

# Foreign resident employers – your tax and super obligations

Determining your employer obligations where you have employees working remotely from Australia

## Key points

- Whether you have Australian tax and super obligations for your employees working remotely from Australia depends on their individual facts and circumstances.
- As part of our initial COVID-19 response, we did not expect you to register for pay as you go (PAYG) withholding if the only reason your employee was working in Australia was because of the effects of COVID-19 on travel and it was anticipated they would leave before 30 June 2020. This approach applied until 30 June 2020.
- From 1 July 2020, you need to consider whether you are required to withhold PAYG amounts from your employee's employment income.
- Under an applicable double-tax agreement (DTA), the short-term visit exception may apply to ensure that employment income earned in Australia is not taxed here. However, you will need to check each DTA carefully – wording, conditions and time periods vary between DTAs.
- You can rely on the information your employee provides in their *Tax file number declaration* to work out how much tax to withhold (if any) unless you have reason to believe it's incorrect.
- Superannuation guarantee may apply even if you don't need to withhold PAYG amounts from your employee's employment income.
- You may also need to consider fringe benefits tax (FBT) if you are providing benefits other than salary or wages to your employees.

## Your employer tax and super obligations

If you are a foreign employer, you may have Australian tax and super obligations for your employees. This depends on your employee's individual circumstances including:

- their residency status for tax purposes
- the source of any employment income earned by the employee

- the application of a DTA, if they are a foreign resident.
- ▶ For more information about residency of individuals, source of income and the application of a DTA, see [Residency and source of income](#).

## PAYG withholding

From 1 July 2020, you'll need to consider whether the employment income of your employee is subject to PAYG withholding.

PAYG withholding will apply to:

- employment income earned by Australian residents (including salary, wages, allowances, commissions, bonuses, holiday pay and payments when an employee leaves)
- Australian-sourced employment income earned by employees who are foreign residents (unless the short-term visit exception applies).

Many DTAs with Australia provide that, in certain circumstances, employment income earned by a foreign resident while working in Australia for a short period, (up to 183 days), is not to be taxed in Australia (the short-term visit exception).

If the short-term visit exception does not apply, a DTA may deem employment income earned by a foreign resident while working in Australia to be Australian-sourced and taxable in Australia.

## Employment income is not taxable in Australia

If your employee's employment income is not taxable in Australia, you do not need to withhold PAYG amounts.

Generally, employment income will not be taxable in Australia under the **short-term visit exception** if all of the following apply. The employee:

- is a resident of another country for the purposes of a DTA (including after applying the tie-breaker rule for dual residents, if required)
- is not present in Australia for more than 183 days in total in either an income year or a 12-month

period (depending on the terms of the applicable DTA)

- receives salary and wages paid by, or on behalf of, an employer that is not a resident of Australia
- the employee's salary and wages are not deductible against the profits of an Australian permanent establishment of their employer.

Depending on the applicable DTA, the 183-day limit for presence in Australia doesn't necessarily all have to be in the same income year, and there may be breaks in the aggregate period.

- ▶ You will need to check the applicable DTA carefully as the wording, conditions and time periods vary from DTA to DTA.

In other **very limited** situations, the income of your employee may remain foreign sourced. If they also remain a foreign resident, the income is not taxable in Australia.

## Employment income is taxable in Australia

If you need to withhold PAYG you need to:

- either
  - register for PAYG withholding or
  - arrange for an Australian associate or affiliate to undertake the PAYG withholding obligations on your behalf
- have your employee complete a *Tax file number declaration*. You can rely on the information provided by the employee in this form to determine if they are a resident for tax purposes and how much tax to withhold, unless you believe it's incorrect
- work out the amount to withhold using our [tax withheld calculator](#)
- report and pay the withheld amounts to us
- prepare annual income statements or payment summaries and lodge an annual report.
- ▶ We recommend you start withholding as soon as it is reasonable to presume your employee will need to have amounts withheld from their employment income. This helps reduce any tax bill your employee may have at the end of the income year.

