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This is a guide that covers those payments made to foreign residents for construction and related activities.

QC 76119

Agreements for the allocation of taxing rights with respect to certain income of individuals

Australia has agreements for the allocation of taxing rights with various other tax jurisdictions.

Last updated 3 November 2016

About tax agreements

Australia has tax agreements with other countries to help determine how tax should be paid by people who **both**:

- are a resident in one country
- work temporarily in another.

These agreements are called:

- Double tax treaties (DTAs)
- Tax information exchange agreements (TIEAs)
- Agreements for the Allocation of Taxing Rights (ATRs)

DTAs

Deal with the allocation of the taxing rights of all types of income, profits and gains between Australia and the other country with which we have agreed a DTA.

TIEAs:

- improve the exchange of tax information between Australia and other countries
- promote fairness and enhance Australia's ability to administer and enforce its tax laws.

ATR agreements:

- are like a partial tax treaty

- differ between countries but generally focus on the allocation of each country's right to tax income earned by students, pensioners and government employees who are resident of one country but earning income while temporarily a resident in the other.

ATR agreements may also contain articles dealing with:

- mutual agreement procedures (MAPs- Using these procedures, countries can resolve issues that may arise from transfer pricing adjustments. There is a link to more on transfer pricing below.
- exchange of information for carrying out the provisions of the ATR agreement Unlike the TIEAs, ATR agreements are given force of law in Australia by the *International Tax Agreements Act 1953*.

See also

- International transfer pricing
- What are tax treaties?
- Tax information exchange agreements - overview
- Australian Tax Treaties
- List of countries with tax treaties and agreements with Australia

QC 22192

Employees who work in a foreign country

How to report income for your Australian resident employees who are working in a foreign country.

Last updated 24 April 2023

Foreign source income

Earnings have a foreign source when the:

- work is performed offshore and foreign tax was paid

- business paying the person is located offshore
- work was not incidental to work performed in Australia.

Generally, earnings don't have a foreign source where an employee:

- attends a conference
- travels for work
- undertakes the work as an incidental part of their Australian activities.

Exempt foreign employment income

Some foreign source income is exempt from tax. For example, some payments for foreign services that relate to certain development projects, and charitable or government activities are exempt from tax.

If your employee's earnings aren't exempt foreign employment income, you will need to withhold tax from payments made to them. Your employee should include non-exempt earnings in their tax return as assessable income. They may also be entitled to a foreign income tax offset for amounts of foreign tax paid.

If your employees usually live and work in Australia and temporarily work in a foreign country, there is no change to your pay as you go (PAYG) withholding, fringe benefits tax (FBT) and super guarantee obligations.

If their work in a foreign country is extended, you need to consider existing advice on these issues. If you are unsure about your obligations, you can contact us.

Reporting foreign employment income

You should report your employee's foreign employment income through Single Touch Payroll (STP) if any of the following apply:

- You have withheld and paid foreign tax to a foreign government on behalf of your employee.
- Your employee is in any foreign country for a consecutive period of at least 60 days. The period of 60 consecutive days commences at the time that the employee starts work in the foreign country. This

period includes non-working days and will end if the employee returns to Australia.

- The earnings have a foreign source.

How you report depends on whether you're using STP Phase 1 or STP Phase 2 reporting.

If you can't report this income through STP, you will need to provide your employee with a PAYG payment summary – foreign employment.

You do not need to issue a payment summary to a foreign resident who is employed by you in a foreign country and works in a foreign country.

Example: counting the 60 days

Kai is an accountant who goes to the USA to work with his current company's parent company. He continues to be paid by his Australian employer. Kai's duties with the foreign country are unrelated to the work that he performs for his Australian employer.

Kai works with the parent company from 22 February 2019 to 16 May 2019. During this time returns to Australia for the period 20 April to 27 April 2019.

Although Kai is in the USA for more than 60 days, he is not there for a consecutive period of more than 60 days. Kai's employer determined the earnings had a foreign source.

Example: when earnings are from a foreign source

Renee's Australian employer sends her to Hong Kong for 2 weeks to finalise an important acquisition. While in Hong Kong, Renee is offered an opportunity to stay for a further 4 weeks by an affiliate company.

Although this work is unrelated to her duties in Australia, her Australian employer agrees to continue to pay her. They see it as a good opportunity to develop Renee's professional skills and the relationship with the affiliate.

For the initial 2-week period, Renee's employer determines that her earnings do not have a foreign source. However, Renee's employer determines that her earnings in the following 4-week period do have a foreign source.

Accounting for foreign tax

You should reduce the PAYG withholding if:

- your employee's foreign earnings are assessable in Australia
- you pay tax to a foreign government on their behalf.

It should be reduced by the Australian dollar equivalent of the amount of tax paid to the foreign country.

You do not need to withhold any further amount, if the tax paid to the foreign government is equal to or greater than the amount you would have otherwise withheld for Australian tax purposes.

