

PS LA 2003/6 - Alienated personal services payments - calculating withholding amounts

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Alienated personal services payments – calculating withholding amounts

This Law Administration Practice Statement sets out the administrative option for calculating withholding amounts for alienated personal services payments under Division 13 of the *Taxation Administration Act 1953*.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What this Practice Statement is about

From 1 July 2003, taxpayers can use an administrative method to calculate the withholding amounts on their alienated personal services payments to comply with Division 13 of the *Taxation Administration Act 1953* (TAA).¹

When personal services entities follow this arrangement, the Commissioner will remit any failure to withhold penalty that might otherwise arise under the law.

This practice statement discusses the arrangement in detail. It sets out the calculations, the circumstances in which they can be used and provides worked examples.

2. Why are there administrative arrangements?

The administrative arrangements are to relieve an unintended difficulty for taxpayers arising from the law.

Division 13 of the TAA deals with collecting income tax and other liabilities included in an individual's assessable income under the Alienation of Personal Services Income Measures in Part 2-42 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Personal services entities use the method statement in subsection 13-5(2) of the TAA to work out their liability. At Step 2(a) of the method statement, the personal services entity must identify amounts that are included in the individual's assessable income under section 86-15 that relate to alienated personal services payments the entity received during the PAYG payment period.

However, the method statement creates a timing mismatch if the entity is eligible for deductions under section 86-20 of the TAA. These deductions must be worked out at the end of the income year, yet the method statement requires an amount to be included at Step 2(a) during the year.

If the personal services entity cannot quantify the amount to be paid under Division 13 and this results in a shortfall, a failure to withhold penalty will apply under section 16-30. The arrangements address this problem.

3. What are the administrative arrangements?

The administrative arrangement corrects the difficulty for personal services entities by allowing them to fulfil their obligations by applying the correct withholding rate to a **minimum personal services income payout measure**, and:

- pay amounts as salary or wages to the service provider and withhold under Division 12, or
- choose not to pay the amounts as salary or wages to the service provider, but pay them to the Commissioner under Division 13.

If a personal services entity does this using the calculations set out below, the Commissioner will remit to nil the failure to withhold penalty on any shortfall that arises from the entity's being unable to follow the method statement in subsection 13-5(2) of the TAA.

The **withholding rate** is the rate listed in the relevant PAYG withholding tax tables (or a relevant variation granted to the individual service provider).

The **minimum personal services income payout measure** will be an amount that is either equal to or greater than:

- (a) 70% of the gross personal services income (GST exclusive) received by the personal services entity during the current PAYG payment period, or
- (b) a **net personal services income percentage** applied to the gross personal services income (GST exclusive) received by the personal services entity during the current PAYG payment period.

¹ All legislative references in this practice statement are to the TAA 1953 unless otherwise specified.

To work out the **net personal services income percentage**:

- subtract the amount worked out under the method statement in section 86-20 for the individual's previous income year from the individual's gross personal services income (GST exclusive) for the previous income year
- divide the result by the personal services entity's gross personal services income (GST exclusive) for the previous income year, and
- multiply by 100 to give a percentage.

Apply this percentage to the gross personal services income (GST exclusive) for each PAYG payment period in the current year.

The formula is as follows:

$$\begin{array}{rcl}
 \text{Net personal services income percentage} & = & \frac{\text{Individual's gross personal services income (GST exclusive) for the previous year} - \text{Amount worked out under the method statement in section 86-20 for the previous income year}}{\text{Personal services entity's gross personal services income (GST exclusive) for the previous income year}} \times 100
 \end{array}$$

Failure to comply

If the personal services entity does not follow the administrative practice, or meet its conditions, the usual guidelines on remission of failure to withhold penalty apply.

4. Worked examples

In the following three worked examples, assume that the personal services entities:

- are subject to the Alienation of Personal Services Income Measures under Part 2-42 of the TAA, and
- have withholding obligations under Division 13.

Note: the withholding amounts calculated in the following examples are based on the *PAYG Withholding Tax Tables (Quarterly)* that were current at 1 July 2003. Always refer to the current tables when working out withholding amounts (see link in section 5: 'More information').

