



Explanatory Statement

Taxation Administration (Withholding Variation for Payments to Indigenous Artists who do not Quote an ABN) Legislative Instrument 2026

General outline of instrument

1. This instrument is made under section 15-15 in Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. This instrument reduces to nil the amount that must be withheld from a payment for artistic work provided by an indigenous artist who lives or works in Zone A in Australia (Zone A covers certain remote locations) and who does not quote an ABN in relation to that work. A payment summary does not need to be provided in relation to those payments as the amount withheld is nil.
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.
6. This instrument repeals and replaces the *PAYG Withholding Variation: Variation of amount to be withheld from Indigenous artists when an ABN is not provided* instrument which would otherwise sunset on 1 April 2026. This instrument has the same substantive effect as the one it is replacing.

Background

7. Under subsection 12-190(1) in Schedule 1 to the Act, a payer must withhold an amount from a payment made to an entity that does not quote an ABN (where it would ordinarily be required to be quoted), unless an exemption in section 12-190 in Schedule 1 to the Act applies.
8. Under this section a payer may be required to withhold an amount from a payment they make to a recipient who supplies artistic works if the recipient does not quote an ABN. Where an ABN is quoted in relation to that supply, withholding under section 12-190 in Schedule 1 to the Act is not required.
9. However, it may be difficult for a recipient of a withholding payment to quote an ABN in relation to a supply they make in certain circumstances, including where age, language, level of education or location make it more difficult for that person to engage fully with the requirements of the tax system and obtain an ABN.

10. Requiring an ABN to be quoted in these circumstances may present difficulties for the recipient (who may find it challenging to obtain an ABN to quote in relation to a supply) and impose a compliance burden on the payer (who must withhold an amount from the payment as no ABN is quoted).

11. The amount required to be withheld from a withholding payment can also be varied by the Commissioner, including to nil. 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.

Effect of this instrument

12. An entity is not required to withhold an amount from a payment it makes to an indigenous person for their artistic work where the person resides or works in Zone A and does not quote an ABN in relation to the artistic work.

13. The concept of artistic work generally refers to work exhibiting human creative skill. This instrument specifically identifies that artistic works include (but are not limited to) graphic work, photography, sculpture, painting, collage, works of artistic craftsmanship, performances, presentation or participation in a musical performance, play, dance, entertainment, display exhibition or similar activity of a cultural nature.

14. Artistic works may be created by the Indigenous artist individually or in conjunction with other artists.

15. Under the *Income Tax Assessment Act 1936* (ITAA 1936), certain areas within Australia that are particularly remote or isolated are designated as being within certain Zones.

16. Part 1 of Schedule 2 of the ITAA 1936 specifies locations that fall within Zone A. Locations within Zone A are generally remote or isolated locations in the Northern Territory, northern Western Australia, or far-north and north-western Queensland. This instrument applies to a payment made to an Indigenous person who lives or works in a location covered by Zone A.

17. Obtaining an ABN may be onerous for indigenous artists who, for reasons such as age, language, level of education or isolation, may not be able to fully engage with the complexity of the tax system.

18. Varying the amount required to be withheld from these payments to nil:

- provides certainty for the entity making the payment that withholding is not required when an ABN is not quoted by an Indigenous artist
- provides certainty for Indigenous artists that they are not required to obtain and quote an ABN in relation to their artistic works, and
- removes the requirement for the entity making the payment to provide a payment summary to the Indigenous artist in relation to the payment.

19. Under subsection 16-167(1) in Schedule 1 to the Act an entity that makes a withholding payment covered by section 12-190 in Schedule 1 to the Act must give a payment summary to the recipient, unless the amount required to be withheld from that payment is nil.

20. The payer is therefore not required to issue a payment summary for payments to which section 6 applies, as the amount required to be withheld has been varied to nil.

Compliance cost assessment

21. To be advised.

Consultation

22. 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.

23. 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:	16 January 2026
Contact officer:	Andrew Lipshutt
Email:	andrew.lipshutt@ato.gov.au
Phone:	(03) 9285 1588

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

Under subsection 12-190(1) in Schedule 1 to the *Taxation Administration Act 1953* (the Act), an amount may be required to be withheld from a payment that is made to a payee who does not quote an ABN, in circumstances where an ABN would ordinarily be required.

This instrument reduces to nil the amount that an entity must withhold from a payment for an artistic work provided by an Indigenous person, where that person lives or works in Zone A in Australia and does not quote an ABN in relation to that work.

This variation provides assurance to both the Indigenous person and the entity making the payment that an ABN does not need to be quoted in relation to the supply of the artistic work.

Additionally, by varying the amount to be withheld from these payments to nil, the entity making the payment is no longer required under subsection 16-167(1) in Schedule 1 to the Act to provide a payment summary to the Indigenous person in respect of the payment.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It merely varies to nil the amount that must be withheld from payments made to Indigenous persons for artistic work they supply in certain circumstances.

Conclusion

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