Use the tax tables to work out how much to withhold from payments you make to your employee.

Example: calculating Australian tax

Norman is an Australian resident who has been sent to work in Papua New Guinea for 4 months from July 2019. Norman is paid in local currency, the Papua New Guinea kina, by his Australian employer. He receives K3,850 weekly, and. K1,413.26 is required to be withheld for Papua New Guinea income tax.

Norman has claimed the tax-free threshold for his Australian employment but is not eligible for any tax offsets. He does not have a Higher Education Loan Program or Student Financial Supplement Scheme debt. He is not entitled to leave loading.

In this example, the exchange rate for converting Papua New Guinean kina to Australian dollars is 2.36.

He calculates the Australian tax as follows:

- **Step 1**: Convert the earnings in K to A$
  - K3,850÷2.36 = $1,631.36

- **Step 2**: Calculate the Australian amount to be withheld from the amount calculated at Step 1, using the relevant PAYG withholding tax table
  - Amount to be withheld from $1,631 = $401
- **Step 3**: Convert the amount withheld and paid to the foreign country to A$
  - K1,413.26÷2.36 = $598.84
- **Step 4**: Reduce the amount calculated at Step 2 by the amount calculated at Step 3
  - Amount to be withheld $401−$598.84 = 0.

As the amount of tax paid to the foreign government is greater than the amount that would have been withheld for Australian tax purposes, no further withholding is required.

Reporting accrued leave

You will be required to report an employee's leave as foreign employment income, if the leave is accrued while the employee worked in a foreign country. This is regardless of whether the earnings are exempt from tax.

Example: reporting leave accrued overseas

Suresh works for her Australian employer in Fiji for a period of 12 weeks. Her employer determines the earnings from this period of foreign employment are required to be reported as foreign employment income as she was in Fiji for 84 consecutive days.

During this time, Suresh accrues one week of annual leave. She will need to report that week's leave, when taken, as foreign employment income.

Fringe benefits tax (FBT)

If you provide a fringe benefit to your employee, you may also be required to:

- record the value of the benefit, if
- the grossed-up value exceeds $2,000 in a fringe benefits tax year.

You must report the grossed-up taxable value of those benefits through STP or their payment summary for the corresponding financial year.

Follow our steps to help you work out the reportable fringe benefits.

Superannuation

Generally, if you pay an employee, you'll also be responsible for their super. This includes if:

- you are an Australian resident employer
- your Australian resident employee is employed outside Australia.

If you don't meet your super guarantee obligations, you may have to pay penalties and a general interest charge.

If you have not correctly provided super guarantee for an employee (because you did not contribute the right amount to the super fund by the due date or did not meet their choice of fund) you must lodge and pay the super guarantee charge to us.

You must continue to meet your superannuation obligations in Australia for an employee you send to temporarily work in another country. You may also be required to pay super (or equivalent) in the other country.

However, if you send an Australian employee to work temporarily in a foreign country that Australia has a bilateral social security agreement with, you may be able to apply for a certificate of coverage so you won’t have to pay super in both countries.

Foreign resident withholding - who it affects

How to pay foreign residents for activities listed in regulations to the Taxation Administration Act 1953.

Last updated 26 October 2016

This information will assist you if you pay foreign residents for the following activities:

- for promoting or organising casino gaming junket arrangements
- for entertainment and sports activities
- under contracts for the construction, installation and upgrading of buildings, plant and fixtures and for associated activities.

Next steps

- Withholding from payments to foreign residents for casino gaming junket activities
- Withholding from payments to foreign residents for construction and related activities
- Withholding from payments to foreign residents for entertainment or sports activities

QC 17765

Refund of over-withheld withholding: how to apply

How to complete the Refund of over-withheld withholding application form (NAT 75265) for non-residents.

Last updated 7 August 2024

Requesting a refund of over-withheld tax

The *Refund of over-withheld withholding application form* (Nat 75265) is for **non-residents**. The application form is used to claim a refund if too much non-resident withholding tax has been withheld from interest, dividend or royalty payments or from managed investment trust (MIT) distributions.

If you request a refund of overpaid tax, we'll aim to issue your refund within 28 days of receiving all the required information.

You must make your request in writing and attach evidence to support your application. Complete the application form online (it can be saved to your computer). When you have completed the application, you can lodge it online by logging into Online services for business. Alternatively, you can print your completed application form and mail it to us.

To access a link to the form and for more information, see Applying if you're not a custodian/payer or registered tax agent.

Note: if applying as a custodian/payer or registered tax agent, the application is lodged with an excel (XLSX) file. For a link to the file and instructions, see Applying as a custodian/payer or registered tax agent.