Example 1 – company

In this example, a company uses the **net personal services income percentage** option to calculate salary to pay to an individual service provider.²

The example concludes with an analysis of the application of this Practice Statement to the shortfall in amounts that should have been paid under Division 13.

InfotechBiz Pty Ltd provides Peter's services as an IT consultant. InfotechBiz has only one worker (Peter) and is registered as a small withholder. InfotechBiz chooses to pay amounts out as salary to Peter within 14 days of the end of the quarter calculated using the **net personal services income percentage**.

During the current income year

The **net personal services income percentage** is the same for each quarter in the income year, as it is worked out using amounts from the previous income year. For the previous income year, InfotechBiz:

- received total payments of \$100,000 (GST exclusive) for Peter's services
- received other income of \$2,000
- incurred expenses (other than promptly paid salary or wages and entity maintenance expenses) of \$30,000 to generate the income for Peter's services, and
- incurred entity maintenance expenses of \$5,000.

The **net personal services income percentage** formula from section 3 of this Practice Statement provides.

Peter's gross personal services income (GST exclusive) for the previous income year was \$100,000. As InfotechBiz had no other service providers, its gross personal services income (GST exclusive) for the previous income year was also \$100,000.

The amount worked out under the method statement in section 86-20 of the TAA is \$33,000. This was worked out as follows:

Method statement		Calculation
Step 1	Work out, for the income year, the amount of any deductions (other than entity maintenance deductions or deductions for amounts of salary or wages paid to you) to which the personal services entity is entitled that are deductions relating to your personal services income.	\$30,000
Step 2	Work out, for the income year, the	\$5,000

² This example would apply in the same way if the personal service entity were a trust.

	amount of any entity maintenance deductions to which the personal services entity is entitled.	
Step 3	Work out the personal services entity's assessable income for that income year, disregarding any income it receives that is your personal services income or the personal services income of anyone else.	\$2,000
Step 4	Subtract the amount under step 3 from the amount under step 2. Note 1: Step 4 ensures that, before entity maintenance deductions can contribute to the reduction, they are first exhausted against any income of the entity that is not personal services income. Note 2: If the personal services entity received another individual's personal services income, see section 86-25.	\$3,000
Step 5	If the amount under step 4 is greater than zero, the amount of the reduction under subsection (1) is the sum of the amounts under steps 1 and 4.	\$33,000
Step 6	If the amount under step 4 is not greater than zero, the amount of the reduction under subsection (1) is the amount under step 1.	N/A

The **net personal services income percentage** is:

$$\begin{aligned}
 \text{Net personal services income percentage} &= \frac{\$100,000 - \$33,000}{\$100,000} \times \frac{100}{1} \\
 &= 67\%
 \end{aligned}$$

To work out the amount of salary to pay to Peter, multiply the **net personal services income percentage** by the gross personal services income (GST exclusive) of InfotechBiz for the current PAYG payment period. During quarter 1, InfotechBiz received gross personal services income (GST exclusive) of \$28,000.

$$67\% \times \$28,000 = \$18,760.$$

InfotechBiz pays out \$18,760 as salary to Peter within 14 days of the end of quarter 1.

InfotechBiz works out the amount to withhold from the payment by referring to the *PAYG Withholding Tax Tables (Quarterly)*, and withholds \$5,811 from the payment of \$18,760. InfotechBiz has not made any other withholding payments during that quarter, so the amount of \$18,760 is reported at W1, and the amount of \$5,811 is reported at

W2 on InfotechBiz's quarterly BAS. InfotechBiz then submits the BAS together with \$5,811 (assume InfotechBiz has no other activity statement obligations).

Assume the gross personal services income (GST exclusive) received by InfotechBiz is the same for each quarter (ie \$28,000). By the end of the income year, InfotechBiz has withheld the following amounts during the year from payments of salary to Peter:

Quarter	Promptly paid salary	Amount withheld under Division 12
1	$\$28,000 \times 67\% = \$18,760$	\$5,811
2	$\$28,000 \times 67\% = \$18,760$	\$5,811
3	$\$28,000 \times 67\% = \$18,760$	\$5,811
4	$\$28,000 \times 67\% = \$18,760$	\$5,811
TOTAL	\$75,040	\$23,244

InfotechBiz fills out the BAS correctly, and pays the withheld amounts to the ATO.

