

Pay as you go (PAYG) withholding for external administrators

What external administrators need to do to meet their administrative obligations under the PAYG withholding system



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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 www.ato.gov.au or contact us.

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WHO SHOULD USE THESE INSTRUCTIONS?

You need to be aware of your administrative obligations under the pay as you go (PAYG) withholding system if you are:

- a liquidator
- a receiver
- a receiver and manager
- a voluntary administrator appointed under the *Corporations Act 2001*
- an administrator of a deed company arrangement.

These instructions provide information about your withholding obligations when appointed to any of these roles for an entity under external administration. They also apply to you if you make payments under either the:

- employee entitlement support scheme
- general employees' entitlements redundancy scheme.

The information reflects the decision in *Deputy Commissioner of Taxation v. Applied Design Development Pty Ltd (in Liq.)* [2002] ATC 4193; (2002) 49 ATR 196, which ruled that a priority payment made to an employee who had proved a debt for wages retained its character as salary or wages for the purposes of the PAYG withholding system.

➤ Slightly different requirements apply to payments made by trustees under the *Bankruptcy Act 1966*. If you are a trustee, refer to *Pay as you go (PAYG) withholding for trustees of bankrupt estates* (NAT 10914) on our website at www.ato.gov.au

GETTING STARTED

You must withhold an amount from payments you make to employees (including former employees) of an entity under external administration. The amounts you must withhold, and the payment arrangements, will vary depending on the nature and scale of the payments.

You will need to:

- apply for an Australian business number (ABN) – only if the entity under external administration does not have an ABN
- register for PAYG withholding
- work out the amount to withhold
- report and pay withheld amounts
- complete payment summaries and annual reports
- keep the right records.

APPLY FOR AN ABN

If the entity under external administration does not have an Australian business number (ABN), you must apply for a separate ABN. If the entity has an ABN, you may use this ABN after arranging for a separate client account number to be attached to the entity's ABN. This will allow you to register for PAYG withholding.

➤ For more information about applying for an ABN, visit the *ABN essentials* page on our website at www.ato.gov.au

REGISTER FOR PAYG WITHHOLDING

You must be registered for PAYG withholding to withhold an amount from payments made to:

- employees of an entity under external administration
- a supplier who fails to provide an ABN.

You do not need to register for PAYG withholding until you make your first withholding payment.

If you don't have an ABN, you can use the same form to register for PAYG withholding and an ABN.

➤ For more information, visit the Australian Business Register's website at www.abr.gov.au

If you have an ABN, you can add a PAYG withholding account online at www.abr.gov.au using an Administrator AUSKey.

Alternatively, you can register for PAYG withholding:

- online through our Business Portal (you will need an AUSKey)
- by phoning us on **13 28 66** between 8.00am and 6.00pm, Monday to Friday
- by completing an *Add a new business account* (NAT 2954) form.

You can cancel your PAYG withholding registration at any time by one of the above options or completing an *Application to cancel registration* (NAT 2955).

Variations

An employee may apply to us to vary the amount to be withheld below the normal rate of withholding. We will approve individual variations in special circumstances – usually only when the employee can show their final tax liability for all income in the year does not justify the standard withholding rate.

There may also be situations where a group of employees with the same circumstances need to obtain a variation to the rate of withholding. In these cases, you may apply for a class variation for these employees.

➤ If you need information about individual or class variations, phone us on **1300 360 221** between 8.00am and 6.00pm, Monday to Friday.

WORK OUT THE AMOUNT TO WITHHOLD

➤ To work out the amount to withhold from payments you make to employees, you need to do both of the following:

- use the information the employees has given you on their *Tax file number declaration* (NAT 3092) and, if applicable, *Withholding declaration* (NAT 3093)
- refer to 'Table 1: PAYG withholding and reporting for payments made by external administrators' on page 4.

The amount you must withhold will depend on the nature of the payment – see table 1 on page 4.

Tax file number (TFN) declarations and withholding declarations

The *Tax file number declaration* (NAT 3092) and *Withholding declaration* (NAT 3093) will help you work out how much to withhold from employee payments. If the former employer's records include these forms, you can use them to calculate the amounts to withhold.

If you don't have a copy of a *Tax file number declaration* for an employee, they must complete a new one. You will need to complete the 'payer' section and send the original of the completed declaration to us within 14 days. You must also keep a copy for your records.

If a previous employee of the entity under external administration gives you a *Withholding declaration* to claim a tax offset, or to advise you of changes to their residency status and tax-free threshold, you are not required to send it to us. However, you must keep the completed *Withholding declaration* with your records for five years.