For further information and examples, see:

- Investment income and royalties paid to foreign residents
- Interest, dividends, royalties and MIT payments
- Stapled Structures
- Straddle holding period rule

Who completes the application

You (the beneficial owner or representative of the beneficial owner) may be able to claim a refund if:

- too much withholding tax has been withheld from an amount of interest, dividend or royalty payments made in Australia and the error is discovered

  - by 30 June of the relevant year – your payer refunds the amount to you
  - after 30 June of the relevant year – you apply to us
- too much withholding has occurred because of managed investment trust (MIT) distributions – you apply to us.

To apply you must either be the individual or entity entitled to the refund or act on behalf of them with a power of attorney.

For certain tax treaties, you can apply to us for a refund if too much withholding tax has been withheld from a non-portfolio intercorporate dividend as a result of satisfying any ownership and other conditions in the particular tax treaty after the dividend was paid. The tax treaties that apply are listed on Straddle holding period rule.

Applying if you're not a custodian/payer or registered tax agent

To apply for a refund of over-withheld withholding tax on your own behalf you need to:

- Download the Refund of over-withheld withholding application form (PDF, 279KB) and complete the form on your computer.
- Save a copy for your records and print the application form if mailing it to us.
- Included in your supporting documents must be a *Certificate of Residency* from your tax authority for the requested years, or your claim may be rejected.
- If you're unable to obtain a certificate, you must contact the ATO at the following address for further help.
- You can lodge your form online by logging into Online services for business. Alternatively, you can mail your claim and supporting documents to:

Australian Taxation Office
PO Box 1032
ALBURY NSW 2640

Applying as a custodian/payer or registered tax agent

We recommend that you use a desktop or laptop device to ensure that you can fill out the document correctly.

To apply for a refund of over-withheld withholding tax on behalf of another entity, you need to download the Application for Non Resident over-withheld withholding refund (XLSX, 643KB) file.

To do this:

1. Right click on the link and select **Save.**
2. Save the link in Microsoft Excel format (.xls or .xlsx only – don't convert this form to PDF).
3. Open the form and enable JavaScript if prompted.
4. Complete the form on your computer.
5. Select **Save** at the bottom and save to your computer as Microsoft Excel format (.xls or .xlsx only – do not convert this form to PDF).
6. Lodge your form by logging into Online services for business or Online services for agents.
7. Submit your form by attaching it to your secure mail message.

You can attach up to 6 attachments in the application mail message. Attachments are limited to 6MB each.

Failure to follow these instructions correctly might lead to a delay in the processing of your application.

Supporting evidence

You need to provide supporting evidence with your application.

Generally, the beneficial owner submits their refund request through their Australian custodian or payer.

If you want the refund cheque to be made out to an entity other than the beneficial owner (for example, to the Australian custodian), then you must provide a declaration signed by the beneficial owner (or their authorised representative) that:

- confirms we are authorised to make the cheque out in favour of the other entity
- indemnifies us from any adverse legal consequences, including any further claims to the refund entitlements.

If the declaration is signed by the authorised representative, you must attach a duly executed power of attorney document that gives the authorised representative the authority to act for the beneficial owner in this matter. If you give us a copy, it must be a certified copy.

You need to provide the following if any have been issued:

- a copy of the ATO exemption letter or private ruling covering the periods when the non-resident withholding tax has been deducted
- a certificate of residency from your tax authority for the requested years.

For information on requirements for copies of documents for applicants outside Australia, see: Copies of identity documents.

Additional evidence - interest, dividend or royalty payments

If too much withholding tax has been withheld from an amount of interest, dividend or royalty payments made in Australia and you want a direct refund of the over-withheld withholding, you need to also provide the following supporting evidence with your application form:

- a letter from your Australian custodian or payer on their letterhead, confirming details of the withholding
- a copy of the dividend or distribution advices issued to the beneficial owner by the payer, detailing the
  - gross interest or gross dividend amount
  - security
  - date paid
  - amount of tax withheld
- a certificate of residency from your tax authority for the requested years

- all original certificates of payment, if any have been issued, for the nominated financial years.

Additional evidence - non-portfolio intercorporate dividends

You must provide evidence that you have owned, held or controlled the required amount of capital, shares or voting rights of the company paying the dividends for the period set out in the relevant tax treaty, for example ASIC or ASX forms.

Additional evidence for MIT distributions

You must provide evidence of the managed investment trusts (MIT) distribution payments made. For example, a credit advice or distribution statement or fund payment notice that would have been issued to the ultimate beneficiary, showing the following:

- name of the ultimate beneficiary
- security
- holding
- distribution paid or deemed payment amount (or both)
- amount withheld
- date of payment or deemed payment
- a letter from your Australian custodian/payer on their letterhead that
  - confirms tax was withheld at the non-Exchange of Information (EOI) country rate from MIT payments made to the recipient
  - provides details of the withholding remitted to us for each of the fund payments.

