



PAYG withholding compliance

You may be ineligible for deductions or be charged penalties if you don't comply with your PAYG withholding obligations.

Removing deductions for non-compliant payments

You can only claim deductions for payments to workers if you've complied with PAYG withholding and reporting obligations.

Non-compliance tax

Guidance for who is responsible for paying the PAYG withholding non-compliance tax.

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Removing deductions for non-compliant payments

You can only claim deductions for payments to workers if you've complied with PAYG withholding and reporting obligations.

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Types of payments affected

If you comply with the PAYG withholding and reporting requirements for the following payments, you can claim a deduction for them. These payments are:

- salary, wages, commissions, bonuses or allowances to an employee
- directors' fees
- payments to a religious practitioner
- payments under a labour hire arrangement
- for a supply (either wholly or partly) of services where the independent contractor hasn't provided you with their Australian business number (ABN).

Non-cash benefits

A non-cash benefit is something you provide instead of paying cash, for example goods or services.

You must report to us the PAYG withholding amount relating to non-cash benefits in order to be able to claim a deduction.

Correcting a mistake

You won't lose your deduction if you:

- withheld an incorrect amount by mistake
- withheld the correct amount but made a mistake when reporting it to us.

To minimise any penalties, you should still lodge a **voluntary disclosure in the approved form** as soon as possible.

Failure to withhold or report

You will lose your deduction for payments that:

- you should have withheld from a PAYG amount but didn't
- you withheld from a PAYG amount but didn't report the amount to us.

We may also charge you penalties for failing to withhold an amount from a payment or failing to report the amount to us.

You **may** avoid penalties or be able to claim your deduction if you make a **voluntary disclosure in the approved form before** we start an [audit](#) or other compliance activity involving your PAYG withholding obligations or deduction claims.

Mistaking an employee for an independent contractor

If you mistakenly treated the person working for you as an independent contractor, rather than an employee, and didn't withhold an amount from their payments, you won't lose your deduction for these payments if you had:

- obtained an invoice, or some other document relating to the payment, that quoted the independent contractor's ABN
- no reasonable grounds to believe that it was not the independent contractor's ABN or that the ABN was incorrect.

You can correct your mistake by lodging a **voluntary disclosure in the approved form**.

You can use our **employee or independent contractor** information pages help you work out if your worker is an employee or independent

contractor.

Payments to independent contractors

You won't lose your deduction for a payment you make to an independent contractor for their services if **both** of the following apply. You have:

- been given an invoice, or some other document that relates to the payment, that quotes the independent contractor's ABN
- no reasonable grounds to believe that it's not the independent contractor's ABN or that the ABN is incorrect.

It is always good business practice to check the:

- ABN on the invoice is active and correct
- independent contractor is registered for GST (if they have charged GST).

You can use [ABN Lookup](#)  to perform these checks.

How we tell you about an audit

If you have been selected for an audit or other compliance activity, we will usually phone you, or we may tell you in person or in writing. We will also tell you the scope of the audit and the period(s) under review.

Penalties

If you don't comply with your PAYG withholding and reporting obligations for a payment, you may:

- lose your deduction for that payment
- face **penalties for failure to withhold** and report amounts under the PAYG withholding system.

Non-compliance tax

Guidance for who is responsible for paying the PAYG withholding non-compliance tax.

Last updated 5 April 2017

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If a company doesn't comply with its PAYG withholding obligations, a non-compliance tax (NCT) may be payable by you if you are:

- a director of the company, or
- an associate of the director of the company.

The purpose of NCT is to encourage companies to meet their PAYG withholding payment obligations by reversing the benefit of related tax credits.

The NCT applies in relation to tax credits claimed by you in your personal income tax returns for the 2011–12 financial year and later financial years.

Directors and associates are subject to different rules.

Find out about:

- [If you are a company director](#)
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If you are a company director

Be aware that NCT may still apply to you even if:

- you are no longer a director of a company
- the company's PAYG withholding payment obligations were not met before you became a director
- the company in question proceeds into liquidation.

If you receive a NCT notice and have any queries you should **contact us** immediately.

The NCT could apply to you if:

- a company you are or were a director of has a PAYG withholding debt and some part of that debt relates to the financial year for which you are entitled to a credit for tax withheld from payments made to you, and
- we have issued you with a notice of assessment and you claimed and received the benefit of the related PAYG withholding tax credits in your income tax return.

You can be liable to pay NCT if any amount of the company's PAYG withholding is still unpaid for a particular financial year.

If you became a director of the company after the day that the PAYG withholding was due to be paid, the NCT may still apply to you if:

- you were still a director of the company 30 days after becoming a director, and
- the company did not pay the total of those amounts to us on or before the last of those 30 days.

We cannot ask you to pay the NCT if you have a director penalty debt relating to the relevant financial year.

See also:

- [Director penalties](#)
- [Contact us](#)

If you are an associate of company director

You can avoid incurring the NCT by taking all reasonable steps to influence the director that you are an associate of, to cause the company to pay its PAYG withholding debt.

Be aware that NCT may still apply to you if the:

- director that you were an associate of is no longer a director of the company in question
- company's PAYG withholding payment obligations were not met before the director you were an associate of became a director
- company in question proceeds into liquidation.

If you receive a NCT notice and have any queries you should contact us immediately.