REPORT AND PAY AMOUNTS WITHHELD

Once you are registered for PAYG withholding, we will send you an activity statement.

You are generally required to lodge your activity statement monthly or quarterly depending on your status as a small, medium or large withholder:

- Small withholders have total annual withholdings of \$25,000 or less – if you are a small withholder you must pay amounts withheld each quarter.
- Medium withholders have total annual withholdings of \$25,001 to \$1 million – if you are a medium withholder you must pay amounts withheld each month.
- Large withholders have total annual withholdings more than \$1 million – if you are a large withholder and need information on when you must make withholding payments, refer to *PAYG withholding for large withholders* (NAT 3301).

The due date for lodging and paying is pre-printed at the top right hand corner of the activity statement.

You need to complete the activity statement and return it to us with any amounts withheld from payments to employees or suppliers.

You also need to keep copies of all these records and supporting documents for five years.

TABLE 1: PAYG withholding and reporting table for payments made by external administrators

| Item | Type of payment | Relevant provision – PAYG withholding | Applicable tax table or withholding rate | Relevant payment summary |
|------|--|---|--|--|
| 1 | Current salary or wage payments made to employees, including payments for leave paid when leave taken, for the period after the date on which the external administrator was appointed | Payment to employee Section 12-35 of schedule 1 to the <i>Taxation Administration Act 1953</i> (TAA) | Schedule 2 – <i>Weekly tax table</i> (NAT 1005) Schedule 3 – <i>Fortnightly tax table</i> (NAT 1006) <i>Monthly withholding table</i> (NAT 1007) | <i>PAYG payment summary – individual non-business</i> (NAT 0046) |
| 2 | Back payment of wages, including unpaid amounts of leave already taken (and including underpayment of wages over any period) that accrued before the date on which the external administrator was appointed | Payment to employee Section 12-35 of schedule 1 to the TAA | Withhold at 31.5% ¹ | <i>PAYG payment summary – individual non-business</i> (NAT 0046) If the amount accrued within the 12 months before the date of payment, the gross amount is to be included at ‘Gross payments’ on the payee’s payment summary If the amount accrued more than 12 months before the date of payment and the amount is \$400 or more, include the gross payment at ‘Lump sum payments’ label E and the amount withheld, along with any other withheld amounts at ‘Total tax withheld’ If the amount accrued more than 12 months before the date of payment and the amount is less than \$400, include the gross payment at ‘Gross payments’ on the payee’s payment summary |
| 3 | Back payment of wages, including unpaid amounts of leave already taken (and including underpayment of wages over any period) that accrued after the date on which the external administrator was appointed | Payment to employee Section 12-35 of schedule 1 to the TAA | Schedule 30 – <i>Tax table for back payments, commissions, bonuses and similar payments</i> (NAT 3348) | <i>PAYG payment summary – individual non-business</i> (NAT 0046) |
| 4 | Unused annual leave for employees | Payment for unused leave Section 12-90 of schedule 1 to the TAA | Withhold at 31.5% ¹ | <i>PAYG payment summary – individual non-business</i> (NAT 0046) |

TABLE 1: PAYG withholding and reporting table for payments made by external administrators *(continued)*

| Item | Type of payment | Relevant provision – PAYG withholding | Applicable tax table or withholding rate | Relevant payment summary |
|------|--|---|--|---|
| 5 | Payment for unused rostered days off Payment in lieu of notice Gratuity or golden handshake Part of a genuine redundancy payment or an early retirement scheme payment that exceeds the tax free limit Certain payments after the death of an employee | Employment termination payment ² Section 12-85 of schedule 1 to the TAA | Withhold at 31.5% ¹ | <i>PAYG payment summary – employment termination payment (NAT 70868)</i> |
| 6 | Long service leave for employees | Payment for unused leave Section 12-90 of schedule 1 to the TAA | Withhold at 31.5% ¹ | <i>PAYG payment summary – individual non-business (NAT 0046)</i> |
| 7 | Payment for a supply where no ABN is quoted. (This does not include dividend payments made to employees) | Recipient does not quote ABN Section 12-190 of schedule 1 to the TAA | Withhold at 46.5% | <i>PAYG payment summary – withholding where ABN not quoted (NAT 3283)</i> |

1 A Notice of Variation issued on 13 May 2005, where the amount to be withheld from certain payments made by external administrators is varied to 31.5% of the total payment.

2 A payment must generally be made within 12 months of termination to qualify as an ETP. Payments made outside 12 months are delayed termination payments unless we have given approval for them to be treated as ETP.