Under the new tax system for MITs, you may receive 'deemed payments' if the MIT has elected into the attribution system. MITs that elect into the new system are called attribution managed investment trusts (AMITs). See, Withholding for AMITs for more information. Deemed payment amounts may be different to the amounts actually paid to you, and are also subject to withholding, even if you do not receive an actual or cash payment for them.

You will need to check the information provided to you by the MIT as to the amounts and types of payments that have been subject to withholding, to work out whether the correct amount of tax has been withheld from your MIT income.

QC 45331

Straddle holding period rule

How Australia's tax treaties may be impacted by Straddle holding period rule.

Last updated 14 May 2024

Overview of straddle holding period

Under particular tax treaties, including some of those modified by Article 8 of the Multilateral Instrument, non-portfolio intercorporate dividends may become eligible for reduced withholding tax rates if the beneficial owner of the dividend satisfies the straddle holding period rule (usually 365 days) and any other conditions set out in the particular tax treaty. Australia's tax treaties that may be impacted by this rule are set out in the following table.

The straddle holding period includes the day of payment of the dividend. So in the first year a beneficial interest in the shares is held, the holding period may straddle the dividend payment date. This is because the holding period rule will look both backwards and forwards in determining whether the relevant holding period is satisfied.

If the holding period has not been satisfied when a dividend is paid then the withholding tax rate, as specified in the particular tax treaty before any reduction, will apply to any unfranked part of the dividend.

If the holding period is subsequently satisfied after the dividend payment date and any other conditions set out in the particular tax treaty are met, the reduced withholding tax rate will apply to the dividend. This means the dividend withholding tax withheld at the dividend payment date may have been over-withheld. In such a case,

the beneficial owner of the dividend, or a representative of the beneficial owner, may apply to the ATO for a refund of the over-withheld withholding tax.

Example: Dividend paid before the straddle holding period rule is satisfied

On 1 December 2019, Foreignco, a New Zealand resident company, acquired 20% of the shares or ownership interests in Ausco, an Australian resident company.

On 17 June 2020, 200 days after Foreignco acquired the shares in Ausco, Ausco pays an unfranked dividend to Foreignco.

As Foreignco has only owned the shares in Ausco for 200 days when the dividend is paid the 365-day straddle holding period requirement under the Australia New Zealand tax treaty as modified by the Multilateral Instrument (the New Zealand treaty) has not been satisfied. Accordingly the reduced withholding tax rate of 5% potentially available to Foreignco under Article 10(2)(a) of the New Zealand treaty will not apply at the date of payment of the dividend.

When Ausco pays the dividend on 17 June 2020, Foreignco is subject under Article 10(2)(b) of the New Zealand treaty to dividend withholding tax at 15% of the gross amount of the dividend.

Foreignco continues to hold the shares in Ausco throughout a 365-day period that includes the day of payment of the dividend. Once Foreignco has held the shares in Ausco for a continuous 365-day period, the reduced dividend withholding tax rate of 5% under Article 10(2)(a) of the New Zealand treaty will from that time apply to any dividends paid by Ausco to Foreignco from 1 December 2019 being the date of acquisition of the shares.

From the date at which the straddle holding period is satisfied Foreignco can apply to the ATO for a refund of the dividend withholding tax which was over-withheld from the dividend paid on 17 June 2020.

Tax treaties impacted by a straddle holding period

The following table summarises the intercorporate dividend concessional provisions in Australia's tax treaties that may be impacted by the straddle holding period rule in the first year the beneficial interest in the shares is held.

Provisions that may be impacted by the straddle holding period rule

Jurisdiction	Date of effect of the relevant treaty article (see Note 1)	Treaty article (modified by Article 8 of the MLI where applicable)	Non-portfolio dividend rate if holding period and other criteria are satisfied
Argentina	–	10(2)(a)(i)	10%
Canada	01/01/2020	10(2)(a)(i)	5%
France	01/01/2019	10(2)(a) 10(2)(b)	0% 5%
Germany (see Note 2)	01/01/2017	10(2)(a)	5%
Iceland (see Note 2)	01/01/2024	10(2)(a)	5%
Israel (see Note 2)	01/01/2020	10(2)(a)	5%
Mexico	01/01/2024	10(2)(a)	0%
New Zealand	01/01/2019	10(2)(a) 10(3)	5% 0%

Norway	01/01/2020	10(2)(a)	5%
Romania	01/01/2024	10(2)(a)	5%
Russia	01/01/2021	10(2)(a)	5%
South Africa	01/01/2023	10(2)(a)	5%

Table notes:

- **Note 1:** Where date of effect is left blank, the treaty partner has yet to action its ratification, acceptance or approval of the MLI and notify the OECD.
- **Note 2:** The tax treaties with Germany, Israel and Iceland are not modified by the MLI.

For more information see:

- Refund of over-withheld withholding: how to apply
- International tax agreements

QC 60960

Tax on Australian income for foreign residents

What you need to know about how tax applies to your Australian income.

