
Taxation Determination

Income tax: Are payments made to an individual under the age of 18 (eighteen) who has not provided the paying entity with a Tax File Number (TFN) Declaration subject to Pay As You Go withholding?

Preamble

*This document does not rule on the application of a 'tax law' (as defined) and is, therefore, not a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. The document is, however, administratively binding on the Commissioner of Taxation. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

Date of Effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes. However the Commissioner has varied the amount of the withholding to nil in the circumstances outlined in paragraph 5 below.
2. Often an entity (the payer) will make a payment to an individual;
 - for work or services or,
 - in respect of retirement payments, annuities, and eligible termination payments or,
 - in respect of benefits or compensation.

The payer is required to withhold an amount from the payments in accordance with the provisions contained in subdivisions 12-B, 12-C or 12-D in Schedule 1 of the *Taxation Administration Act 1953* (TAA) which cover payments in the following categories:

Payments for work and services – Subdivision 12-B

- Payment to employee
- Payment to company director
- Payment to office holder
- Return to work payment

- Voluntary agreement to withhold¹
- Payment under labour hire arrangements, or specified by regulations.

Retirement payments, eligible termination payments and annuities – Subdivision 12-C

- Payment of pension or annuity
- Eligible termination payment
- Payment for unused leave

Benefit and compensation payments – Subdivision 12-D

- Social Security or other benefit payment
- Commonwealth education or training payment
- Compensation, sickness or accident payment.

For details of the provisions relating to these payments see sections 12-35 to 12-120 of Schedule 1 of the TAA.

3. Subsection 15-10(1) of Schedule 1 of the TAA provides that the amount that subdivision 12-B, 12-C or 12-D requires to be withheld from the payment is to be worked out under withholding schedules gazetted by the Commissioner as per section 15-25 of Schedule 1 of the TAA. However, if the regulations prescribe how the amount is to be worked out, then it is to be worked out under the regulations. Regulation 37 of the *Taxation Administration Regulations 1976* currently provides that where the individual who receives the payment does not provide the paying entity with a TFN Declaration, the payer is required to withhold an amount equivalent to 48.5% of the payment.

4. Section 15-15 of Schedule 1 of the TAA enables the Commissioner to vary the amount required to be withheld to meet the special circumstances of a particular case or class of cases. A copy of a variation that applies to a class of entities must be published in the Gazette.

5. The Commissioner considers that where an entity makes a payment to an individual that falls within the provisions of Subdivision 12-B (except section 12-55 which covers a voluntary agreement to withhold), 12-C or 12-D in Schedule 1 of the TAA and:

- (a) the individual is under 18 (eighteen) years of age; and
- (b) the individual has not provided the entity with a TFN declaration that is in effect; and
- (c) the amounts paid by the entity to the individual do not exceed:
 - where the entity pays the individual weekly: \$112; or
 - where the entity pays the individual fortnightly: \$225; or
 - where the entity pays the individual monthly: \$489,

(the threshold amounts apply whether or not the individual is entitled to annual leave loading)

then the amount required to be withheld from the payment should be varied to nil under the power contained in section 15-15 to meet the special circumstances of this class of cases. A copy of the notice of variation to this effect was published in the Commonwealth of Australia Special Gazette No S 343, 29 June 2000. The variation is effective from 1 July 2000 and applies to payments made on or after that date.

Commissioner of Taxation

25 October 2000

¹ Payments subject to a voluntary agreement to withhold under section 12-55 are not subject to variation in this determination.

Previous draft:

Not previously released in draft form

Subject references:

- Pay As You Go
- PAYG Variation
- PAYG Withholding
- TFN Declaration

Legislative references:

- TAA 1953 Schedule 1
- TAA 1953 Subdiv 12-B
- TAA 1953 Subdiv 12-C
- TAA 1953 Subdiv 12-D
- TAA 1953 12-55
- TAA 1953 15-10(1)
- TAA 1953 15-15
- TAA 1953 15-25
- TAR 1976 Reg 37

ATO references:

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