

Withholding from payments to foreign residents for casino gaming junket activities

OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake in trying to follow our information in this publication and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at ato.gov.au or contact us.

This publication was current at **July 2013**.

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WITHHOLDING ARRANGEMENTS

You should use this guide if you are a payer who makes payments to foreign residents who arrange casino gaming junket activities.

 Rules relating to Australian residents do not apply in this publication.

If you engage a foreign resident as an employee, you must continue to withhold from those payments under the existing pay as you go (PAYG) withholding rules that apply to employees.

If you are making dividend, interest or royalty payments to foreign residents, different withholding rules apply. For more information, see 'More information' on the inside back cover.

 For more information, you can:

- visit ato.gov.au/paygw
- phone us on **13 28 66** between 8.00am and 6.00pm, Monday to Friday
- speak to your tax adviser.

You may also find our PAYG withholding forms and publications useful, which is available on our website at ato.gov.au

PAYER AND PAYEE

The payer is the person or entity making a payment, and the payee is the person or entity receiving a payment.

PAYMENTS SUBJECT TO WITHHOLDING

You are required to withhold amounts from payments you make to individuals or businesses that arrange for foreign gamblers to come to Australia for the purpose of gaming at casinos. These individuals or businesses are generally known as casino gaming junket operators. You may make payments to them in the form of monetary payments, incentives and non-cash benefits as a reward for bringing people to a casino to gamble.

Services provided by casino gaming junket operators include, but are not limited to:

- contracting with casinos
- contracting with players
- recording player gambling statistics
- credit and debt management
- local funds management
- casino settlement and liaison
- repatriation of funds
- providing customer liaison services (for example, translating and interpreting)
- associated services such as arranging hotel accommodation, transportation, entertainment and other forms of endearment.

You may make payments to casino gaming junket operators in the following forms:

- monetary payments
- flights
- accommodation
- food and beverage
- laundry, car hire or any other in-house services
- other non-cash benefits.

In some circumstances, you may have to make payments to an agent on behalf of a foreign resident. You should withhold from payments you make to such an agent as though you were making the payment directly to the foreign resident. This is the case even if the agent is an Australian resident.

If an Australian resident agent receives a payment subject to foreign resident withholding on behalf of an overseas resident and an amount has not already been withheld from that payment, the agent must withhold from the payment.

YOUR OBLIGATIONS AS A PAYER

If you make any payments mentioned previously, you must:

- be registered for PAYG withholding
- withhold amounts from payments
- report and pay withheld amounts to us
- issue payment summaries to payees and report to us annually.

REGISTERING FOR PAYG WITHHOLDING

If you have employees and other workers, you are probably already registered for PAYG withholding. If you are not already registered, you can register in **one of three ways**:

- 1 Online through the Business Portal at **bp.ato.gov.au** (you will need an AUSkey).
- 2 Phone us on **13 28 66** (between 8.00am and 6.00pm, Monday to Friday) to register over the phone – you will need to have your Australian business number (ABN) or tax file number (TFN).
- 3 Complete the *Add a new business account* (NAT 2954) form.

If you need help to register, phone us on **13 28 66** between 8.00am and 6.00pm, Monday to Friday.

You can register for PAYG withholding when applying for an ABN.

➔ You can apply for an ABN online through the Australian Business Register at **abr.gov.au**

WITHHOLDING AMOUNTS FROM PAYMENTS

PAYG withholding requires you to withhold amounts from payments made to certain payees and send these amounts to us. As a payer, you withhold amounts from payments to:

- payees
- workers who are not employees that have provided an ABN
- suppliers carrying on an enterprise in Australia who do not quote an ABN, when required to.

How much to withhold from payments to foreign residents for arranging casino gaming junket activities

You are required to withhold 3% of the total payment you make to a foreign resident business or individual for arranging casino gaming junket activities.

⚠ Payers are required to determine if the Junket Tour Operator (JTO) will be considered to be carrying on an enterprise in Australia to ascertain if an ABN should be provided.

If the JTO carries on little or no activity in Australia, it is unlikely that they are carrying on an enterprise in Australia and therefore they are not eligible for an ABN or able to register for GST.

EXAMPLE

William is a Hong Kong resident who has arranged for another Hong Kong resident (David) to gamble at an Australian casino. All of the administration associated with organising David's play at the Australian casino has been undertaken offshore. William is not carrying on an enterprise in Australia.

A JTO who is not carrying on an enterprise in Australia is not subject to the no ABN withholding and is not required to quote a TFN. The Australian payer is still required to withhold the 3% foreign resident withholding amount unless we have provided a written variation notice.

⚠ If a foreign resident payee has not supplied you with an ABN, and they carry on an enterprise in Australia, you will need to withhold at a different rate. For more information, see 'Withholding when a payee does not quote an ABN' on page 5.

