



Income

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This is a guide that covers those payments made to foreign residents for construction and related activities.

QC 76119

Agreements for the allocation of taxing rights with respect to certain income of individuals

Australia has agreements for the allocation of taxing rights with various other tax jurisdictions.

Last updated 3 November 2016

Australia has tax agreements with other countries to help determine how tax should be paid by people who **both**:

- are a resident in one country
- work temporarily in another.

These agreements are called:

- Double tax treaties (DTAs)
- Tax information exchange agreements (TIEAs)
- Agreements for the Allocation of Taxing Rights (ATRs)

DTAs

Deal with the allocation of the taxing rights of all types of income, profits and gains between Australia and the other country with which we have agreed a DTA.

TIEAs:

- improve the exchange of tax information between Australia and other countries
- promote fairness and enhance Australia's ability to administer and enforce its tax laws.

ATR agreements:



- are like a partial tax treaty
- differ between countries but generally focus on the allocation of each country's right to tax income earned by students, pensioners and government employees who are resident of one country but earning income while temporarily a resident in the other.

ATR agreements may also contain articles dealing with:

- mutual agreement procedures (MAPs- Using these procedures, countries can resolve issues that may arise from **transfer pricing** adjustments. There is a link to more on transfer pricing below.

- exchange of information for carrying out the provisions of the ATR agreement Unlike the TIEAs, ATR agreements are given force of law in Australia by the *International Tax Agreements Act 1953*.

See also:

- International transfer pricing
- What are tax treaties?
- Tax information exchange agreements - overview
- [Australian Tax Treaties](#) 
- [List of countries with tax treaties and agreements with Australia](#) 

QC 22192

Australian tax obligations for special recreational vessels

Information for owners, masters or agents of special recreational vessels or superyachts on their tax obligations.

Last updated 1 July 2022

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Overview

Special recreational vessels, or superyachts, can now opt into Australia's coastal trading regulatory scheme.

This means:

- a superyacht offered for hire or charter and owned by a foreign operator can be granted a temporary licence under the *Special Recreational Vessels Act 2019*
- applications are then considered under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

Owners, masters or agents that receive temporary licences under this scheme will not have to pay goods and services tax (GST) on the importation into Australia of a superyacht.

The scheme does not change any other Australian tax obligations, including GST on hire and charter services.

GST

If you are the owner, master or resident agent of a superyacht and you supply hire or charter services in Australia, you may need to pay GST to us.

If your Australian sales are A\$75,000 or more over any 12-month period, you need to:

- register for GST within 21 days of being required to register
- charge GST on services
- lodge regular returns (called 'business activity statements') with us, together with your GST payments.

If you're registered for GST you can claim credits for the GST included in the price of goods or services you buy for use in your business. You are **not** entitled to GST credits for:

- private or domestic purchases
- purchases by your passengers or crew members.

You can choose to register for GST even if your Australian sales are under the A\$75,000 threshold. Registering for GST is necessary if you want to claim fuel tax credits.

How to register for GST

To register for GST you need an Australian business number (ABN). You can [apply for an ABN](#) and register for GST at the same time. You can also register for [pay as you go \(PAYG\) withholding](#) if you need to.

You can apply online. If you don't have an Australian tax file number (TFN), you will need to provide proof of identity documentation and a statement of your business activities in Australia when applying. This means your registrations may take some time.

We can help you Work out which registrations you need.

Paying GST

You need to pay GST to us in Australian dollars, regardless of the currency you receive for a hire or charter.

Visit [Foreign exchange rates](#) for more information.

Non-resident business with an Australian resident agent

Generally, the non-resident vessel owner is responsible for paying us the GST on superyacht hire or charter services.

However, if an Australian resident agent acts on behalf of the non-resident vessel owner, the agent may be responsible for the owner's GST obligations. The resident agent is responsible for GST if:

- the non-resident vessel owner does not intend to operate and does not operate their chartering services in Australia for greater than 6 months
- the chartering services are made to an entity that is not GST registered (either an Australian consumer or an enterprise not registered for GST), and
- the resident agent acts on behalf of the non-resident owner in the agreement to supply chartering services.

For more information visit:

- **Non-resident businesses with an Australian resident agent**
- *GSTR 2003/4 Goods and services tax: stores and spare parts for international flights and voyages*

- *LCR 2016/1 GST and carrying on an enterprise in the indirect tax zone (Australia)*
- *GSTR 2000/37 GST and agents: This ruling includes the obligations of a resident agent acting for a non-resident principal*

Fuel tax credits

If you're registered for GST, you may be entitled to claim credits for the fuel tax (excise or customs duties) included in the price of fuel you use in your business activities.

For more information visit:

- [How to register for fuel tax credits](#)
- [Bunker fuel and commercial shipping – fuel taxes \(excise duty, customs duty, GST and associated credits\) in commercial shipping.](#)

Income tax

If you're a foreign-based ship operator (owner or charterer of a ship) and you derive income from **voyages within Australia**, you may be required to lodge an **Overseas ships – voyage return**. We will then calculate the tax payable (commonly known as 'freight tax') and send you a notice of assessment.

