay to a deductible gift recipient on a payee's behalf.

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.