After the end of the income year

By 14 July, InfotechBiz prepares a payment summary for Peter. InfotechBiz also prepares an annual report and submits it to the ATO.

To complete their income tax returns, Peter and InfotechBiz need to work out the amount of personal services income that is attributed to Peter under Part 2-42 of the TAA.

Assume that during the income year InfotechBiz:

- received \$112,000 (GST exclusive) as a payment for Peter's services
- received investment income of \$4,000
- incurred other expenses of \$32,000 to generate the income for Peter's services, and
- incurred entity maintenance expenses of \$6,000.

The amount attributed to Peter at the end of the income year is Peter's personal services income less deductions worked out under sections 86-15 and 86-20 of the TAA.

The amount of Peter's personal services income is \$112,000. This amount is reduced by amounts promptly paid to Peter as salary (ie \$75,040). Peter's personal services income under section 86-15 of the TAA (before the application of section 86-20 of the TAA) is therefore \$36,960.

This amount is then reduced by the amount worked out using the method statement in subsection 86-20(2) of the TAA of \$34,000:

Method statement		Calculation
Step 1	Work out, for the income year, the amount of any deductions (other than entity maintenance deductions or deductions for amounts of salary or wages paid to you) to which the personal services entity is entitled that are deductions relating to your personal services income.	\$32,000
Step 2	Work out, for the income year, the amount of any entity maintenance deductions to which the personal services entity is entitled.	\$6,000
Step 3	Work out the personal services entity's assessable income for that income year, disregarding any income it receives that is your personal services income or the personal services income of anyone else.	\$4,000
Step 4	Subtract the amount under step 3 from the amount under step 2. Note 1: Step 4 ensures that, before entity maintenance deductions can contribute to the reduction, they are first exhausted against any income of the entity that is not personal services income. Note 2: If the personal services entity received another individual's personal services income, see section 86-25 of the TAA.	\$2,000
Step 5	If the amount under step 4 is greater than zero, the amount of the reduction under subsection (1) is the sum of the amounts under steps 1 and 4.	\$34,000
Step 6	If the amount under step 4 is not greater than zero, the amount of the reduction under subsection (1) is the amount under step 1.	N/A

The amount therefore attributable to Peter under section 86-15 of the TAA is \$2,960 (ie \$36,960 less \$34,000).

Peter includes the amounts of \$2,960 (attributed personal services income) and \$75,040 (salary) in his assessable income.

Analysis

After the end of the income year, we are in a position to accurately review the amounts that **should** have been paid under Division 13, had InfotechBiz been in a position

to know the amount to include at Step 2(a) in the method statement in paragraph 13-5(2)(a).

This potentially exposes InfotechBiz to a penalty for failure to withhold if there is a shortfall in the amounts that **should** have been paid under Division 13.

The amounts which should have been paid under Division 13 in quarter 1 are:

Method statement		Calculation
Step 1	Identify the payments that the personal services entity makes to the individual during the period mentioned in paragraph (1)(b) that are withholding payments covered by section 12-35.	\$18,760
Step 2	Identify the amounts that: (a) are included in the individual's assessable income under section 86-15 of the TAA, and (b) relate to alienated personal services payments the entity receives during that period.	\$740 (\$2,960 x [28,000/112,000])
Step 3	Work out the sum of all the amounts that Division 12 would require the entity to withhold in respect of that period if both of these were taken into account: (a) the payments identified in step 1, and (b) the amounts identified in step 2, as if they were payments of salary covered by section 12-35.	\$6,169 (amount to withhold on quarterly basis from \$19,500)
Step 4	Sum of all the amount withheld under section 12-35 from the payments identified in step 1.	\$5,811
Step 5	Subtract the sum under step 4 from the sum under step 3.	\$358

In addition to the amounts withheld under Division 12 throughout the year, InfotechBiz should have paid \$358 per quarter under Division 13. There is, therefore, a shortfall in the amounts that InfotechBiz was required to pay under Division 13, and therefore a failure to withhold penalty of \$358 applies to InfotechBiz for quarter 1. Similarly, a failure to withhold penalty of \$358 will apply for quarters 2, 3 and 4.

