



# ***TD 2000/49 - Income tax : Are payments made by members of a body corporate in respect of that membership subject to Pay As You Go withholding ?***

 This cover sheet is provided for information only. It does not form part of *TD 2000/49 - Income tax : Are payments made by members of a body corporate in respect of that membership subject to Pay As You Go withholding ?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *25 October 2000*

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# Taxation Determination

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## **Income tax: Are payments made by members of a body corporate in respect of that membership subject to Pay As You Go withholding?**

### ***Preamble***

*This document does not rule on the application of a 'tax law' (as defined) and is, therefore, not a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. The document is, however, administratively binding on the Commissioner of Taxation. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

### ***Date of Effect***

*This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).*

1. Yes, where the body corporate does not quote a valid Australian Business Number (ABN) and none of the exceptions outlined in paragraph 5 below applies. However, where a withholding would be required, the Commissioner has varied the amount of the withholding to nil in the circumstances outlined in paragraph 7 below.
2. Section 12-190 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) requires an entity (the payer) to withhold an amount from a payment it makes to another entity if the payment is for a supply that the other entity has made, or proposes to make, to the payer in the course or furtherance of an enterprise carried on in Australia by the other entity, and none of the exceptions in that section apply.
3. For the purposes of the PAYG provisions, the definition of the terms 'entity', 'enterprise', and 'supply' take their meaning from section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 97). Relevant to this determination:
  - an entity includes a body corporate;
  - an enterprise includes an activity, or series of activities, done by a body corporate; and
  - a supply includes performance of services

4. For the purposes of the PAYG provisions, the definition of the terms 'entity', 'enterprise', and 'supply' take their meaning from section 995-1 of the Income Tax Assessment Act 1997 (ITAA 97). For more information on 'supply' and furtherance of an 'enterprise' please refer to:

- Goods and Services Tax Ruling GSTR 2000/31 which looks at supplies connected with Australia; and
- Miscellaneous Taxation Ruling MT 2000/1 which looks at the meaning of entity carrying on an enterprise for the purposes of entitlement to an ABN under sections 37 and 38 of the A New Tax System (Australian Business Number) Act 1999 ANTS(ABN)A99.

5. Often a member of a body corporate will make a payment to that body corporate in respect of that membership. The payments may relate to body corporate levies, access fees to inspect books of account, insurance policies, rolls, minutes etc; or fees payable to the body corporate for the collection of rents from the common property.

6. Under section 12-190 of Schedule 1 to the TAA, the member of the body corporate (the payer) is required to withhold an amount from the payment if the body corporate does not quote a valid ABN and none of the other exceptions in section 12-190 apply. The exceptions apply where the payment does not exceed \$55, or the payment is not in the course or furtherance of the payer carrying on an enterprise in Australia, for example if it is solely in respect of the payer's private residence.

7. Where section 12-190 of Schedule 1 to the TAA requires an amount to be withheld, the withholding amount is to be worked out under the regulations as required by subsection 15-10(2) of Schedule 1 to the TAA. However, section 15-15 of Schedule 1 to the TAA enables the Commissioner to vary the amount required to be withheld to meet the special circumstances of a particular case or class of cases. A copy of a variation that applies to a class of entities must be published in the Gazette.

8. The Commissioner considers that where a member a body corporate of residential or commercial property makes a payment to that body corporate in respect of:

- (i) body corporate levies;
- (ii) access fees to inspect books of account, insurance policies, rolls, minutes etc; or
- (iii) fees payable to the body corporate for the collection of rents from the common property,

then the amount required to be withheld from the payment should be varied to nil under the power contained in section 15-15 to meet the special circumstances of this class of cases. A copy of the notice of variation to this effect was published in the Commonwealth of Australia Special Gazette No S 343, 29 June 2000. The variation applies to payments made on or after 1 July 2000.

## **Commissioner of Taxation**

25 October 2000

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*Previous draft:*

Not previously released in draft form

*Related rulings:*

GSTR 2000/31; MT 2000/1;

*Subject references:*

- Pay As You Go
- PAYG Variation

- PAYG Withholding
- Body Corporate

*Legislative references:*

- TAA 1953 Schedule 1
  - TAA 1953 12-190
  - TAA 1953 15-10(2)
  - TAA 1953 15-15
  - ANTS(ABN)A 99 37
  - ANTS(ABN)A 99 38
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## ATO references:

NO 2000/017600

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FOI Index No: I 1022629

ISSN: 1038-8982