



Explanatory Statement

Taxation Administration (PAYG Withholding Variation for Company Directors and Certain Office Holders) Legislative Instrument 2026

General outline of instrument

1. This instrument is made under sections 15-15 and 16-180, and subsection 389-10(1) of Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. This instrument reduces the amount required to be withheld by an entity to nil, where the amount is from payments to an individual that is appointed as a director, member of a committee of management, or as an office holder and the individual is required to remit the full amount of payments they receive in that capacity to another entity (a second entity) of which they are a director, partner or employee.
3. This instrument also removes the requirement to provide payment summaries or report through the Single Touch Payroll (STP) reporting framework in relation to those payments.
4. This instrument is a legislative instrument for the purpose of the *Legislative 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 it is registered on the Federal Register of Legislation.
7. This instrument repeals and replaces the legislative instrument *PAYG Withholding Variation: Company Directors and Office Holders* (2016 instrument), which would otherwise sunset on 1 April 2026. While this instrument has substantially the same effect as the 2016 instrument, it additionally provides an exemption from STP reporting requirements (which were introduced after the 2016 instrument was made).

Background

8. Under the PAYG withholding system, entities are required to withhold from certain payments they make.
9. Section 12-40 of Schedule 1 to the Act requires a company to withhold from payments made to a director (if the company is incorporated), members of a committee of management (if the company is not incorporated), and those who perform those duties (where not appointed as a director or a member of a committee of management).

10. Paragraphs 12-45(1)(b), (c), and (d) of Schedule 1 to the Act respectively require an entity to withhold from payments of salary, wages, commissions, bonuses or allowances to:

- (b) A person who holds, or performs the duties of, an appointment, office or position under the Constitution or an Australian law;
- (c) A member of the Defence Force, or of a police force of the Commonwealth, a State or a Territory;
- (d) A person who is otherwise in the service of the Commonwealth, a State or a Territory.

11. These include statutory office holders, those appointed to panels or boards directly established under an Australian law, and those who hold a common law appointment at the prerogative of the Crown (such as a Royal Commissioner who holds office under Letters Patent).

12. These paragraphs do not include Members of Parliament or members of local governing bodies that have made a unanimous resolution under section 446-5 of Schedule 1 to the Act, as they are covered by other withholding provisions.

13. Where an entity makes payments from which an amount is required to be withheld, they are also required under section 389-5 of Schedule 1 to the Act to notify the Commissioner of these amounts through the STP reporting framework and, in some circumstances, to provide a payment summary to the payment recipient.

14. Where an individual recipient of these payments is required to pass on the full amount to a second entity, complying with these withholding and reporting requirements results in unnecessary withholding and reporting.

15. Under section 15-15 of Schedule 1 to the Act, the Commissioner may vary the amount required to be withheld by an entity (through a written notice) or classes of entity (by legislative instrument) from a withholding payment.

16. The Commissioner may also exempt entities from the requirement to notify amounts through the STP reporting framework (under subsection 389-10(1) of Schedule 1 to the Act) and from the requirement to issue payment summaries (under section 16-180 of Schedule 1 to the Act).

Effect of this instrument

Section 6 – Withholding variation

17. Section 6 varies the amount a payer must withhold under section 12-40 or paragraphs 12-45(1)(b), (c), or (d) of Schedule 1 to the Act to nil from payments to an individual where that individual is required to pay the full amount of the payment to a second entity of which they are a partner, director or employee.

18. While section 12-40 of Schedule 1 to the Act requires an amount to be withheld from payments to individuals appointed as a director or member of a committee of management and those performing those duties without appointment, the variation provided by this instrument only applies where the individual has been appointed to the position.

19. This restriction provides clarity about the boundaries of the variation, as entities can determine whether or not the variation applies by reference to the objective fact of appointment rather than an assessment of whether an individual's duties amount to (or are equivalent of) an appointed director or member of the committee of management.

20. By requiring formality of appointment, this restriction also reduces the ability for the variation to be used as a tool for dishonest activity, such as by a shadow director seeking to exert influence over a company as a vehicle to avoid tax obligations.

21. Section 12-45 of Schedule 1 to the Act requires withholding from payments made to a range of office holders. The variation provided by this instrument only applies to a subset of those office

holders where contractual arrangements to pass on remuneration for an individual's services to a second entity may occur.

22. For payments that are made in circumstances where this variation does not apply, the normal requirements for withholding continue to apply.

Section 7 – Payment summary and reporting exemption

23. Where an entity makes a payment to which section 6 applies, section 7 also exempts that entity from requirements to notify the Commissioner of amounts through the STP reporting framework and from requirements to issue payment summaries that might otherwise apply in relation to that payment.

Example

An incorporated medical research company enters into an agreement with a hospital to provide a medically-qualified representative on its board.

The hospital nominates a medical practitioner that is a hospital employee as its representative, and that practitioner is appointed to the board as a director. As part of this arrangement, the medical practitioner is required under their contract with the hospital to pass the full amount of those payments on to the hospital.

When the medical research company makes payments of remuneration to the medical practitioner, the variation provided will apply with the result that the amount the medical research company needs to withhold from the payment is nil. This is because:

- (a) the payment is being made to the medical practitioner as a director of the medical research company,*
- (b) the medical practitioner is required to pay the full amount of the payment to the hospital, and*
- (c) the medical practitioner is an employee of the hospital.*

The medical research company is also exempt from requirements to notify the Commissioner through the STP reporting framework or issue a payment summary to the medical practitioner in relation to these payments.

Compliance cost assessment

24. To be advised.

Consultation

25. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a determination.

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

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

Due date:	5 December 2025
Contact officer:	Gnanakumary Aran
Email:	gnanakumary.aran@ato.gov.au
Phone:	(03) 8632 5112

Draft

Statement of compatibility with Human Rights

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 of the legislative instrument

This legislative instrument reduces to nil the amount that an entity must withhold under section 12-40 and paragraphs 12-45(1)(b), (c), and (d) in Schedule 1 to the *Taxation Administration Act 1953* from certain payments to an individual, where the full amount of the payment must be paid to another entity of which the individual is a director, partner or employee.

This instrument also exempts the entity making the payment from requirements to notify the Commissioner under the Single Touch Payroll (STP) reporting framework and requirements to issue payment summaries which may otherwise apply in respect of the payment.

This avoids unnecessary withholding from, and reporting on, payments that are effectively made to an entity other than the individual.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It merely varies withholding to nil for certain payments and removes reporting requirements corresponding to those payments.

Conclusion

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