However, the penalties are remitted to nil, because InfotechBiz complied with the administrative arrangements by:

- paying salary within 14 days after the end of the PAYG payment period that was equal to the net personal services income percentage applied to the gross personal services income received by InfotechBiz during the quarter, and

- withholding from that salary at the applicable withholding rate.

Example 2 – partnership

The following example illustrates the application of the administrative options for partnerships.

As partnerships cannot pay amounts to partners as salary or wages, they can only pay amounts under Division 13 rather than Division 12. In this example, the partnership has chosen to work out Division 13 amounts based on the flat rate of 70% of the gross personal services income of the partnership during the PAYG payment period.

Carrie and Jamie are partners in a partnership trading as 'Chic Deco'. Chic Deco provides Carrie's services as an interior designer. Chic Deco does not have any employees, but has registered as a small withholder. Jamie provides assistance in the administration of the partnership. Chic Deco chooses to work out its Division 13 obligations using 70% of the partnership's gross personal services income (GST exclusive) per quarter.

During quarter 1, Chic Deco received gross personal services income (GST exclusive) of \$28,000.

Chic Deco attributes \$19,600 (70% of \$28,000) to Carrie.

Chic Deco then works out the amount to pay to the ATO under Division 13 by referring to the *PAYG Withholding Tax Tables (Quarterly)*.

The amount Chic Deco is required to pay is \$6,218. Chic Deco has not made any other withholding payments during that quarter, so the amount of \$19,600 is reported at W1, and the amount of \$6,218 is reported at W2 on Chic Deco's quarterly BAS. Chic Deco then sends in the BAS and pays the \$6,218 (assume Chic Deco has not other activity statement obligations).

Assume for each quarter, that the gross personal services income (GST exclusive) received by Chic Deco is the same as for quarter 1 (ie \$28,000). By the end of the income year, Chic Deco has paid the following amounts to the ATO under Division 13.

Quarter	Attributed Income	Amount paid under Division 13
1	$\$28,000 \times 70\% = \$19,600$	\$6,218
2	$\$28,000 \times 70\% = \$19,600$	\$6,218
3	$\$28,000 \times 70\% = \$19,600$	\$6,218
4	$\$28,000 \times 70\% = \$19,600$	\$6,218
TOTAL	\$78,400	\$24,872

All amounts are correctly reported on the BAS and Division 13 amounts have been paid to the ATO.

After the end of the income year

By 14 July, Chic Deco prepares a payment summary for Carrie. Chic Deco also prepares an annual report and submits it to the ATO.

To complete their income tax returns, Carrie and Chic Deco need to work out the amount of personal services income attributed to Carrie under Part 2-42 of the TAA.

Assume that during the year Chic Deco:

- received \$112,000 (GST exclusive) as payment for Carrie's services
- received investment income of \$4,000
- incurred other expenses of \$32,000 to generate the income from Carrie's services, and
- incurred entity maintenance expenses of \$6,000.

The amount attributed to Carrie at the end of the income year is Carrie's personal service income less deductions worked out under sections 86-15 and 86-20 of the TAA.

The amount of Carrie's personal services income under section 86-15 (before the application of section 86-20 of the TAA) is \$112,000.

This amount is then reduced by the amount worked out in accordance with the method statement in section 86-20(2) of the TAA of \$34,000 (calculations are the same as in Example 1 above).

The amount therefore attributable to Carrie under section 86-15 of the TAA is \$78,000 (ie \$112,000 less \$34,000).

Carrie includes the amount of \$78,000 (attributed personal services income) in her assessable income.

Analysis

After the end of the income year, we are in a position to accurately review the amounts that **should** have been paid under Division 13, had Chic Deco been in a position to know the amount to include at Step 2(a) in the method statement in paragraph 13-5(2)(a). This potentially exposes Chic Deco to a penalty for failure to withhold if there is a shortfall in the amounts that **should** have been paid under Division 13.

