PAYG withholding – voluntary agreements

This fact sheet explains how a payer and payee (independent contractor) can enter into a voluntary agreement to have amounts withheld from payments to help the payee meet their expected income tax liability

WHO SHOULD READ THIS FACT SHEET?

Read this fact sheet if you either:

- make payments to an individual who performs work or services as an independent contractor and they want to enter into a voluntary agreement with you
- are paid to perform work or services as an independent contractor.

WHAT IS A VOLUNTARY AGREEMENT?

A voluntary agreement is an agreement between a payer and a payee (independent contractor) to bring the payee's work payments into the pay as you go (PAYG) withholding system. The payee must be an individual who has an Australian business number (ABN), and the payments must not be subject to any other PAYG withholding.

Where there is a voluntary agreement between a payer and a payee, the payer must withhold amounts from payments they make to the payee and send the amounts withheld to us.

> Payers can only enter into a voluntary agreement if the payee is being paid as an independent contractor. They cannot enter into a voluntary agreement if the payee is:
> - an employee
> - being paid under a labour hire arrangement.

> If you are a business in the building and construction industry and you make payments to contractors for building and construction services under a voluntary agreement, you do not report these payments in the *Taxable payments annual report*. For more information, visit our website at **www.ato.gov.au/taxablepaymentsreporting**

WHAT ARE THE BENEFITS OF A VOLUNTARY AGREEMENT?

Voluntary agreements are a good way to help independent contractors meet their tax obligations. By having an amount withheld by the payer, independent contractors can make regular contributions towards their expected income tax liability. We encourage payees who are having difficulties meeting their tax obligations to enter into voluntary agreements with their payers.

WHAT TYPES OF ARRANGEMENTS ARE SUITABLE FOR A VOLUNTARY AGREEMENT?

Voluntary agreements to withhold may only be used where no other PAYG withholding applies and the payment is partly or wholly for the performance of work or services.

For example:

- a computer consultant working as an independent contractor for a manufacturing company to develop an electronic reporting system
- an electrician working as an independent contractor for a building company to undertake electrical work on new units
- a marketing consultant working as an independent contractor for a large retailing firm to undertake market research.

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The diagram below outlines the circumstances where a payer can enter into a voluntary agreement with a payee.

Is the payment under an arrangement, in whole or in part, for the performance of work or services? **NO →**

YES ↓

Is the payee an individual? **NO →**

YES ↓

Is the payment subject to any other PAYG withholding? **YES →**

NO ↓

Does the payee have an ABN? **NO →**

YES ↓

Do the payer and the payee agree to enter into a voluntary agreement and to record that agreement in the approved form? **NO →**

YES ↓

The payer can enter into a PAYG voluntary agreement with the payee.

The payer cannot enter into a PAYG voluntary agreement with the payee.

WHAT DOES A VOLUNTARY AGREEMENT INCLUDE?

A voluntary agreement is a written agreement between a payer and a payee that includes all of the following:

- the start date of the agreement
- what the payments are for (for example, plumbing services)
- a statement that the payments made under the arrangement are subject to a voluntary agreement under section 12-55 of Schedule 1, Part 2-5 of the *Taxation Administration Act 1953*
- the payer's ABN, name and address
- the payee's ABN, name and address
- the rate of withholding
- the signatures of both the payer and the payee.

A voluntary agreement for PAYG withholding (NAT 2772) form is available from our website at **www.ato.gov.au**

The payer doesn't have to use this form, but any voluntary agreement must be a written agreement including all the information specified above.

If preferred, the payer and payee can have an electronic voluntary agreement, provided that all the above items are included in the electronic agreement and the payer has adequate computer system controls in place to ensure the security and accuracy of the agreement.

Do not send a copy of the voluntary agreement to us. Each party should keep a copy for their records.

HOW MUCH SHOULD BE WITHHELD?

