TR 2005/16W - Income tax: Pay As You Go - withholding from payments to employees

This cover sheet is provided for information only. It does not form part of *TR 2005/16W - Income tax: Pay As You Go - withholding from payments to employees*

This ruling is being reviewed as a result of a recent court/tribunal decision. Refer to Decision Impact Statement: Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd (Published 31 March 2022).

This document has changed over time. This is a consolidated version of the ruling which was published on *14 December 2022*

Notice of Withdrawal

Taxation Ruling

Income tax: Pay As You Go – withholding from payments to employees

Taxation Ruling TR 2005/16 is withdrawn with effect from 15 December 2022.

1. TR 2005/16 provides guidance as to whether an individual is paid as an employee for the purposes of section 12-35 of Schedule 1 to the *Taxation Administration Act 1953*, which imposes an obligation on the paying entity to withhold an amount from the relevant payment. The Ruling considers the various indicators the courts have considered in establishing whether a person engaged by another entity is an employee within the common law meaning of the term.

2. It is being replaced by Taxation Ruling TR 2022/D3 *Income tax: pay as you go withholding – who is an employee?*, which will issue on 15 December 2022. TR 2022/D3 incorporates the Commissioner's view expressed in TR 2005/16 to the extent that it continues to apply and updates the Commissioner's view to incorporate recent developments in case law.

Commissioner of Taxation
14 December 2022

ATO references
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