The amounts which should have been paid under Division 13 in quarter 1 are:

Method statement		Calculation
Step 1	Identify the payments that the personal services entity makes to the individual during the period mentioned in paragraph (1)(b) that are withholding payments covered by section 12-35.	\$0
Step 2	Identify the amounts that: (a) are included in the individual's	\$19,500 (\$78,000 ×

	assessable income under section 86-15 of the TAA, and (b) relate to alienated personal services payments the entity receives during that period.	[28,000 / 112,000]
Step 3	Work out the sum of all the amounts that Division 12 would require the entity to withhold in respect of that period if both of these were taken into account: (a) the payments identified in step 1, and (b) the amounts identified in step 2, as if they were payments of salary covered by section 12-35.	\$6,169 (Amount to withhold on quarterly basis from \$19,500)
Step 4	Sum of all the amount withheld under section 12-35 from the payments identified in step 1.	\$0
Step 5	Subtract the sum under step 4 from the sum under step 3.	\$6,169

Had Chic Deco been in a position to accurately calculate Step 2(a) of the method statement in section 13-5(2)(a), they would have known that their Division 13 liability was \$6,169. Instead, they paid \$6,218 under Division 13 for quarter 1. There is, therefore, a small 'over-withholding' of \$49 per quarter. There was no shortfall under Division 13 for quarter 1, so no penalty applies.

Example 3 – applying the ordinary rules to a company that pays a flat rate

In this example, we consider remission of failure to withhold penalty under the general remission policy, rather than the specific guidelines. In this case, the company is not applying the administrative arrangement. Instead, they pay a set amount of salary not calculated from the gross personal services income the company receives.

Peppe Pty Ltd provides Jack's services as an engineer. Peppe is aware that it had Division 13 obligations for the personal services provided by Jack. Peppe is registered as a small withholder.

In quarter 1, Peppe receives \$60,000 in gross personal services income (GST exclusive). Peppe pays \$20,000 as salary to Jack. Peppe works out the amount to withhold by referring to the *PAYG Withholding Tax Tables (Quarterly)* and withholds \$6,412 from the payment of \$20,000. Peppe has not made any other withholding payments during that quarter so the amount of \$20,000 is reported at W1 and the amount of \$6,412 is reported at W2 on Peppe's BAS. Peppe then sends the BAS and pays \$6,412 to the ATO (assume Peppe has no other activity statement obligations).

Assume the gross personal services income (GST exclusive) received by Peppe is the same for each quarter

(ie \$60,000). By the end of the income year, Peppe has withheld the following amounts from salary paid to Jack:

Quarter	Promptly paid salary	Amount withheld under Division 12
1	\$20,000	\$6,412
2	\$20,000	\$6,412
3	\$20,000	\$6,412
4	\$20,000	\$6,412
TOTAL	\$80,000	\$25,648

These amounts are correctly reported on the BAS and the withheld amounts paid to the ATO.

After the end of the income year

By 14 July, Peppe prepares the payment summary for Jack. Peppe also prepares an annual report and submits it to the ATO.

To complete their income tax returns, Jack and Peppe need to work out the amount of personal services income that is attributed to Peppe under Part 2-42 of the TAA.

Assume that during the income year Peppe:

- received \$240,000 (GST exclusive) as a payment for Jack's services
- received investment income of \$5,000
- incurred other expenses of \$65,000 to generate the income for Jack's services, and
- incurred entity maintenance expenses of \$5,000.

The amount attributed to Jack at the end of the income year is Jack's personal service income less deductions worked out under section 86-15 and 86-20 of the TAA.

The amount of Jack's personal services income is \$240,000. This amount is reduced by amounts promptly paid to Jack as salary or wages (ie \$80,000). Jack's personal services income under section 86-15 of the TAA is therefore \$160,000.

