



Taxation Determination

Income tax: Are payments made to an individual under the age of 18 (eighteen) who has not quoted an Australian Business Number (ABN) 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 4 below.
2. Often an entity (the payer) will make a payment to an individual for a supply that the individual has made or proposes to make to that entity in the course or furtherance of an enterprise carried on in Australia by the individual. Under section 12-190 of Schedule 1 to the *Taxation Administration Act 1953 (TAA)*, the payer is required to withhold an amount from the payment where the individual who makes the supply does not quote a valid ABN and none of the other exceptions in that section apply.
3. For the purposes of the PAYG provisions, the definition of the terms 'entity', 'enterprise', and 'supply' take their meaning from section 995-1 of the Income Tax Assessment Act 1997 (ITAA 97). For more information on 'supply' and furtherance of an 'enterprise' please refer to:
 - Goods and Services Tax Ruling GSTR 2000/31 which looks at supplies connected with Australia; and
 - Miscellaneous Taxation Ruling MT 2000/1 which looks at the meaning of entity carrying on an enterprise for the purposes of entitlement to an ABN under sections 37 and 38 of the A New Tax System (Australian Business Number) Act 1999 (ABNA).

4. The amount required to be withheld is to be worked out under the regulations as required by subsection 15-10(2) of Schedule 1 of the TAA. However, 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 given to each of the entities or published in the Gazette.

5. The Commissioner considers that where an entity makes a payment to an individual that falls within the provisions of section 12-190 and:

- (a) the individual is under the age of 18 (eighteen) years; and
- (b) the supplier (individual) does not quote an ABN to the payer; and
- (c) the payment does not exceed \$120 per week;

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 to 30 June 2001 for payments made on or after 1 July 2000 where all or part of a supply to which the payment relates is made on or after that date.

Commissioner of Taxation

25 October 2000

Previous draft:

Not previously released in draft form

Related rulings:

GSTR 2000/31; MT 2000/1

Subject references:

- ABN
- Pay As You Go
- PAYG Variation
- PAYG Withholding

Legislative references:

- TAA 1953 Schedule 1
 - TAA 1953 12-190
 - TAA 1953 15-10(2)
 - TAA 1953 15-15
 - ANTS(ABN)A 99 37
 - ANTS(ABN)A 99 38
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ATO references:

NO 2000/017600

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FOI Index No: I 1022613

ISSN: 1038-8982