Last updated 28 July 2017

This page is for foreign residents who source an income in Australia – you will find information on the income you must report in your annual Australian tax return.

For more information, see Work out your residency status for tax purposes to see if you are considered a foreign resident.

As a foreign resident, you must lodge a tax return in Australia. You must pay tax on all Australian-sourced income, except for income that has already been correctly taxed (such as interest, unfranked dividends and royalties).

Australia has tax treaties with other countries and this may affect the amount of tax you need to pay. Ensure your Australian financial institutions have your updated overseas address and residency status so they deduct the correct amount of tax. This will reduce follow-up actions by Australia or a treaty country when discrepancies are found.

Table: How tax applies

Income type	How tax applies
Australian pensions and annuities	You must include Australian pensions and annuities you receive in your Australian tax return, unless an exemption is available under Australian tax law or an applicable treaty
Australian employment income	Working in Australia – what you need to know explains how to engage in the tax system if you are taking up work in Australia
Australian investment income	Investing in Australia – what you need to know explains how to treat income from passive investments in Australia such as securities and rental properties, as well as interest and royalties
Interest, unfranked dividends and royalties	You do not need to include this income in your Australian tax return if tax has been correctly withheld – refer to Investing in Australia – what you need to know

Franked dividends	Franked dividends you receive are exempt from Australian income and withholding taxes – refer to Investing in Australia – what you need to know
Rental income	Investing in Australian property outlines the way tax applies to rental income you receive from a property in Australia
Australian business income	Doing business in Australia – what you need to know explains how tax applies to income you receive from Australian business activities you conduct
Income from exports of goods and services to Australia that is defined as Australian income	You must include this income in your Australian tax return and pay tax on the amount you receive unless an exemption is available under an applicable treaty – refer to Doing business in Australia – what you need to know
Income from: • promoting or operating casino gaming junket arrangements • entertainment and sports activities • construction, installation and upgrading of buildings, plant and fixtures and for other works and related activities	Foreign resident withholding tax is withheld by the payer. You need to report this in your Australian tax return – refer to Foreign resident withholding – who it affects
Capital gains on disposal of Australian assets	Generally, you must include capital gains you make on assets that are considered taxable Australian property

	in your Australian tax return and pay tax on that amount – refer to Capital gains in Australia

QC 18342

Withholding from dividends paid to foreign residents

Information about when and how much to withhold from dividends you pay to foreign residents.

Last updated 8 April 2021

If you pay dividends to a foreign resident (that is, someone who is not an Australian resident), the unfranked component of each of those payments is subject to a final withholding tax.

A foreign resident can be an individual, company, partnership, trust or super fund.

Dividends

Dividends for withholding tax purposes include:

- any distribution made by a company to any of its shareholders in the form of money or other property
- any amount credited by a company to any of its shareholders
- the return on all equity interests, including non-share dividends. However, they do not include dividends paid for non-equity shares that are subject to interest withholding tax.

You must issue a statement to your shareholder or payee that indicates the extent the dividend is franked or is conduit foreign income. You do not have to withhold tax if the dividends you pay have been fully franked or they are conduit foreign income.

See also

- Conduit foreign income
- Withholding from interest paid to foreign residents
- Withholding from royalties paid to foreign residents

Who withholds

If you operate a company that is an Australian resident, you must withhold amounts from unfranked or partly franked dividends that are not conduit foreign income if either of the following applies:

- the payment is made to an entity which has an address outside Australia
- your company is authorised to pay the dividend to any entities outside Australia.

Australian payers must withhold amounts from the payments they make. An Australian payer can be either an Australian resident or foreign resident with a permanent establishment in Australia.

Permanent establishment

A permanent establishment means a fixed place through which a business entity carries on their business activities in part or in full, and can include a:

- place of management
- branch or office
- factory
- workshop
- building and construction site
- mine or quarry
- pastoral or agricultural property.

An establishment may not be counted as a permanent establishment if is just used:

- as a storage facility
- to display goods or services

- as a fixed place of business for the purpose of purchasing goods or merchandise
- to collect information for the enterprise.

See also

- Permanent establishments

Temporary resident

Temporary residents of Australia who pay dividends to foreign lenders do not have to withhold tax from the payments they make. This exemption applies to qualifying temporary residents who are also Australian residents for tax purposes.

- Exempt foreign employment income

When to withhold

You must withhold tax from dividends you pay to a foreign resident when any of the following occurs:

- you make the dividend payment
- you credit the dividend to the foreign resident's account
- you otherwise deal with the payment on behalf of, or at the direction of, the foreign resident.

If you are an Australian agent of a foreign resident, you should withhold tax when you:

- receive a dividend payment on behalf of the foreign resident
- have the amount credited to your account
- have the payments otherwise dealt with at the direction of your foreign resident payee.

Your obligations

You must:

- withhold tax from dividends you pay to foreign residents
- pay the amounts you withhold to us

- issue payment summaries to your payees
- lodge a PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report (NAT 7187).