What if the payment is made in a foreign currency?

If you have to make a payment in a foreign currency, you need to calculate the equivalent Australian dollar value of the payment at the time you make the payment.

After converting the foreign currency payment to Australian dollars, you then calculate the amount to withhold at the required rate. The amount you report and pay to us must always be the Australian dollar value.

When to withhold a different amount

The amount you must withhold may be different if the payee has received a variation from us. If we grant a variation, we will send you a written notice confirming how much you must withhold from payments you make to that payee. Unless we notify you, you must withhold 3% from any payments you make.

What if the payee has a variation from us?

A foreign resident payee can ask us to vary the required rate of withholding.

Why does a payee apply for a variation?

A foreign resident payee may seek a variation where the required rate of withholding is lower or higher than the expected tax payable on their Australian taxable income. If a payee claims the prescribed rate is too low or too high, tell them to apply for a variation.

A payee will need to apply for a variation if they believe they are not required to pay tax in Australia for either of the following reasons:

- due to the operation of a double tax agreement
- where the income is exempt under Australian law.

A foreign resident payee who is an employee will need to apply for a *PAYG withholding variation* if they want raise or lower the amount withheld from payments.

! If the employee is receiving exempt income, a PAYG withholding variation isn't required.

How does a payee apply for a variation?

To apply for a withholding variation, a foreign resident payee must complete a foreign resident withholding variation application form.

> The application form is available online or can be downloaded in PDF format. To access the form, refer to *PAYG foreign resident withholding variation application* (NAT 11097) available on our website at ato.gov.au

! The payee should read the instructions on how to complete the application form carefully as incomplete applications take longer to process. Lodging the form electronically may reduce the time it takes to process the application.

What to do when you receive a variation notice for a payee

Where a payee has been granted a variation, we will send you (the payer) a written variation notice confirming the new rate. Until you receive this notice, you must not vary the rate of withholding.

When you receive a variation notice for the payee:

- match the payee identity details on the notice with the payee identity details you have in your records
 - if you can't match the details, contact us on the phone number provided on the notice
 - if you can match the details you must use the varied rate to calculate how much to withhold from any future payments you make to the payee that are covered by the variation – continue to do so until the expiry date shown on the notice or until we advise you otherwise
- keep a copy of the variation notice with your business records for at least five years.

! If you receive more than one variation notice for a payee, the latest notice supersedes all previous notices.

What to do if you receive a variation withdrawal notice

If you receive a variation withdrawal notice for a payee from us:

- Match the payee identity details on the notice with the payee identity details you have in your records
 - if you can't match the details, contact us on the phone number provided on the notice
 - if you can match the details, you must withhold 3% from the payment .
- Keep a copy of the variation withdrawal notice with your business records for at least five years.

> For foreign resident tax rates, refer to *Individual income tax rates* (NAT 4689) available on our website at ato.gov.au

> For more information:

- phone us on **1300 306 105** between 8.00am and 6.00pm, Monday to Friday
- email us at FRWvariation@ato.gov.au

REPORTING AND PAYING WITHHELD AMOUNTS TO US

Withholding when a payee does not quote an ABN

If a foreign resident payee is required to supply you with an ABN and they do not, you must withhold at the highest tax rate (currently 46.5%).

There are some limited circumstances where a payee is not required to supply an ABN, including when the income is exempt income of the payee or the payee is a foreign resident and does not carry on an enterprise in Australia.

Where the foreign resident payee believes they don't need an ABN, you still need to consider whether you are required to withhold from the payment and the payee may need to apply for a variation.

The withholding requirements where an ABN is not quoted takes precedence over the foreign resident withholding requirements. If you have withheld because an ABN was not quoted, you do not also withhold under foreign resident withholding rules.

If you make payments to foreign resident JTOs who quote an ABN (or who are not required to quote an ABN), you must withhold at one of the following rates:

- the varied rate specified on their PAYG variation notice
- 3% from the payment you make if they do not have a PAYG variation.

HOW TO REPORT AMOUNTS YOU WITHHOLD

You report and pay amounts you withhold by completing an activity statement. We will send you an activity statement and you report your PAYG withholding obligations at the applicable **W** label. You also show the amount withheld from foreign residents at label **W3** on your activity statement.

If you have not withheld any amount for a reporting period, you don't have to report amounts at labels **W2** to **W5**. However, you must still report any other obligations you have, sign and date your activity statement, and return it to us by the due date printed in the top right-hand corner.

⚠ Ensure the amounts that have been withheld are reported at the correct label.

➔ For more information, refer to *PAYG withholding – how to complete your activity statement* (NAT 7394) available on our website at ato.gov.au

When and how you report and pay amounts to us depends on whether you are a small, medium or large withholder. All reporting is done in line with the Australian financial year, starting 1 July and ending 30 June.