### Example 1 – intending to be in Australia more than 183 days in aggregate

*Dominic is an IT professional who resides overseas and works for ComputingWorldwide.com, an overseas company. Dominic can undertake his work remotely anywhere in the world.*

*Dominic was in Australia from 16 December 2019 to 4 January 2020 (20 days).*

*He subsequently came back to Australia as a safety precaution on 20 March 2020. Dominic advises ComputingWorldwide.com that he intends to leave Australia once it is safe to return overseas, but that he will stay in Australia at least until 1 September 2020 (due to a personal commitment).*

*By 1 September 2020, Dominic will have been in Australia for more than 183 days in total (the 20 days that he was in Australia during the New Year period are taken into account for the purposes of the short-term visit exception).*

*ComputingWorldwide.com checks the relevant DTA and establishes that it has to treat Dominic's salary or wages as taxable in Australia if he spends more than 183 days in Australia in any 12-month period.*

*As ComputingWorldwide.com is aware that Dominic is expected to be in Australia for more than 183 days in a 12-month period, it registers for PAYG withholding and asks Dominic to complete a TFN declaration.*

*ComputingWorldwide.com starts to withhold PAYG amounts from Dominic's salary and wages, report and pay the amounts to us, from 1 July 2020.*

### Example 2 – intending to depart Australia as soon as possible

*LeeCo is an overseas accounting firm. One of LeeCo's employees, Mel, came to Australia for a holiday on 1 March 2020. On 1 April 2020, COVID-19 affected international travel, so LeeCo agreed to let Mel remain in Australia and work remotely until travel restrictions were lifted at which time, they both agreed that she would return home.*

*On 1 July 2020, LeeCo checks the relevant DTA and establishes that they will need to start withholding from their employee's salary or wages when they become taxable in Australia. If Mel remains in Australia for more than 183 days in a 12-month period, all of Mel's salary or wages earned while in Australia are taxable (as the short-term visit exception does not apply).*

*Mel has been in Australia since 1 March 2020 and it is unlikely she will be returning to her home country before 30 August 2020 (by when she will have been here for 183 days) due to COVID-19 international travel restrictions. It does not matter that Mel was not working in March – any days that she was physically present in Australia are taken into account for the purposes of the short-term visit exception.*

*We recommend that LeeCo registers for PAYG withholding, asks Mel to obtain a TFN and complete a TFN declaration, and starts withholding from 1 July 2020. This will reduce Mel's potential tax bill at the end of the income year if she stays in Australia for more than 183 days.*

- ▶ For more information about:
  - double-tax agreements, see [Tax treaties](#)
  - residency of individuals, source of income and the DTA exceptions, see [Residency and source of income](#)
  - employing people, see [Your workers](#)
  - PAYG withholding, see [PAYG withholding](#)
  - completing a Tax file number declaration, see [Tax file number declaration](#).

## Superannuation

A foreign resident employer will usually be required to pay super for Australian resident and foreign resident employees who perform work in Australia, otherwise the super guarantee charge will apply.

Generally, you must pay super in addition to your employee's wages if:

- you pay them \$450 or more before tax in a calendar month, and
- they are 18 years of age or older.

There are some instances where you don't have to pay super. For example, for an employee who is temporarily working in Australia and is covered by a bilateral super agreement, or for certain foreign executives.

Eligible employees can claim the super paid for them as a Departing Australia Superannuation Payment (DASP) when they leave Australia if they meet all the requirements. A final DASP tax will be withheld from their payment when it is made.

- ▶ For more information about:
  - superannuation, see [Super for employers](#)
  - DASP, see [Departing Australia superannuation payment \(DASP\)](#).

### Example 3 – no requirement to withhold but payment of super guarantee

*RocketCo has an employee, Rod, working in Australia because of the COVID-19 pandemic. Rod arrived in Australia on 15 March 2020 and leaves Australia on 1 September 2020. Rod is not an executive employee, is over 18, earns more than \$450 in a calendar month and doesn't have a certificate of coverage exempting the payment of super in Australia.*

*RocketCo checks the DTA and establishes that the short-term visit exception applies; therefore it is not required to withhold PAYG from Rod's salary and wages. However, RocketCo is required to pay super to an Australian complying super fund, on behalf of Rod, to avoid the super guarantee charge.*

## Fringe benefits tax

If you are required to withhold PAYG from payments to your employees, you may also have FBT obligations in Australia. FBT applies to certain benefits you provide to your employees (or their family or other associates) that are in addition to, or instead of, salary or wages. For example, you would need to consider whether FBT applies where you pay for your employee's accommodation or allow them to use a hire car that you've paid for, for private purposes.

You will need to check if any applicable DTA affects your FBT obligations in Australia.

## More information

For more information see:

- [Fringe benefits tax](#)
- [Tax treaties](#)

Siebel reference: 1-NEBA8A6

### 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 in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake trying to follow our information in this publication and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

This publication was current at December 2020.

© Australian Taxation Office for the Commonwealth of Australia.

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).

Published by: Australian Taxation Office, Canberra



**Australian Government**  
**Australian Taxation Office**