You do not have to lodge this annual report if you have correctly reported interest or dividend payments to foreign residents in an annual investment income report (AIIR).

Registering for PAYG withholding

You must be registered for pay as you go (PAYG) withholding before you withhold tax.

See also

- Registering for PAYG withholding

Withholding rate

If the payment is made to a resident of a country which has a tax treaty with Australia, that treaty sets the rate of withholding which is required. If there is no tax treaty the rate will be 30%.

Tax treaties are special agreements that Australia has entered into with over 40 countries. The tax treaties help prevent the same income being taxed more than once.

The reduced tax rate that applies under a tax treaty only applies if the recipient of the dividend is both:

- a resident of the particular tax treaty country
- beneficially entitled to that income.

See also

- Tax treaties
- Countries Australia has tax treaties with and their required withholding tax rates are in the Income tax treaties table on the Treasury website.

Australian resident living overseas temporarily

If you are an investment body such as a financial institution and you have Australian resident payees who temporarily live overseas, the

amounts you pay to those payees are not subject to foreign resident withholding tax if they:

- advise you that they continue to be Australian residents
- provided you their tax file number (TFN) or Australian business number (ABN).

If they are Australian residents and have not provided their TFN or ABN, you must withhold at the top rate of tax (47% from 1 July 2017).

Exemptions

You do not have to withhold amounts from dividend payments you make to a foreign resident of a treaty country if **both** of the following circumstances apply – the:

- foreign resident payee carries on a business in Australia through a permanent establishment
- payment you make is effectively connected with the payee's business.

This means that the payee will need to include the dividend payment in the assessable income of the payee's business in Australia. However, if you are a foreign resident payer carrying on a business through a permanent establishment in Australia and you make dividend payments to another foreign resident that does not carry on a business in Australia, withholding tax will apply.

Payee obligations

Foreign residents do not have to pay us any more tax if their only Australian income is from interest, dividends and royalties which have had the correct amount of withholding tax withheld.

Foreign resident payees must lodge an Australian tax return if they have assessable income other than interest, dividends or royalties in Australia.

Certificates of payment

A foreign resident payee may require a certificate of payment to provide to the tax authorities in their home country.

See also

- Investment income and royalties paid to foreign residents
- Application for certificate of payment (NAT 6408)

Refunds

If you withhold more tax than you should and you discover the error early, you must refund the extra amount you withheld to the payee, even if you have already paid the amount to us. By discovering the error early, we mean either:

- you become aware of the error by no later than 30 June of the relevant year
- your payee requests a refund by no later than 30 June of the relevant year.

If you have already paid the amount to us, you can offset the amount against another withholding amount you are liable to pay us in the future for the relevant year. Remember to record this offset in your accounts.

If you have already paid the amount to us and you are not liable to pay us any further withholding amounts for the relevant year, you need to lodge a revised activity statement. Revised activity statements are available in Online services for business if you are a registered user or you can phone us on **13 28 66** to obtain a revised activity statement form.

If you withhold more tax than you should and you discover the error later than 30 June after the end of the year to which the withheld amount relates, **do not refund the amounts to your payee** – if you do we cannot refund the amount to you.

Next step

- Refund of over-withheld withholding: how to apply

See also

- PAYG withholding

Withholding tax from payments to foreign residents for casino gaming junket activities

The following provides information on payments to foreign residents for arranging casino gaming junket activities.

Last updated 30 June 2017

This information will assist you if you pay foreign residents for arranging casino gaming junket activities. You must withhold tax from these payments under the existing pay as you go (PAYG) withholding rules.

If you are making interest, dividend or royalty payments to foreign residents, different withholding rules apply and this information is not for you.

See also

- PAYG withholding
- Register for PAYG withholding
- Paying and reporting withheld amounts
- Issue payment summaries and lodge annual reports
- How to pay
- Record keeping for small business

When should I withhold tax?

Business that arrange for foreign gamblers to come to Australia for the purpose of gaming at casinos are generally known as casino gaming **junket tour operators** (JTO). You may make payments to them in the form of:

- monetary payments, including a commission based on the gaming or losses of the people
- incentives including:
  - flights

  - accommodation
  - food and beverage
  - laundry, car hire or any other in-house services

- non-cash benefits as a reward for bringing people to a casino to gamble.

Services provided by JTOs include, but are not limited to:

- contracting with casinos
- contracting with players
- recording player gambling statistics
- credit and debt management
- local funds management
- casino settlement and liaison
- repatriation of funds
- providing customer liaison services (for example, translating and interpreting)
- associated services such as arranging hotel accommodation, transportation and entertainment.

In some circumstances, you may have to make payments to an agent on behalf of a foreign resident. You should withhold from payments you make to such an agent as though you were paying the foreign resident directly. This is the case even if the agent is an Australian resident.

