PPS Bulletin 10 - Voluntary Agreements

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Number 10
Voluntary Agreements

Valid from 17 December 1998

About this Bulletin

This Bulletin explains how a payer and payee can become subject to the Prescribed Payments System (PPS) by voluntary agreement.

A *prescribed payment* is defined to mean payments made under a particular class or category of contract. The payments that are currently prescribed are:

- certain payments within nine specified industries (see PPS Bulletins 1–9 for information on how PPS affects these industries); and
- any other payment that the payer and payee have voluntarily agreed will be a prescribed payment.

What is a 'payment' for PPS purposes?

As indicated above, only payments made under a certain type of contract may be subject to PPS. In essence the contract must be one that requires a person to perform some work, other than as an employee. That is, only payments to independent contractors for the performance of work may be subject to PPS. Payments of salary or wages to employees are subject to the PAYE system.

Secondly, a contract for the performance of work must be distinguished from a contract passing title in goods. For example, performance under a contract for sale of goods requires the transfer of title in goods. Any work undertaken by the seller enables that person to fulfil that obligation. The essential obligation under a contract for work is the performance of work for another person (ie the payer or a third party).

Finally, it should be noted that the term 'work' is given a broad meaning that encompasses services and other activities of a professional, technical, skilled or artistic kind.

For more information on this topic, see PPS Bulletin 11—*The meaning of the term 'payment' for PPS purposes.*

What payments can be the subject of a voluntary agreement?

After 22 December 1998, any payment within the range described above may be subject to a voluntary agreement under the regulations. However, if the payment meets the requirements of a specified industry payment it will be automatically prescribed (see PPS Bulletins 1–9). That is, the application of PPS to those payments is mandatory rather than voluntary. PPS can only apply by voluntary agreement in circumstances where the payment is not already prescribed.

Form of the agreement

There are four requirements for a valid agreement[1]:

- it must be in writing;
- it must state that the parties agree that payments made under the contract or successive contracts are prescribed payments for Division 3A of Part VI of the *Income Tax Assessment Act 1936*;
- it must be signed by the parties; and
- the payer must send the agreement to the Tax Office within 14 days after it is signed.

A *Voluntary Agreement for the Prescribed Payments System* form is available from the Tax Office. Completion of this form will provide us with sufficient evidence of your intention to be subject to the PPS. You may develop your own agreement provided the four requirements outlined above are met.

When does the agreement take effect?

The agreement takes effect when it is signed. It remains effective until one year after the payee receives a payment from the payer or either party terminates it. For example: A payee and payer enter an agreement on 1 February 1999. A payment is made on 15 February 1999 and then no further payments are made. The agreement is no longer effective after 15 February 2000.

What are your PPS obligations?

If you are the payer, you should register as a payer with the Tax Office.

You now have obligations under the PPS and should refer to the booklet titled *PPS Reference Guide for Payers* (if you are a payer) or refer to the booklet titled *PPS Reference Guide for Payees* (if you are a payee). These publications explain what you must do when making or receiving a prescribed payment and are available from the Tax Office.

How do you terminate the agreement?

Either party may terminate the agreement at any time by notifying the other party. The payer must notify the Tax Office in writing within 14 days that the agreement has been terminated.

Record keeping requirements

Both the payee and payer must keep a copy of the agreement whilst the agreement is in force. If the agreement is terminated or is no longer effective, the payee and payer must keep a copy of the agreement for a further 5 years. Failure to comply with this requirement may result in a penalty.

What if you enter successive contracts?

Some parties may enter into successive contracts for the performance of work. Rather than creating a new voluntary agreement for each contract the parties may elect that the voluntary agreement will apply to successive contracts.

An example of where successive contracts for the performance of work arises is in labour hire arrangements. In some labour hire arrangements there is no contract of employment between the worker and the labour hire firm (or the user of the worker's services). In these cases, the worker is an independent contractor and a contract is made between the worker and labour hire firm each time the worker accepts work offered to him or her by the labour hire firm. Rather than having to enter a new voluntary agreement for each contract, the parties can elect in the agreement to have the voluntary agreement apply to all subsequent contracts.

Do you need more information?

If you have any questions or need more information, please contact the Tax Office

- by ***a Fax from Tax***, our 24 hour fax information service. Simply call **13 28 60** (local call cost) on your phone or fax and follow the voice prompts
- at our **internet** website, ATO*assist*, at **www.ato.gov.au**
- by phone on our national enquiry number **13 28 66** (local call cost)
- in person by visiting the enquiry counter at the Tax Office. Addresses are listed in *TaxPac*k and the *White Pages* telephone directory.

Endnotes
1. Income Tax Regulation 126A(2)

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