


TD 2003/D10 - Income tax: Simplified Tax System (STS): what amount is returned as assessable income by an STS taxpayer in relation to an assessable payment to them that has been subject to the Pay As You Go (PAYG) withholding rules in Division 12 of Schedule 1 to the Taxation Administration Act 1953 ('TAA 1953')?

 This cover sheet is provided for information only. It does not form part of *TD 2003/D10 - Income tax: Simplified Tax System (STS): what amount is returned as assessable income by an STS taxpayer in relation to an assessable payment to them that has been subject to the Pay As You Go (PAYG) withholding rules in Division 12 of Schedule 1 to the Taxation Administration Act 1953 ('TAA 1953')?*

This document has been finalised by TD 2003/24.

Draft Taxation Determination

Income tax: Simplified Tax System (STS): what amount is returned as assessable income by an STS taxpayer in relation to an assessable payment to them that has been subject to the Pay As You Go (PAYG) withholding rules in Division 12 of Schedule 1 to the *Taxation Administration Act 1953* ('TAA 1953')?

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Under section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997'), as modified by paragraph 328-105(1)(a) of the ITAA 1997, an STS taxpayer includes in their assessable income for an income year the gross amount of a payment from which an amount has been withheld under the PAYG withholding rules. This is so even though the STS taxpayer actually receives a lesser amount in the income year.
2. Paragraph 328-105(1)(a) modifies the operation of section 6-5 for an STS taxpayer, so that they only include in their assessable income for an income year, amounts of ordinary income that have been 'received'. This STS accounting rule is referred to as the 'received rule' for STS taxpayers.
3. The Note to paragraph 328-105(1)(a) indicates that the 'constructive receipt rule' in subsection 6-5(4), where receipt is taken to have occurred if an amount is applied or dealt with on behalf of a taxpayer, also applies for the purposes of applying the STS received rule.
4. Where an STS taxpayer receives an assessable payment from which an amount has been withheld under the PAYG withholding rules, they are taken under this constructive receipt rule also to have received the amount withheld. This is because the act of withholding by the payer constitutes an application of or a dealing with that portion withheld on behalf of the STS taxpayer at the time of the withholding. Thus, for the purposes of paragraph 328-105(1)(a) the STS taxpayer actually receives the net amount paid to them, and is taken to have constructively received the amount withheld by the payer at the same time. As both amounts have been received, either actually or constructively, during the income year, the STS taxpayer will need to include both amounts in their assessable income for that year.

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5. *Case No 6*, 12 CTBR (OS) provides an example of where withholding an amount from a payment was found to be a 'dealing with' the amount withheld on behalf of the recipient of the payment, for the purposes of the constructive receipt rule. The Chairman of the No 1 Board of Review, Mr Gibson, said at 31:

... the amounts deducted by the employer under s221C(1) are treated by the Legislature as being, at all times, moneys belonging to the employee. For that reason I consider that the employee's wages, to the extent of the amounts deducted, are income which, although not actually paid over to him, is dealt with on his behalf and is therefore deemed by s19 to have been derived by him. The deductions made by the employer are, in substance, payments made by the employee, or by the employer on his behalf, out of the wages which the employee is entitled to receive.

Example

6. *George is an STS taxpayer. He provides catering to Solomon Pty Ltd (SPL) for the agreed price of \$1,000. George, however, fails to quote his Australian Business Number to SPL. When SPL pays George for the supply, it withholds 48.5 per cent of the payment under subsection 12-190(1) of Schedule 1 to the TAA 1953. As a result, George receives \$515 on 26 June 2002. SPL pays the \$485 withheld to the Commissioner on 21 July 2002.*

7. *The amount of \$1,000 payable to George is his ordinary income. He will include the entire \$1,000 in his assessable income for the 2001-02 income year. This is because the amount withheld has been applied or dealt with on George's behalf at the time he receives \$515, and he is therefore taken to have constructively received the \$485 withheld.*

Your comments

8. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Comments by Date: 30 July 2003

Contact Officer: Kathy Riley

E-Mail address: Kathy.Riley@ato.gov.au

Telephone: (08) 8208 1900

Facsimile: (08) 8208 1800

Address: 91 Waymouth Street
ADELAIDE SA 5000

Commissioner of Taxation

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Subject references:

- constructive receipt
- PAYG withholding
- STS accounting methods
- STS taxpayers

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 6-5(4)
- ITAA 1997 328-105(1)(a)
- TAA 1953 Sch 1 Div 12
- TAA 1953 Part IVAAA
- TAA 1953 12-190(1)

Case references:

- 12 CTBR Case 6

ATO references

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