The withholding rate under a voluntary agreement is either the payee's instalment rate as notified by us called the Commisioner's instalment rate (CIR) or a flat rate of 20%.
If the payee:

- has a CIR of more than 20%, the payer withholds at the CIR
- has a CIR of 20% or less, the payer withholds at the flat rate of 20% unless both parties agree to use the CIR
- does not know their CIR at the time of the agreement, the payer withholds at the flat rate of 20%.

To work out how much to withhold, the payer subtracts any goods and services tax (GST) charged from the gross amount (invoiced amount) payable and multiplies the result by the withholding rate specified in the voluntary agreement.

The payee is advised of their CIR after the lodgment of their most recent income tax return. For the purpose of voluntary agreements, the CIR used must be the rate notified by us.

> The payee must disclose their CIR to the payer or state that they do not have one.

HOW LONG DOES A VOLUNTARY AGREEMENT LAST?

A voluntary agreement can cover a specific task or apply to successive arrangements between the payer and the payee.

When the payee is first advised of their CIR, or advised of a new CIR, the payer may need to enter into a new agreement after considering the rules applying to the rate of withholding (as explained on page 2).

The payer and the payee can each end a voluntary agreement at any time by notifying the other party in writing. We do not need to be notified of the cancellation of the agreement or any changes made to the voluntary agreement.

HOW LONG DO RECORDS NEED TO BE KEPT?

The payer and the payee must keep a copy of the voluntary agreement while it is in force and for five years after the last payment is made under the agreement. Copies do not have to be sent to us.

HOW DOES A PAYER REPORT AMOUNTS WITHHELD UNDER VOLUNTARY AGREEMENTS?

The payer needs to:

- pay any amounts withheld under voluntary agreements to us (large withholders must do this by direct credit)
- complete and lodge activity statements including any amounts withheld under voluntary agreements
- give each payee a *PAYG payment summary – business and personal services income* (NAT 72545) by 14 July after the financial year (or earlier if requested)
- complete an annual report of all payments made under voluntary agreements and send this to us by 14 August each year.

WHEN DO PAYEES CHARGE GST?

If a payee is not registered for GST, they cannot include GST in the price of the goods or services they supply, nor are they entitled to GST credits.

If a payee is registered for GST, they can claim GST credits for any GST paid on items they buy and use in performing the work under the voluntary agreement.

Payees may also need to charge GST for the goods or services they supply the payer under the voluntary agreement. This depends on whether or not the payer is entitled to a full GST credit.

> The payer must indicate on the voluntary agreement form if they are entitled to a full GST credit.

If the payer:

- would normally be entitled to a full GST credit, the payee can't charge GST on the goods or services they supply under the voluntary agreement
- is not entitled to a full GST credit and the payee is registered for GST, the payee must charge GST on any goods or services subject to GST supplied under the voluntary agreement.

EXAMPLE: Payer entitled to full GST credit

> Tony is a self-employed bricklayer. He wins a contract with Housebuilders Inc., a house building company, to complete all of the bricklaying for Housebuilders related to their current property development. Tony and Housebuilders agree to enter into a voluntary agreement so that Housebuilders withholds amounts from the payments to Tony.
>
> Tony is registered for GST. He can't include GST in the price he charges for the bricklaying services for Housebuilders because they are entitled to a full GST credit. However, he can claim GST credits for any GST paid on goods or services he buys or uses in performing the work.

EXAMPLE: Payer NOT entitled to full GST credit

> Jim runs a computer programming business and contracts with Big Bank Inc. to help develop a program for internet banking. Jim and Big Bank agree to enter into a voluntary agreement so that Big Bank withholds payments from Jim.
>
> As Big Bank makes financial supplies it is not entitled to claim GST credits for the things it buys, including Jim's services, that relate to the supply of financial services. Jim is registered for GST and so must include GST in the price he charges Big Bank. Jim can also claim GST credits for any GST paid on goods or services he buys or uses in performing the work.

MORE INFORMATION

If you need more information:

- visit **www.ato.gov.au** and search for 'Contractors and voluntary agreements'
- phone us on **13 28 66**.

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 **www.relayservice.com.au** and ask for the ATO number you need.

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 **www.ato.gov.au** or contact us.

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