An ETP includes the part of a genuine redundancy payment or early retirement scheme payment that exceeds the tax-free threshold for such payments. These components of ETP are excluded from the operation of the 12 month rule. For the tax-free threshold for the year in which the payment is made, phone us on **13 10 20** between 8.00am and 6.00pm, Monday to Friday.

How to pay the amounts you withhold to us

If you are a small or medium withholder, you can pay amounts withheld to us by the following methods:

- BPAY®
- credit card
- direct credit
- direct debit
- mail
- Australia Post.

 If you need more information or to use these services, visit our website at www.ato.gov.au/howtopay

COMPLETE PAYMENT SUMMARIES AND ANNUAL REPORTS

Providing payment summaries to employees

Each year you are required to provide employees with a payment summary.

Payment summaries show the total payments you made and the amount you withheld for each employee during the financial year ending 30 June.

Generally, you must provide:

- each employee with a payment summary by 14 July each year
- an ETP summary to any employee to whom you have made an ETP within 14 days of making the payment.

You will need to give a copy of the payment summary to each employee and keep a copy for your records. If you report your PAYG withholding information electronically, you can give your employees their payment summaries printed on plain paper. However, the payment summaries must be in a format acceptable to us.

 If you need more information about self-printing payment summaries, refer to *How to lodge your pay as you go (PAYG) withholding annual reports electronically* (NAT 3367).

If you report your PAYG withholding information using paper forms rather than electronically, you will need to send the original form to us with a *PAYG payment summary statement* (NAT 3447). We will send you payment summaries and a personalised payment summary statement in June each year.

If you need extra payment summaries you can order them by phoning our automated ordering service on **13 72 26** at any time. You will need your ABN or withholding payer number (WPN) to order. If we send you more payment summaries than you need, you can keep them for future use.

Part-year payment summaries

Employees may request a part-year payment summary. The employee's request must be made in writing, no later than 21 days before the end of the financial year.

You must provide the employee with copies of the payment summary within 14 days of their request, unless the employee is an individual with a reportable fringe benefits tax amount. In this case, a part-year summary may not be issued.

Part-year payment summaries provide details of withholding payments made from either of the following:

- 1 July of that financial year to the date of issue of the payment summary
- the date of issue of any previous part-year payment summary to the date of issue of the current one.

For end of financial year payment summaries provided to employees previously issued with a part-year payment summary, only include details relevant to the period from the date of issue of the previous part-year payment summary to 30 June.

You should provide a payment summary for payments made to employees and other payees, even if the withheld amount is nil.

Employees and other payees no longer have to include copies of all payment summaries issued to them with their tax return.

Providing payment summaries if no ABN has been quoted

When a business supplies you with goods or services, that business should provide their ABN. If they don't, generally, you must withhold and give them a payment summary showing details of the payment.

You can use *PAYG payment summary – withholding where ABN not quoted* (NAT 3283) or prepare your own, as long as you include all the necessary details. You need to provide this payment summary at the same time you make the payment or as soon as practicable thereafter.

Choosing which payment summary to use

The payment summary you use depends upon the type of payment being made. For more information about which payment summary to use, refer to 'Table 1: PAYG withholding and reporting for payments made by external administrators' on page 4.

 For help to complete payment summaries, visit our website at www.ato.gov.au/paymentsummaries

 You can provide some of these payment summaries electronically, as long as you send the relevant PAYG withholding annual report to us electronically. For more information, refer to *Providing electronic payment summaries to payees* (NAT 9210).

Lodge annual reports

At the end of each financial year, you must lodge your PAYG withholding annual reports to us. These reports must include the following details:

- all payments you have made to employees or businesses during the financial year
- the amounts you withheld.

Depending on the types of payments that you have made throughout the financial year, you may have to complete various types of annual reports.

Table 2 shows the different types of annual reports, the types of payments you need to report and when you need to report.

TABLE 2: Types of PAYG withholding annual reports

| What to report | Annual report type | When to lodge |
|---|---|-------------------------|
| Information about payments you have made as wages, salaries or other work-related payments | <i>PAYG payment summary statement</i> (NAT 3447 or NAT 7885) | By 14 August each year |
| Information about payments you have made and amounts withheld from other businesses that did not quote their ABN to you | <i>PAYG withholding where ABN not quoted – annual report</i> (NAT 3448) | By 31 October each year |

There are three methods of providing your PAYG withholding annual reports to us. They are:

- online electronically
- on electronic storage media (that you mail to us)
- on paper, using ATO approved forms (that you also mail to us).

➤ If you need more information about reporting electronically, refer to *How to lodge your pay as you go (PAYG) withholding annual reports electronically* (NAT 3367).