This amount is reduced by the amount worked out using the method statement in section 86-20(2) of the TAA of \$65,000:

Method statement		Calculation
Step 1	Work out, for the income year, the amount of any deductions (other than entity maintenance deductions or deductions for amounts of salary or wages paid to you) to which the personal services entity is entitled that are deductions relating to your personal services income.	\$65,000

Step 2	Work out, for the income year, the amount of any entity maintenance deductions to which the personal services entity is entitled.	\$5,000
Step 3	Work out the personal services entity's assessable income for that income year, disregarding any income it receives that is your personal services income or the personal services income of anyone else.	\$5,000
Step 4	Subtract the amount under step 3 from the amount under step 2. Note 1: <i>Step 4 ensures that, before entity maintenance deductions can contribute to the reduction, they are first exhausted against any income of the entity that is not personal services income.</i> Note 2: <i>If the personal services entity received another individual's personal services income, see section 86-25 of the TAA.</i>	\$0
Step 5	If the amount under step 4 is greater than zero, the amount of the reduction under subsection (1) is the sum of the amounts under steps 1 and 4.	N/A
Step 6	If the amount under step 4 is not greater than zero, the amount of the reduction under subsection (1) is the amount under step 1.	\$65,000

The amount therefore attributable to Jack under section 86-15 of the TAA is \$95,000 (ie \$160,000 less \$65,000).

Jack includes the amounts of \$95,000 (attributed personal services income) and \$80,000 (salary or wages) in his assessable income.

Analysis

After the end of the income year, we are in a position to accurately review the amounts that **should** have been paid under Division 13 had Peppe been in a position to know the amount to include at Step 2(a) in the method statement in paragraph 13-5(2)(a). This potentially exposes Peppe to a penalty for failure to withhold if there is a shortfall in the amounts that **should** have been paid under Division 13.

The amounts which should have been paid under Division 13 in quarter 1 are:

Method statement		Calculation
Step 1	Identify the payments that the personal services entity makes to	\$20,000

	the individual during the period mentioned in paragraph (1)(b) that are withholding payments covered by section 12-35.	
Step 2	Identify the amounts that: (a) are included in the individual's assessable income under section 86-15 of the TAA, and (b) relate to alienated personal services payments the entity receives during that period.	\$23,750 (\$95,000 × [60,000 / 240,000])
Step 3	Work out the sum of all the amounts that Division 12 would require the entity to withhold in respect of that period if both of these were taken into account: (a) the payments identified in step 1, and (b) the amounts identified in step 2, as if they were payments of salary covered by section 12-35.	\$17,931 (amount to withhold on quarterly basis from \$43,750)
Step 4	Sum of all the amount withheld under section 12-35 from the payments identified in step 1.	\$6,412
Step 5	Subtract the sum under step 4 from the sum under step 3.	\$11,519

In addition to the amounts withheld under Division 12 for quarter 1, Peppe should have also paid \$11,519 under Division 13. There is, therefore, a shortfall, and a failure to withhold penalty of \$11,519 applies to Peppe for quarter 1. Similarly, a penalty of \$11,519 will apply to Peppe for quarters 2, 3 and 4.

Even though Peppe did not make a conscious choice to adopt the administrative options, if the amounts that Peppe withheld during each quarter of the year are equal to or greater than the amounts that would have been withheld if the relevant withholding rate had been applied to:

- 70% of the gross personal services income (GST exclusive) received by Peppe during the quarter, or
- the **net personal services income percentage** applied to the gross personal services income (GST exclusive) received by Peppe during the quarter,

the Commissioner will remit the failure to withhold penalty to nil. Otherwise, the Commissioner will apply the general guidelines on remission of failure to withhold penalty for Division 13.

The amount actually withheld during quarter 1 was \$6,412.

Under the 70 % of the **gross personal services income** option, 70% of \$60,000 (Peppe's gross personal services income for quarter 1) is \$42,000. The amount to withhold from \$42,000 according to the *PAYG Withholding Tax Tables (Quarterly)* is \$17,082.

Under the **net personal services income percentage** option, the calculation relies on the previous year's figures. Assume for the previous income year Peppe:

- received total payments of \$200,000 (GST exclusive) for Jack's services
- received other income of \$4,000
- incurred expenses (other than promptly paid salary or wages and entity maintenance expenses) of \$60,000 to generate the income for the Jack's services, and
- incurred entity maintenance expenses of \$5,000.

The **net personal services income percentage** formula from section 3 of this practice statement provides.

Jack's gross personal services income (GST exclusive) for the previous income year was \$200,000. As Peppe had no other service providers, its gross personal services income (GST exclusive) for the previous income year was also \$200,000.