To work out if you are a small, medium or large withholder, we look at how much your total withholding was, or is likely to be, each year. If you are unsure of whether you are a small, medium or large withholder, phone us on **13 28 66** between 8.00am and 6.00pm, Monday to Friday and we can confirm it for you.

SMALL WITHHOLDERS

If you withhold \$25,000 or less a year, you are a small withholder. You must pay the amount you withhold to us quarterly. We will send you an activity statement each quarter that shows when your withholding payment is due.

! If you are a small withholder, you can choose to pay the amount you withhold to us monthly. To arrange this, phone us on **13 28 66** between 8.00am and 6.00pm, Monday to Friday. You can still pay other tax amounts, such as GST and fringe benefits tax, quarterly.

If you withheld amounts because a foreign resident did not quote their ABN, show these amounts separately at label **W4** on your activity statement.

> For more information about completing your activity statement as a small withholder, refer to *PAYG withholding – how to complete your activity statement* (NAT 7394) available on our website at ato.gov.au

MEDIUM WITHHOLDERS

If you withhold \$25,001 to \$1 million a year, you are a medium withholder. You must generally pay any amount you withhold to us monthly. We will send you an activity statement each month that shows when your withholding payment is due.

If you withheld amounts because a foreign resident did not quote their ABN, show these amounts separately at label **W4** on your activity statement.

> For more information about completing your activity statement as a small or medium withholder, refer to *PAYG withholding – how to complete your activity statement* (NAT 7394) available on our website at ato.gov.au

LARGE WITHHOLDERS

If you have withheld amounts totalling more than \$1 million in a previous income year or are part of a company group that has withheld more than \$1 million in a previous income year, you are a large withholder. If you are a large withholder, you must generally pay the amounts you withhold to us electronically within a specified payment cycle.

> For more information about reporting and paying amounts you withhold as a large withholder, refer to *PAYG withholding for large withholders* (NAT 3301) available on our website at ato.gov.au

HOW TO PAY THE AMOUNTS YOU WITHHOLD TO US

If you are a small or medium withholder, you can pay withheld amounts (along with other amounts you are liable to pay) to us:

- electronically, via direct credit, BPAY®, direct debit or credit card via optussmartpay.com/governmenteasypay-ato (card payment fee payable)
- by mailing a cheque or money order with your activity statement
- by taking your original pre-printed payment advice to any Australia Post outlet and paying by cash (up to \$3,000), cheque or EFTPOS from your savings or cheque account.

Large withholders must pay their withholding amounts electronically through direct credit or BPAY.

> For more information, visit ato.gov.au/howtopay

PROVIDE PAYMENT SUMMARIES TO PAYEES AND REPORT ANNUALLY

If you withhold from payments to a foreign resident, you have specific end-of year reporting obligations and you must do **both** of the following:

- provide each foreign resident with a payment summary
- send a *PAYG withholding annual report – payments to foreign residents* (NAT 12413) to us.

Your obligations are different depending on whether you withheld an amount for foreign resident withholding or withheld an amount where an ABN was not quoted.

REPORTING AMOUNTS WITHHELD FROM PAYEES

Payee payment summaries

A payment summary is a document you give (the payer) to your payee that includes details of gross payments made to the foreign resident payee and amounts withheld from these payments. It provides information the payee needs to prepare their tax return.

When to supply a payment summary

You must give a payment summary to each payee, detailing the payments made and amounts withheld from those payments for the relevant period.

A payee may ask for a payment summary at any time during a financial year, but no later than 9 June for the relevant income year. You must give the payment summary to the payee within 14 days of their request.

You must give a payment summary to the payee by 14 July following the end of the financial year if **either** of the following applies:

- the payee has not requested a payment summary during the financial year
- there are payments for the financial year that have not been shown on an earlier payment summary.

What period is covered by a payment summary?

When a payee first requests a payment summary during a financial year, that payment summary must include details of all payments made from 1 July until the date of the payee's request.

If a payee requests additional payment summaries during the financial year, or a payment summary is issued at the end of the financial year, the later payment summaries should include only details of payments that have not been shown previously.

What form does a payment summary take?

You must prepare your own payment summaries and include the following information:

- title – PAYG withholding from foreign residents – payment summary
- period covered by the payment summary – for example, 'Payment summary for the period 01/07/2012 – 30/06/2013
- your business name (as it appears on your activity statement)
- your ABN or withholding payer number
- the name of the payee and overseas address (if known)
- ABN of the payee if provided
- Australian TFN of the payee (if known)
- payee's taxpayer identification number (TIN) (if known)
- the payee's country of residence for tax purposes
- the total gross amount you paid (in whole Australian dollars) to the foreign resident payee during the relevant period
- the total amount withheld (in whole Australian dollars) from the payments you made
- the wording 'To be retained by the payee for tax purposes'.