If you want to provide your employees and other workers with an electronic payment summary, refer to *Providing electronic payment summaries to payees* (NAT 9210).

Reporting using paper forms

If you report using paper forms, send your completed *PAYG payment summary statement* (NAT 3447 or NAT 7885) to us for the financial year ending 30 June, together with the original copies of all completed payment summaries.

Both the *PAYG payment summary statement* and the payment summaries must be reported on our forms. Remember to keep a copy of the statement and payment summaries for your records.

Your *PAYG payment summary statement* must include the totals of all payments made and amounts withheld for all employees. You must send this report to us by 14 August each year.

If you have withheld from businesses that did not quote their ABN, you need to complete *PAYG withholding where ABN not quoted – annual report* (NAT 3448). You must send this report to us by 31 October each year. You don't have to send us copies of payment summaries you give to suppliers, but you must keep copies for your records.

- To order both the *PAYG payment summary statement* (NAT 3447) and *PAYG withholding where ABN not quoted – annual report* (NAT 3448):
- visit our website at www.ato.gov.au/onlineordering
 - phone our automated ordering service on **13 72 26** – you will need your ABN or withholding payer number (WPN) to use this service.

! PRE-FILLING – MAKING IT EASIER FOR EMPLOYEES TO PREPARE TAX RETURNS

You can make it easier for employees to lodge their tax returns. Simply lodge your *PAYG withholding payment summary annual report* early. As soon as we have processed your annual report, we will make the payment summary information available in the following forms:

- pre-filled into the correct labels in *e-tax* – the free service offered by us that allows individuals to complete and lodge their income tax returns
- reports for tax agents to help them complete their client's tax returns.

For more information about pre-filling, refer to *Lodging early helps your employees* (NAT 73420).

OTHER OBLIGATIONS

KEEP THE RIGHT RECORDS

You must keep all records that explain your PAYG withholding transactions. Records must be in English or in a form that can be converted into English. Make sure you keep all your records for five years.

If your records are not in a written form (for example, in an electronic form on a computer system), they must be in a form that is readily accessible and easily converted into English.

➤ For more information about record keeping and written evidence, visit our website at www.ato.gov.au/recordkeeping

PAYG withholding records you must keep

The PAYG withholding records you must keep include:

- wages records, including payment records
- voluntary agreements
- employment declarations, tax file number declarations and withholding declarations
- copies of payment summaries and payment summary statements, or electronic annual reports, if applicable
- employment termination payment records
- statements by a supplier where no ABN was quoted
- records of amounts you withheld when no ABN was quoted
- annual reports of PAYG withholding when no ABN was quoted.

SUPPLIERS QUOTING ABNS WHEN DIVIDENDS ARE PAID BY EXTERNAL ADMINISTRATORS

If an external administrator makes a payment representing a dividend to a recipient who is a creditor (other than an employee), the administrator must withhold 46.5% from the payment for a supply if the recipient does not quote their ABN. This also applies to any ongoing business transactions made by the practitioner.

➤ For more information, refer to *Statement by a supplier* (NAT 3346).

EMPLOYEES THAT HAD A DEBT WITH THE ENTITY AND HAD AN AMOUNT OFFSET BEFORE PAYMENT

An employee may be entitled to claim an offset for mutual dealings between themselves and their employer entity.

If an employee is entitled to an offset they can only claim the net amount (if any) of wages that remain after taking into account amounts they owe the entity. You must calculate the amount to withhold based on this net amount – that is, after any offset has occurred.

The amount offset is not a redirection as the employee does not have ownership or control over the amount. The external administrator is not applying or dealing with the amount on behalf of the employee because it is a statutory offset. Therefore, the amount of the statutory offset is not a constructive payment of wages to the employee for the purposes of the withholding provisions. The external administrator should withhold from the payment actually made to the employee – that is, after any offset has occurred.

MORE INFORMATION

For more information about PAYG withholding, you can:

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

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

If you are deaf, or have a hearing or speech impairment, phone the ATO 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 www.relayservice.com.au and ask for the ATO number you need.

If you would like further information about the NRS, phone **1800 555 660** or email helpdesk@relayservice.com.au

PAYG WITHHOLDING PUBLICATIONS

To order one of our PAYG withholding publications:

- visit our website at www.ato.gov.au/onlineordering
- phone our Business tax self-help service on **13 72 26** Fast Key Code **4**. You need to provide your ABN or TFN to use this service
- phone our Publications Distribution Service (which operates from 8.00am to 6.00pm, Monday to Friday) on **1300 720 092**. You need to provide your ABN to use this service.

 You need the full title or NAT number of the publication you want to order to use these services.