The amount worked out under the method statement in section 86-20 is \$61,000. This was worked out as follows:

Method statement		Calculation
Step 1	Work out, for the income year, the amount of any deductions (other than entity maintenance deductions or deductions for amounts of salary or wages paid to you) to which the personal services entity is entitled that are deductions relating to your personal services income.	\$60,000
Step 2	Work out, for the income year, the amount of any entity maintenance deductions to which the personal services entity is entitled.	\$5,000
Step 3	Work out the personal services entity's assessable income for that income year, disregarding any income it receives that is your personal services income or the personal services income of anyone else.	\$4,000
Step 4	Subtract the amount under step	\$1,000

	3 from the amount under step 2. Note 1: Step 4 ensures that, before entity maintenance deductions can contribute to the reduction, they are first exhausted against any income of the entity that is not personal services income. Note 2: If the personal services entity received another individual's personal services income, see section 86-25 of the TAA.	
Step 5	If the amount under step 4 is greater than zero, the amount of the reduction under subsection (1) is the sum of the amounts under steps 1 and 4.	\$61,000
Step 6	If the amount under step 4 is not greater than zero, the amount of the reduction under subsection (1) is the amount under step 1.	N/A

The **net personal services income percentage** is:

$$\begin{aligned} \text{Net personal services income percentage} &= \frac{\$200,000 - \$61,000}{\$200,000} \times \frac{100}{1} \\ &= 69.5\% \end{aligned}$$

69.5% of \$60,000 (Peppe's gross personal services income for quarter 1) is \$41,700. The amount to withhold from \$41,700 according to the *PAYG Withholding Tax Tables (Quarterly)* is \$16,936.

The amount that Peppe actually withheld in quarter 1 (ie \$6,412) is neither equal to nor greater than the amount that would have been withheld using one of the administrative options (ie \$17,082 or \$16,936).

The Commissioner, therefore, will not remit the failure to withhold penalty of \$11,519 for quarter 1 (or the other three quarters) to nil under the guidelines in this Practice Statement.

We would consider remission of the failure to withhold penalties under the general failure to withhold remission guidelines for Division 13.

5. More information

For more information, see:

- [PAYG withholding tax tables](#)

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ATO references

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Transitional arrangements for the 2001-2002 and 2002-2003 income years

Transitional administrative arrangements cover payments made during the 2001-2002 and 2002-2003 income years.

These use the Commissioner's discretionary power under section 15-15 to vary the rate of withholding for Division 13 amounts to nil. The class of cases is described in the variation as:

- any alienated personal services payment that is received by a personal services entity and that relates to one or more individuals' personal services income where salary or wages are paid to the individual or individuals within 14 days after the end of the relevant PAYG payment period either equally or greater than
 1. 70% of the gross personal services income (GST exclusive) received by the personal services entity during the current PAYG payment period, or
 2. A **net personal services income percentage** applied to the gross personal services income (GST exclusive) received by the personal services entity during the current PAYG payment period. The net personal services income percentage is calculated by dividing the personal services entity's gross personal services income (GST exclusive) less allowable deductions (excluding salary or wages paid in accordance with subsection 86-15(4) of the TAA) for the previous income year by the personal services entity's gross personal services income (GST exclusive) for the previous income year and multiplying this amount by 100.

The amount to pay under Division 13 for any shortfall (which become apparent when the section 86-15 of the TAA amounts are worked out) was nil.

Partnerships are not covered by this variation, as they cannot pay amounts out as salary or wages to partners. In the case of partnerships, the same outcome was achieved by using the Commissioner's discretion to remit failure to withhold penalty to nil where:

- the amounts the partnership paid to the Commissioner under Division 13 were calculated by reference to either 70% of the gross personal services income or the **net personal services income percentage** (as stated in the variation) applied to the gross personal services income received by the partnership during the PAYG payments period, and
- there was a shortfall between the amounts the partnership paid under Division 13 and the amounts the partnership should have paid under Division 13 had the partnership been in a position to determine the personal services income amounts to be included in the individual's assessable income under section 86-15 of the TAA.