


# ***TR 2005/16A1 - Addendum - Income tax: Pay As You Go - withholding from payments to employees***

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# Addendum

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## Taxation Ruling

### Income tax: Pay As You Go – withholding from payments to employees

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2005/16 to update references to Taxation Rulings and legislation, and case law.

#### TR 2005/16 is amended as follows:

**1. Contents list**

Omit:

**Previous Rulings**      5

**2. Paragraph 4**

Omit the paragraph; substitute:

4. This Ruling applies to income years commencing both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

**3. Paragraph 5**

Omit the heading and paragraph.

**4. Footnote 6**

At the end of the second sentence, insert ‘and the Federal Court in *On Call Interpreters and Translators Agency Pty Ltd v. Commissioner of Taxation (No 3)* [2011] FCA 366; (2011) 214 FCR 82; (2011) 83 ATR 137; (2011) 279 ALR 341’.

**5. Paragraph 18**

After the paragraph, insert:

18A. The approach adopted by the courts in modern cases involves the examination of a range of indicia. The courts will look beyond the contractual

description of the relationship to its real substance, and to the work practices which establish the 'totality of the relationship'.<sup>6A</sup>

## 6. Paragraph 55

Omit the paragraph; substitute:

55. Section 8 of the *A New Tax System (Australian Business Number) Act 1999* provides that, in part, an entity is entitled to an ABN if they carry on an enterprise in Australia.<sup>47A</sup> Section 9-20 of the *A New Tax System (Goods and Services Tax) Act 1999* provides, in part, that an enterprise includes activities done in the form of a business, but does not include activities done by a person as an employee.<sup>48</sup>

## 7. Detailed contents list

Omit:

**Previous Rulings** **5**

## 8. Related Rulings/Determinations

Omit:

TR 92/20;

Insert:

TR 2006/10

## 9. Previous Rulings/Determinations

Omit heading and paragraph.

## 10. Legislative references

Omit:

- ABNA 1999 38
- ABNA 1999 38(2)(a)

Insert:

- ABNA 1999 41
- GST Act 1999 9-20
- GST Act 1999 9-20(2)(a)

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<sup>6A</sup> *On Call Interpreters and Translators Agency Pty Ltd v. Commissioner of Taxation (No 3)* [2011] FCA 366 at [204].

<sup>47A</sup> Section 41 of the *A New Tax System (Australian Business Number) Act 1999* provides that the term 'enterprise' has the meaning given by section 9-20 of the *A New Tax System (Goods and Services Tax) Act 1999*.

<sup>48</sup> This is subject to certain exceptions stated in paragraph 9-20(2)(a) of the *A New Tax System (Goods and Services Tax) Act 1999*.

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**11. Case references**

Insert:

- On Call Interpreters and Translators Agency Pty Ltd v. Commissioner of Taxation (No 3) [2011] FCA 366; (2011) 214 FCR 82; (2011) 83 ATR 137; (2011) 279 ALR 341

This Addendum applies on and from 22 March 2017.

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**Commissioner of Taxation**

22 March 2017

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ATO references

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