Australian Government
Australian Taxation Office

PS LA 2007/22
Remission of penalties for failure to withhold

This Practice Statement provides guidance on remitting penalties for failure to withhold.

This Practice Statement is an internal ATO document and 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 do not 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

This Practice Statement sets out what you need to consider when deciding whether to remit, in full or in part, the failure to withhold penalties imposed under Division 16 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) for entities failing to withhold or pay amounts under a pay as you go withholding (PAYGW) obligation.[1]

All further legislative references in this Practice Statement are to Schedule 1 to the TAA, unless otherwise indicated.

2. Failure to withhold penalty

An entity registered for PAYGW needs to withhold from certain payments made to others and pay it to the ATO.

If an entity fails to withhold an amount from a payment that is subject to withholding, they are liable to a failure to withhold penalty. The penalty amount is equal to the amount they should have withheld from the payment.[2] The liability to penalty arises at the time the entity fails to withhold or pay an amount. If an entity disagrees with the penalty imposed on them, they may request a partial or full remission.[3]

A decision to remit the penalty can be made before or after it is imposed and a notice is issued. You should not remit the penalty where you consider the case warrants referral for criminal investigation or prosecution.

Payer's right to recover amounts of penalty for certain withholding taxes

A payer may recover an amount equal to the amount of penalty from the person liable to pay the withholding tax, or mining withholding tax, for the withholding payment[4], if a payer has paid an amount of penalty[5] for a withholding payment relating to:

- dividend, interest or royalty payment
- departing Australia superannuation payment
- labour mobility programs
- mining payment
- distributions of withholding managed investment trust income.

3. Remission of penalties for failing to withhold

The individual circumstances of each case must be assessed to determine whether, and to what extent, remission is appropriate.

Remission is granted only in exceptional circumstances. Remission decision considerations include but are not limited to:

- the objectives of administrative penalties generally – that is, to encourage entities to take reasonable care in complying with their tax obligations and to promote consistent treatment between all taxpayers
- the appropriateness of remitting any of the penalty
- the entity's compliance history
- the circumstances leading to the penalty liability
- the impact to revenue resulting from the failure to withhold
- whether we became aware of the failure to withhold as a result of the entity's voluntary disclosure or because of our compliance efforts

[1] See Division 16.
[2] See section 16-30.
[3] See section 298-20.
[4] See section 16-195.
[5] Under section 16-30, 16-35 or 16-40.

- the entity's attitude towards complying with the tax laws
- if the case warrants referral for criminal investigation or prosecution
- if the payer has a right to recover amounts of a penalty
- if a deduction has been denied for not complying with certain PAYGW obligations
- the level of record keeping maintained by the entity
- any other relevant factors.

Your decision to remit should:

- consider the merits of each case, the matters relevant to the penalty and not irrelevant matters
- be made with just cause and not arbitrarily
- be made in good faith
- consider the payer's behaviour consistent with the principles of the ATO Charter and the compliance model.

Specific considerations to remit the penalty for failure to withhold under Subdivision 12-F (dividend, interest and royalty payments to overseas persons)

If a payer:

- fails to withhold from a dividend, interest and royalty payment or withholds less than required, they are liable to a penalty equal to the amount that they failed to withhold
- has paid the penalty, the payee is entitled to a credit equal to the amount of the penalty.[6]

The combination of these points will usually mean that the withholding tax liability has been met or paid. However, if the payer is granted remission of the penalty, the payee's credit is reduced by the amount of the remission.

This will mean that the withholding tax liability is not paid and remission will generally not be appropriate unless the payer agrees to it.

4. Notifying the payer

You must provide the entity with written notice of your decision[7], including your reasons and the penalty amount to be paid. Due date for payment must be at least 14 days after the notice is given.[8]

If the penalty is remitted in full, you are not required by law to give reasons for your decision to the taxpayer[9], although it is preferable to do so. However, regardless of the outcome, you must maintain suitable records of the reasons and your decisions.

5. Examples

Example 1 – decision to remit in full

Marta has recently immigrated to Australia from Eastern Europe and runs a small bakery employing 2 family members. She is somewhat aware of an obligation by some employers to withhold amounts of PAYGW from employees' wages but assumes that it is only applicable to businesses with 100 or more employees.

