Types of Withholding

Payments to employees, company directors and office holders

Under PAYG withholding, you must deduct amounts from the following kinds of payments you make to others:

- salaries, wages, allowances, bonuses or commissions paid to an employee;
- payments to company directors;
- payments to office holders (such as Members of Parliament);
- payments to members of the Defence Forces or police forces;
- return to work payments;
- eligible termination payments
- payments for unused leave; and
- compensation, sickness or accident payments.

Note that where a payment has been made which is exempt from income tax in Australia, no PAYG withholding obligations will apply. An example of this would include payments made to overseas university professors who are not subject to Australian income tax under a double tax agreement.

Payments under voluntary agreements

A business and an individual contract worker who has an ABN can make a voluntary agreement to bring the worker's payments into the PAYG withholding system, if the work payments are not subject to any other PAYG withholding.

If the business and the contractor make a voluntary agreement the business will withhold tax instalments from payments it makes to the worker and send them to the ATO. The contract worker will not be required to pay PAYG instalments for that income.

A business and a contractor can enter into a voluntary agreement only if the contractor is an individual who has an ABN. You cannot enter into a voluntary agreement to withhold unless you are an individual.

How much do I withhold?

Withholding from payments to employees and some others directly involved in your business should be in accordance with tax tables published by the ATO.

The tax tables take into account the personal income tax rates plus Medicare levy, any offsets or rebates, the Higher Education Contribution Scheme, residency status and other relevant matters. Make sure you use the
right tax table for your recipient, taking into account any information they may have provided you on a declaration.

Where the payee does not give you a fully completed tax file number declaration you must withhold tax at the highest marginal tax rate plus Medicare levy (currently a total of 46.5 per cent). Some payees may have been issued with a variation by the ATO. If this is the case you should withhold in accordance with the ATO variation letter or certificate presented by the payee.

**Non-cash payments**

Under the PAYG system, anyone providing non-cash payments (or receiving such payments, in the case of taxpayers acting for non-residents) must meet their withholding obligations. This ensures that a similar outcome is achieved whether payments are made in cash or in the form of non-cash benefits.

A non-cash benefit includes property or services in any form except money.

Note where the non-cash benefit is a provided to an employee of an associate of the employee as a fringe benefit there will not be a PAYG withholding obligation.

**Payments when an ABN is not quoted**

Under PAYG withholding, if a business supplies goods or services to another business and does not quote an Australian Business Number (“ABN”) on their invoice or some other document, the business that receives the goods or services is required to withhold an amount from the payment to the supplier and remit this amount to the ATO.

**When must I withhold?**

You must withhold if:

- you are a business making a payment for goods or services; and
- the supplier of the goods or services has not quoted their ABN on an invoice or some other document, or has not provided an invoice at all.

You do not withhold from a payment for failure to quote an ABN if:

- you are an individual and the payment is wholly of a private or domestic nature for you;
- the payment does not exceed $50;
- the whole of the payment is exempt income of the recipient (for example, the recipient is an income tax exempt entity);
• you already must withhold from the payment because you are an investment body paying an amount for which no tax file number has been quoted;
• the recipient is an individual and has made a written, signed statement that the supply is private or domestic in nature, or relates to a hobby (unless you have reasonable grounds to think the statement is false); or
• the supply is made by an entity through an agent and the agent quotes its ABN.

Generally, you are entitled to rely on quoted ABNs being genuine. However, if you think the ABN quoted on an invoice may be false, or is not the real ABN of the supplier, you should contact the supplier or check the website www.abr.gov.au. If you cannot obtain a valid ABN, you must withhold as if no ABN had been quoted.

*How much do I withhold?*

In situations where you must withhold from payment because an ABN has not been quoted, you withhold at the top marginal rate of tax plus Medicare levy (currently a total of 46.5 per cent).

*What if another business withholds from a payment to me?*

If you do not provide your ABN on invoices you issue, the businesses you are supplying goods or services to should withhold from your payment at the top marginal rate plus Medicare levy, under the same rules set out above. You will be entitled to claim this withheld amount as a credit in your next tax return.

**PAYG Reporting Requirements**

*What happens to Payment Summaries?*

The payment summary should record the total payments made and total tax withheld, and other information.

At the end of each financial year (the period 1 July to 30 June), a payer who has withheld tax from payments made to others must complete a payment summary for each payee and give it to the payee. The ATO prints payment summaries for you to use, or you may print your own in accordance with ATO specifications. Employers will receive further information about payment summaries.