You should make two copies of the payment summary – one for the payee and one for your records. You may choose to keep an electronic copy rather than a paper copy.

 Do not send copies of these payment summaries to us.

Here is an example of a self-prepared payment summary.

EXAMPLE: PAYG withholding from foreign residents – payment summary

Payment summary for period
01/07/2012– 30/06/2013

Payer details
Payer: ABC Casino Pty Ltd
Payer ABN: 12 345 678 900

Payee details
Payee: Mr Tour Operator

Payee address:
1 Tour Avenue, Malaysia

Payee's country of residence for tax purposes:
Malaysia

TFN: 98 765 432
ABN: 11 222 333 444

TIN:
Total gross payments \$200,000
Total amount withheld \$6,000

To be retained by the payee for tax purposes

➤ For more information, refer to *PAYG payment summaries and guidelines* available on our website at ato.gov.au

REPORTING AMOUNTS WITHHELD WHERE AN ABN WAS NOT QUOTED

Payment summaries

If you withheld amounts because a foreign resident did not provide their ABN, you must give them a payment summary at the same time as you pay them the net amount (gross payment less the tax withheld), or as soon as practicable after this.

When issuing a payment summary for withholding where the payee has not quoted their ABN, you can either:

- prepare your own payment summary
- use our *PAYG payment summary – withholding where ABN not quoted* (NAT 3283).

You can lodge these reports electronically or by using one of our paper forms.

Self-prepared payment summaries must include the:

- payer's name
- payer's ABN or withholder payer number (WPN)
- payer's branch number (if applicable)
- payee's name (if known)
- payee's address (if known)
- date on which the payment was made
- amount of the total payment, including the market value of non-cash benefits
- total amount withheld
- wording 'To be retained by the payee for tax purposes'.

The document must be in English and signed by you as the payer.

Give the original to the payee and keep a copy for your records. You can keep an electronic copy of the payment summary.

Annual reports

As a payer, you must provide us with a *PAYG withholding annual report – payments to foreign residents* (NAT 12413).

You may also need to report details of all amounts you withheld because an ABN was not quoted. You can lodge this report by completing a *PAYG withholding where ABN not quoted – annual report* (NAT 3448).

You must lodge these reports by 31 October following the end of the financial year. You are not required to send copies of the payment summaries given to your payee, but you must keep copies for your records.

This annual report can be lodged through the Business Portal at bp.ato.gov.au (you will need an AUSkey).

➤ For more information about how to lodge your annual report electronically, refer to *How to lodge your PAYG withholding annual report electronically* (NAT 3367) available on our website at ato.gov.au

To order either of the above forms, phone our automated ordering service on **13 72 26** available 24 hours a day, seven days a week. You will need your ABN to place an order.

RECORD KEEPING

Under tax law, you must keep all records that explain your PAYG withholding transactions. Records must be:

- in English (or in a form that can be translated into English)
- readily accessible (written or electronic).

You must keep your business records for at least five years.

MORE INFORMATION

For more information, you can:

- visit our website at ato.gov.au/paygw
- phone us on **13 28 66** between 8.00am and 6.00pm, Monday to Friday
- speak to your tax advisor.


If you do not speak English well and need help from us, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone us through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users connect to the NRS on relayservice.com.au and ask for the ATO number you need.

PAYG WITHHOLDING – FORMS AND PUBLICATIONS

You may find the following PAYG withholding forms and publications useful. To order any of our forms or publications, phone us on **1300 720 092**.

 If you are phoning from outside Australia, dial **+ 61** before the Australian number, that is, **+ 61 1300 720 092**.

- *PAYG payment summary – withholding where ABN not quoted* (NAT 3283)
- *PAYG payment summary – withholding where ABN not quoted guidelines* (NAT 3389)
- *Statement by a supplier (reason for not quoting an ABN to an enterprise)* (NAT 3346)
- *No ABN withholding – questions and answers* (NAT 5931)
- *PAYG withholding – how to complete your activity statement* (NAT 7394)
- *Foreign resident PAYG withholding – non-individual entities*
- *Foreign resident PAYG withholding – individual entities*
- *How to lodge your pay as you go (PAYG) withholding annual reports electronically* (NAT 3367)
- *PAYG withholding where ABN not quoted – annual report* (NAT 3448)
- *PAYG withholding for large withholders* (NAT 3301)
- *PAYG withholding – foreign resident withholding variation (FRWV) application (E-variation)* (NAT 11097)
- *Application to register a PAYG withholding account* (NAT 3377)
- *Add a new business account* (NAT 2954)