At an audit for the 2021–22 financial year, she is informed of her obligation to withhold from wages paid to any employee. Marta has retained comprehensive records of her business and immediately provides copies of bank statements to the auditor, identifying direct transfers of wages into the employees' accounts. Marta responds promptly to the auditor's requests and takes steps to better understand her tax obligations. She engages a tax agent to handle all business and personal tax matters and liaises with them often to ensure her account is up to date.

The auditor considers Marta's lack of experience in Australian business and taxation affairs, and the importance of encouraging her to meet her PAYGW obligations in future. As Marta's positive cooperation helped resolve the audit and there are no other concerns with her compliance history Marta's penalty is remitted in full, a written notice is sent to Marta, and further education is provided to aid future compliance.

Example 2 – decision to partially remit

Alia runs a plastering business as a sole trader and has been in business for 4 years. Alia draws cash from her account to pay for additional casual labour each week and keeps basic records of the names and amounts for each payment. The payments from which she is required to withhold and does not, are relatively substantial and repetitive.

Alia has a tax agent but does not discuss her business obligations or tax treatment for labourers with them. She merely provides a summary of her labour expenses at the end of each year with casual labour amounting to around 25% of her total expenses for each year.

The auditor concludes Alia didn't take sufficient steps to understand and meet her obligations relating to

[6] See section 18-35.
[7] See subsection 298-20(2).
[8] See section 298-15.
[9] See section 298-10.

labour payments, especially considering the size and volume of payments made, and the duration of non-compliance.

Alia was receptive to the education provided and demonstrates she has implemented measures to meet her withholding obligations in future. The penalty is therefore remitted in part as while Alia repeatedly failed to meet her obligations, she has also demonstrated corrective measures to prevent recurrence. A written notice is sent to Alia notifying her of the penalty amount, the reasons for the partial remission decision, and a due date for the payment of the penalty.

Example 3 – decision to not remit

Sam runs a restaurant for many years and pays wages to several full-time employees. Sam obtains tax file number declarations from these employees, withholds the required amount of tax, and reports these payments and withholding amounts to the ATO. In the 2019–20 and 2020–21 financial years, Sam engages a number of casual employees. These employees are paid in cash and Sam does not record details or withhold amounts from these payments. Sam advises the ATO that it is difficult to obtain and maintain casual staff and therefore he pays them in cash from the business takings. Sam is aware that he should be withholding from these payments.

Sam offers no explanation or reason for why he failed to withhold for some staff and not others. As the cash wages were paid to unidentified recipients, the auditor considers the low likelihood of income being declared, and tax being paid by the payees. In accordance with the objective of administrative penalties, it would be inappropriate to remit any of the penalty imposed upon Sam.

A written notice is sent to Sam notifying him of the penalty amount, the reasons for the decision not to remit, and a due date for the payment of the penalty.

6. More information

For more information, see:

- Chief Executive Instruction External fraud (link available internally only) for policy on criminal investigation and prosecution decisions
- Law Administration Practice Statement PS LA 2011/12 *Remission of General Interest Charge* for remission of the general interest charge that accrues on any unpaid penalty amounts.

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Amendment history

11 December 2025

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.

6 May 2020

Part	Comment
Various	Updated CEI title.

20 January 2020

Part	Comment
Contact officer	Details updated.

11 October 2018

Part	Comment
Sections 2, 4 and More information	Included ‘referral for criminal investigation’.

28 November 2017

Part	Comment
Contact details	Details updated.

19 November 2015

Part	Comment
All	Updated to new LAPS format and style.
Date of effect	Changed from 23 June 2006 to 1 July 2002 due to withdrawal of PS LA 2003/11.

20 July 2011

Part	Comment
Contact officer details	Updated.

16 September 2008

Part	Comment
Contact officer details	Updated.

8 April 2008

Part	Comment
Contact officer details	Updated.

13 February 2008

Part	Comment
Contact officer details	Updated.

3 June 2004

Part	Comment
Contact officer details	Updated.

References

Legislative references	TAA 1953 Sch 1 Subdiv 12-F TAA 1953 Sch 1 Div 16 TAA 1953 Sch 1 16-30 TAA 1953 Sch 1 16-35 TAA 1953 Sch 1 16-40 TAA 1953 Sch 1 16-195 TAA 1953 Sch 1 18-35 TAA 1953 Sch 1 298-10 TAA 1953 Sch 1 298-15 TAA 1953 Sch 1 298-20 TAA 1953 Sch 1 298-20(2)
Other references	ATO Charter Compliance model External fraud (link available internally only)
Related practice statements	PS LA 2011/12

ATO references

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