The payment summary must be given to the payee by 14 July after the financial year. A payee can request a payment summary at any time during the financial year (for example, if they leave employment). However, the payer should not provide a mid-year payment summary if they provide reportable fringe benefits to the payee. This is because the reportable fringe benefits amount cannot be completed until the end of the financial year.
TFN declarations

People to whom you make certain types of payments - such as salary or wages - may give you a tax file number (“TFN”) declaration.

If you have received a valid TFN declaration, you must withhold from the payee according to the rates in the tax tables, and send the TFN declaration to the ATO. If you have not received a valid TFN declaration where it is required, you must withhold at the top marginal rate plus Medicare levy (currently a total of 46.5 per cent).

When is a TFN declaration provided?

If you are making payments of the following kinds the recipient may give you a TFN declaration:

- salaries, wages, allowances, bonuses or commissions paid to an employee;
- payments to company directors;
- payments to office holders;
- return to work payments;
- payments under a labour hire arrangement;
- pensions or annuities;
- eligible termination payments;
- payments for unused leave;
- social security or similar payments (TFN declaration mandatory);
- Commonwealth education or training payments (TFN declaration mandatory); and
- compensation, sickness or accident payments.

To be a valid TFN declaration, all the information fields on the form must be completed.

Sending TFN declarations to the ATO

If a payer receives a TFN declaration from a payee they must complete their section and send it to the ATO within 14 days. If no TFN declaration is received, the payer must report this to the ATO within 14 days in the approved form. The report generally contains information about the payee that is known to the payer.

If a payee receives several payments from a payer (for example, if the payee is an employee on weekly or fortnightly wages) they need complete only one TFN declaration at the start of the relationship.
Annual reporting to the ATO

By 14 August after the end of each financial year, the University must provide a report to the ATO about payments from which you withheld amounts (including nil amounts) if the payments were of the following kinds:

- salaries, wages, allowances, bonuses or commissions paid to an employee;
- payments to company directors;
- payments to office holders;
- return to work payments;
- pensions or annuities;
- eligible termination payments;
- payments for unused leave;
- social security or similar payments;
- Commonwealth education or training payments;
- compensation, sickness or accident payments;
- payments under a voluntary agreement; and
- payments under a labour hire arrangement.

You can report on the approved form or provide copies of all payment summaries issued to payees for the financial year, together with a statement that totals all the amounts from the payment summaries.

If you were required to withhold from other types of payments (for example, payments where an ABN is not quoted), you must report in the form approved by the ATO by 31 October after the financial year's end. Contact the ATO if you need more information.
Payments of Interest, Royalties and Dividends to Non-residents

The PAYG system requires withholding from payments of interest, dividends and royalties that are made to entities that are non-residents of Australia.

Generally, you must withhold from such payments where:

• they are made to a recipient, which has its address outside Australia. In relation to dividends, this will be the address according to the register of the company’s members. For royalties, the address should be according to the records in your possession relating to the transaction; or
• where you have been authorised or directed by the recipient to pay the interest, dividend or royalty at a place outside of Australia.

How much is required to be withheld?

The University is required to withhold under the PAYG Withholding provisions at the time of making the payment. The amount to be withheld will depend on which country the person receiving payment is a resident of and whether Australia has a double tax agreement with that country. Please verify with your Payroll/Human Resources contacts, to establish the rate of withholding.

What is a royalty?

Royalties are defined in the Australian domestic taxation legislation as detailed below and in Double Tax Agreements (note: the definition of a royalty varies between Double Tax Agreements).

In broad terms, “royalty” includes any amounts paid or credited as consideration for:

• the use of, or the right to use any:
  (i) copyright;
  (ii) patent;
  (iii) design or model;
  (iv) plan;
  (v) secret formula or process;
  (vi) trade-mark;
  (vii) other like property or right; or
  (viii) industrial, commercial or scientific equipment;

• the supply of scientific, technical, industrial or commercial knowledge or information (‘know how’);
• the supply of any assistance in relation to the application or enjoyment of, any such property or right as is mentioned above;

• the reception of, or the right to receive, visual images or sounds, transmitted to the public by:
  (i) satellite; or
  (ii) cable, optic fibre or similar technology;

• the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:
  (i) satellite; or
  (ii) cable, optic fibre or similar technology;

• the use of, or the right to use:
  (i) motion picture films
  (ii) films or video tapes for use in connection with television
  (iii) tapes for use in connection with radio;

• a total or partial forbearance in respect of the use of, or the granting of the right to use, any such property or right as is mentioned above.

The above definition of a royalty may be modified by a double tax agreement, which Australia has with the country where the recipient is resident. It is important that the payment is reviewed to establish whether it is a royalty as defined in the relevant double tax agreement.