The NCT could apply to you if:

- you are an associate of a person who is, or was, a director of a company that has a PAYG withholding debt and some part of that debt relates to the financial year for which you are entitled to a credit for tax withheld from payments made to you, and
- we have issued you with a notice of assessment and you claimed and received the benefit of PAYG withholding tax credits, and we are satisfied that either:
 - because of your relationship with the director, or the company, you knew or could reasonably have been expected to know, that the company did not pay the total of the PAYG withholding amounts due
 - as well as being an associate of the director, you were an employee of the company, and the company treated you more favourably than other employees of the company.

If you are an associate, you do not need to be actively involved in the company's finances for the NCT to apply to you.

If the director you are an associate of became a director of the company after the day that the PAYG withholding was due, the NCT may still apply to you if all of the following apply:

- the director was still a director of the company 30 days after becoming a director
- you were an associate of the director for the whole of that 30 day period
- the company did not pay the total of those amounts to us on or before the last of those 30 days.

For example:

- Your spouse is a director of a company that has a PAYG withholding debt of \$200,000.
- You are employed by the company as a clerk within the company's administrative section where you could reasonably be expected to have knowledge of the company's finances.
- In that circumstance we would be satisfied you knew the company had a PAYG withholding debt.

Favourable treatment of you as an employee is another reason the NCT could apply to you. For example, if your wage is artificially higher than other employees performing similar work or if you receive entitlements that other employees do not, then this may cause us to consider applying the NCT to you.

We cannot ask you to pay the NCT if the director that you are an associate of has a director penalty debt relating to the relevant financial year.

See also:

- [Contact us](#)

Associate for NCT purposes

For NCT purposes an associate of a director includes one of the following:

- the director's spouse
- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the director, or of the director's spouse
- the spouse of a person referred to above

- a partner in a partnership with the director
- a trustee of a trust where the director or an associate of the director benefits from the trust.

You can avoid a NCT debt

The NCT will not apply to you as an associate if you:

- took all reasonable steps to influence the director to tell us about the PAYG withholding debt
- reported the company's non-payment of their PAYG withholding debt to us or to another relevant authority such as the police, the Australian Securities and Investments Commission or the Building and Construction Industry Commissioner
- took all reasonable steps to influence the director to do any of the following
 - pay the full amount of PAYG withholding due
 - have an administrator or liquidator appointed to the company, or
- there were no reasonable steps you could have taken to influence the director to cause any of these events to happen.

In determining what reasonable steps you could have taken, we will consider:

- when, and for how long, you were an associate of the director
- when, and for how long, the director was a director and took part in the management of the company
- all other relevant circumstances.

NCT calculation

The NCT is calculated and applied based on your income for one financial year and is a separate personal debt on your income tax account.

You can only be notified that you have a NCT after you have lodged your tax return for the relevant year.

The amount of NCT that you may need to pay will be the lesser of the:

- company's PAYG withholding debt for that financial year, or
- amount of credit you have claimed for that year.

For example:

You would have a \$25,000 NCT debt if all of the following apply:

- you are either:
 - an associate of a company director and an employee of the company that we consider was treated more favourably than other employees, or
 - a company director
- the company has an unpaid PAYG withholding liability for the 2015-16 financial year of \$100,000
- during that year you were paid wages or directors fees from which \$25,000 in tax was withheld and you claim this credit in your 2015-16 income tax return.

Because the total credit you are entitled to is less than the company's total PAYG withholding debt, you would have to pay NCT up to the amount of the tax credit you claimed; in effect reversing this credit.

If, in the circumstances described in the example above, you had a tax credit of \$120,000 and claimed this amount in your income tax return then, because your credits would be more than the company's total PAYG withholding debt, you would only be liable to pay NCT up to the amount of the company's debt, that is, \$100,000. This would in effect reverse your credit but only up to the amount of the company's PAYG withholding debt.

If the company's PAYG withholding debt is paid

If you pay your NCT debt and the company's PAYG withholding debt is then paid in full, the NCT that you paid will be re-credited to you.

If the company's PAYG withholding debt is paid in part and it becomes less than the amount of tax credits that you claimed on your income tax return, the amount of NCT that you need to pay may be less than the amount we previously notified. In this case we will amend the amount of NCT you have to pay and send you another NCT notice,

advising you of the new amount. This may happen before or after you have paid your NCT.

Due date for NCT

The NCT is due and payable on the same date your income tax is due for the financial year in question.

If we work out you do not need to pay income tax for that year, NCT is payable when your income tax would have been due.

If you fail to pay some or all of your NCT amount by the due date, general interest charge (GIC) accrues on the outstanding balance until the entire amount has been paid. GIC is calculated on a daily compounding basis.

See also:

- Prepare and lodge - due dates
- General interest charge

We will tell you about your NCT debt

If we determine that you are liable to pay NCT, we will send a NCT notice to you advising that you have to pay the NCT. This notice will tell you:

- which company the NCT relates to
- the year it relates to
- the amount you are required to pay.

You may have more than one NCT debt if you are:

- an associate of directors of different non-compliant companies, or
- a director of a number of different non-compliance companies..

We can issue NCT notices to some or all company directors or associates of directors who have claimed tax credits related to the PAYG withholding debt of a company, depending on the circumstances.

Object to the NCT notice

You may object to paying the NCT if you are dissatisfied with our decision to apply it to you. Your objection must:

- be in writing
- giving full details of the reasons for your objection
- be lodged with the Commissioner within 60 days of receipt of the NCT Notice.

See also:

- Object to an ATO decision

Right of indemnity and contribution

A right of indemnity and contribution allows you to seek compensation from the company or directors for the amounts of NCT you paid.

QC 37408

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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