What are my obligations?

As a payer, you are required to withhold tax from payments to:

- payees
- workers who are not employees that have provided an ABN
- suppliers carrying on an enterprise in Australia who do not quote an ABN.

Find out about:

- How much to withhold from payments
- Withholding when a payee does not quote an ABN
- Was the payment made in a foreign currency?
- PAYG withholding variation
- What do I do when I receive a variation notice for a payee?
- What do I do when I receive a variation withdrawal notice?
- Payment summaries and reporting

How much to withhold from payments

You are required to withhold 3% of the total payment you make to a foreign resident business or individual for arranging casino gaming junket activities.

You are required to determine if the JTO will be considered to be carrying on an enterprise in Australia to ascertain if an ABN should be provided. Often, they are entitled to one.

When a JTO is entitled to an ABN and does not provide one, a 'Statement by supplier' should not be used in its place.

Withholding when a payee does not quote an ABN

If a foreign resident JTO payee is required to supply you with an ABN and they do not, you must withhold at the highest tax rate (47% from 1 July 2017).

The withholding requirements where an ABN is not quoted takes precedence over the foreign resident withholding requirements. If you have withheld because an ABN was not quoted, you do not also withhold under foreign resident withholding rules.

If you make payments to foreign resident JTOs who quote an ABN (or who are not required to quote an ABN), you must withhold at one of the following rates:

- the varied rate specified on their PAYG variation notice
- 3% from the payment you make if they do not have a PAYG variation.

What if the payment is made in a foreign currency?

You must report and pay amounts in Australian dollars.

If you have to make a payment in a foreign currency, you need to calculate the equivalent Australian dollar value of the payment at the time you make the payment.

After converting the foreign currency payment to Australian dollars, you then calculate the amount to withhold at the required rate.

For more information, see Foreign exchange (forex): the general translation rule.

PAYG withholding variation

A foreign resident JTO payee may seek a variation where the required rate of withholding is lower or higher than the expected tax payable on their Australian taxable income. If a payee claims the prescribed rate is too low or too high, tell them to apply for a variation.

A payee will need to apply for a variation if they believe they are not required to pay tax in Australia for either of the following reasons:

- there is a tax treaty in place
- where the income is exempt under Australian law.

Tax treaties are special agreements that Australia has entered into with over 40 countries. The tax treaties help prevent the same income being taxed more than once.

See also

- The list of tax treaty countries
- What are tax treaties?

Next steps

- PAYG foreign resident withholding variation application

What do I do when I receive a variation notice for a payee?

Where a payee has been granted a variation, we will send you a written variation notice confirming the new rate. Until you receive this notice, you must not vary the rate of withholding.

When you receive a variation notice for the payee:

- match the payee identity details on the notice with the payee identity details you have in your records
- you must use the varied rate to calculate how much to withhold from any future payments you make to the payee that are covered by the variation – continue to do so until the expiry date shown on the notice or until we advise you otherwise
- keep a copy of the variation notice with your business records for five years.

What do I do if I receive a variation withdrawal notice?

If you receive a variation withdrawal notice for a payee from us:

- match the payee identity details on the notice with the payee identity details you have in your records
- you must withhold 3% from the payment.
- keep a copy of the variation withdrawal notice with your business records for five years.

For more information, see Foreign resident income rates.

Need more help? FRWvariation@ato.gov.au or call our hotline number 1300 306 105

Payment summaries and reporting

If you withhold from payments to a foreign resident, you have specific end-of year reporting obligations and you must do **both** of the following:

- provide each foreign resident with a foreign residents payment summary
- send us a PAYG withholding annual report

You may also need to report details of all amounts you withheld because an ABN was not quoted. You can lodge this report by completing a withholding where ABN not quoted – annual report.

You must lodge these reports by 31 October following the end of the financial year. You are not required to send copies of the payment

summaries given to your payee, but you must keep copies for your records.

Next steps

- PAYG withholding annual report - payments to foreign residents
- Withholding where ABN not quoted – annual report
- Lodging your PAYG withholding annual reports online

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Withholding tax from payments to foreign residents for construction and related activities

This is a guide that covers those payments made to foreign residents for construction and related activities.

Last updated 3 March 2020

The pay as you go (PAYG) withholding system includes certain payments made to foreign residents.

Here you can find out about withholding from payments to foreign residents for construction and related activities.

Next steps

- Register for PAYG withholding

When should I withhold tax?

You are required to withhold amounts when making payments to foreign residents for construction and related activities. Withholding is required from all payments, including payments to subcontractors.

Works include the construction, installation and upgrading of buildings, plants and fixtures. Examples of construction works include, but are not limited to:

- dams

- electricity links
- mine site development
- natural gas field development
- natural resource infrastructure
- oilfield development
- pipeline works
- power generation infrastructure
- railway or road works
- residential building
- resort development
- retail or commercial development
- road and rail developments
- airport upgrades
- telecommunications equipment upgrades
- water treatment plant works.

