

Australian Taxation Office

Taxation Administration Act 1953

Pay as you go withholding

**Variation to the rate of withholding from lump sum superannuation member benefits for certain recipients with a terminal medical condition
– Legislative Instrument**

I, Erin Kathleen Holland, Deputy Commissioner of Taxation, make this instrument under section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.

This legislative instrument will revoke Legislative Instrument No. F2007L03872 of 2007.



Deputy Commissioner of Taxation

Name of instrument

This instrument is the *Taxation Administration Act - Variation to the rate of withholding from lump sum superannuation member benefits for certain recipients with a terminal medical condition*.

Commencement

This instrument commences on 1 July 2007.

Purpose

This variation ensures that withholding is not required from payments made to recipients with a terminal medical condition of lump sum superannuation member benefits in circumstances where the payment will not be subject to income tax as a result of law changes which were introduced to parliament on 13 February 2008. The changes are contained in the Tax Laws Amendment (2008 Measures No. 2) Bill 2008 but not yet enacted.

Variation to the rate of withholding

This instrument varies to nil the amount required to be withheld from a withholding payment which is:

- a superannuation member benefit within the meaning of subsection 307-5(2) of the *Income Tax Assessment Act 1997*, and
- a superannuation lump sum within the meaning of section 307-65 of the *Income Tax Assessment Act 1997*, and
- paid to a member in accordance with the payment standards prescribed:
 - in the case of a benefit paid from a complying superannuation fund – subsection 31(1) of the *Superannuation Industry (Supervision) Act 1993*, or
 - in the case of a benefit paid from an approved deposit fund – subsection 32(1) of that Act, or
 - in the case of a benefit paid from a retirement savings account – subsection 38(2) of the *Retirement Savings Accounts Act 1997*

in circumstances where the member has a terminal medical condition at a time in the period:

- a) starting when the member receives the lump sum; and
- b) ending at the later of:
 - i) 90 days after the member receives the payment; or
 - ii) 30 June 2008 for a payment made in the 2007-08 financial year.

A payee will be taken to have a terminal medical condition if the following circumstances exist:

- (a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the *certification period*) that ends not more than 12 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
- (c) for each of the certificates, the certification period has not ended.