Related activities

Related activities such as commissioning of infrastructure, training and support of personnel to operate infrastructure and supervision during the initial phase of operation are also included.

Other related activities include activities associated with the construction, installation and upgrading of buildings, plant and fixtures.

Examples include, but are not limited to:

- administration
- assembly
- decommissioning plant
- commissioning and operation of facilities
- costing
- engineering

- erection
- fabrication
- hook up
- installation
- project management
- site management
- supervision and provision of personnel
- supply of plant and equipment
- warranty repairs.

Making payments to an agent

In some circumstances you may have to make payments to an agent on behalf of a foreign resident.

You should withhold from payments made to an agent as though the payment were made directly to the foreign resident. This is the case even if the agent is a resident in Australia.

If an Australian resident agent receives a payment subject to foreign resident withholding on behalf of an overseas resident and an amount has not already been withheld from that payment, the agent must withhold from the payment.

How much should I withhold from payments?

You have to withhold 5% of the total payment made to foreign residents for construction and related activities.

The amount to withhold could be different if the payee has received a variation from us or if they do not quote you an Australian Business Number (ABN).

Where a variation has been granted, we send you a written notice confirming how much you should withhold from payments to that payee.

Unless we notify you, you should withhold 5% from payments.

What to do when you receive a variation notice from a payee

A foreign resident payee can ask us to vary the required rate of withholding.

If the payee provides you with a variation notice issued by us, you need to do the following:

- Match the payee identity details on the notice with the payee identity details you have in your records.
- If you cannot match the details, contact us on the phone number provided on the notice.
- If you can match the details, you must use the varied rate to calculate how much to withhold from any future payments you make to the payee.
- You continue to do so until the expiry date shown on the notice or until we advise you otherwise.
- Keep a copy of the variation notice with your business records for at least five years.

If you receive more than one variation notice for a payee, the latest notice supersedes all previous notices.

Why does a payee apply for a variation?

A foreign resident payee may seek a variation where the required rate of withholding is lower or higher than the expected actual tax payable on their Australian taxable income.

If a payee claims that the prescribed rate is too low or high, tell them to apply for a variation.

The payee will need to apply for a variation if they believe they are not required to pay tax in Australia either:

- due to the operation of a double tax agreement
- where the income is exempt under Australian law.

How does a payee apply for a variation?

A foreign resident payee will need to complete a PAYG foreign resident withholding variation form. There is a different application form for each financial year.

For more information, see PAYG foreign resident withholding variation form.

What to do if you receive a variation withdrawal notice

A variation notice can only be withdrawn by us.

If you receive a variation withdrawal notice for a payee from us:

- Match the payee identity details on the notice with the payee identity details you have in your records.
- If you cannot match the details, contact us on the phone number provided on the notice.
- If you can match the details, you should withhold at 5%, unless we notify you otherwise.
- Keep a copy of the variation withdrawal notice with your business records for at least five years.

How much to withhold when a payee does not quote an ABN

In general, a payee carrying on an enterprise in Australia must supply you with an ABN.

If they don't, you must withhold 47% from any payments to them.

There are some limited circumstances where a payee is not required to supply an ABN, including where the income is exempt income for the payee.

Where the foreign resident payee believes they do not need an ABN, you still need to consider whether you are required to withhold from the payment.

The payee may need to apply for a variation.

The withholding requirements where an ABN is not quoted take precedence over the foreign resident withholding requirements.

If you have withheld because an ABN was not quoted, then you do not also withhold under foreign resident withholding.

What if the payment is made in a foreign currency?

Calculate the equivalent Australian dollar value of the payment at the time you make the payment.

Then calculate the amount to withhold at the required rate.

The amount you report and pay to us will always be the Australian dollar value.

Next steps

- Foreign exchange (forex): the general translation rule

For more information on foreign resident withholding, you can:

- phone us on **1300 306 105** between 8:00 am and 6:00 pm, Monday to Friday
- email FRWvariation@ato.gov.au

Reporting and paying

When and how you report and pay amounts to us depends on whether you are a small, medium or large withholder.

To determine this, we look at how much your total withholding is, or is likely to be, each year.

If you withhold from payments to a foreign resident you have specific end-of-year reporting obligations and you must do **both** of the following:

- provide each foreign resident with a payment summary
- send an annual report to us by 31 October.

You do not report these payments in your taxable payments annual report.

Your obligations are different depending on whether the foreign resident quoted you an ABN.

Next steps

- Paying and reporting withheld amounts
- Phone **13 28 66**

See also

- PAYG payment summaries: forms and guidelines
- PAYG withholding annual report – payments to foreign residents

- Lodging your PAYG withholding annual reports online
- PAYG withholding where ABN not quoted – annual report
- Taxable payments annual report
- No ABN withholding – questions and answers

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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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