Employer obligations

Employer obligations include:

- [Pay as you go \(PAYG\) withholding](#)
- [Superannuation](#)
- [Fringe benefits tax](#)

Pay as you go (PAYG) withholding

If you employ a foreign resident, a double tax agreement may apply under which the employee is not taxed in Australia. You will need to check the applicable **tax treaty**. If the employee's income is not taxable in Australia, you do not need to withhold tax from their wage.

If you employ an Australian resident – or a foreign resident who is not exempt from income tax under a double tax agreement – you have to withhold amounts from the employee's wages. This is called **pay as you go (PAYG) withholding**. You need to:

- register for PAYG withholding
- get your employee to complete a *Tax file number declaration*
- work out the amount to withhold using our **tax withheld calculator**
- report and pay the withheld amounts to us
- prepare annual payment summaries and lodge an annual report.

Superannuation

As an employer you may have **superannuation obligations**.

Superannuation is money you pay on behalf of your workers to provide for their retirement.

Generally, you have to pay superannuation on top of the wages you pay an employee (whether they're a temporary resident or not). Prior to 1 July 2022, an employee needed to earn \$450 or more before tax in a calendar month to be eligible.

There are some instances where you don't have to pay superannuation, including the following.

- You don't have to pay superannuation for an employee who is temporarily working in Australia and is covered by a bilateral super agreement. You must keep a copy of the employee's certificate of coverage to verify the exemption.
- You also don't need to pay superannuation to an employee who is under 18 unless they work more than 30 hours in a week.

Fringe benefits tax

If you are required to withhold from payments to your employees under PAYG withholding, you may also have **fringe benefits tax (FBT)** obligations. FBT applies to non-wage benefits, such as entertainment, provided to employees.

You will also need to refer to the applicable double tax agreement, which may include taxing arrangements for FBT.

More information

- [Special Recreational Vessel Temporary Licences](#) 
- [Special Recreational Vessels Bill 2019](#) 
- If you have questions about your Australian tax obligations, email us at ForeignShipping@ato.gov.au
- If you have questions about applying for a coastal trading licence, email the Department of Infrastructure at sbu@infrastructure.gov.au

QC 61757

Employees who work in a foreign country

How to report income for your Australian resident employees who are working in a foreign country.

Last updated 24 April 2023

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Foreign source income

Earnings have a foreign source when the:

- work is performed offshore and foreign tax was paid
- business paying the person is located offshore
- work was not incidental to work performed in Australia.

Generally, earnings don't have a foreign source where an employee:

- attends a conference
- travels for work
- undertakes the work as an incidental part of their Australian activities.

Exempt foreign employment income

Some foreign source income is **exempt** from tax. For example, some payments for foreign services that relate to certain development projects, and charitable or government activities are exempt from tax.

If your employee's earnings aren't exempt foreign employment income, you will need to withhold tax from payments made to them. Your employee should include non-exempt earnings in their tax return as assessable income. They may also be entitled to a foreign income tax offset for amounts of foreign tax paid.

If your employees usually live and work in Australia and temporarily work in a foreign country, there is no change to your pay as you go (PAYG) withholding, fringe benefits tax (FBT) and super guarantee obligations.

If their work in a foreign country is extended, you need to consider existing advice on these issues. If you are unsure about your obligations, you can **contact us**.

Reporting foreign employment income

You should report your employee's foreign employment income through Single Touch Payroll (STP) if any of the following apply:

- You have withheld and paid foreign tax to a foreign government on behalf of your employee.
- Your employee is in any foreign country for a consecutive period of at least 60 days. The period of 60 consecutive days commences at

the time that the employee starts work in the foreign country. This period includes non-working days and will end if the employee returns to Australia.

- The earnings have a foreign source.

How you report depends on whether you're using STP Phase 1 or STP Phase 2 reporting.

If you can't report this income through STP, you will need to provide your employee with a **PAYG payment summary – foreign employment**.

You do not need to issue a payment summary to a foreign resident who is employed by you in a foreign country and works in a foreign country.

Example: counting the 60 days

Kai is an accountant who goes to the USA to work with his current company's parent company. He continues to be paid by his Australian employer. Kai's duties with the foreign country are unrelated to the work that he performs for his Australian employer.

Kai works with the parent company from 22 February 2019 to 16 May 2019. During this time returns to Australia for the period 20 April to 27 April 2019.

Although Kai is in the USA for more than 60 days, he is not there for a consecutive period of more than 60 days. Kai's employer determined the earnings had a foreign source.

Example: when earnings are from a foreign source

Renee's Australian employer sends her to Hong Kong for 2 weeks to finalise an important acquisition. While in Hong Kong, Renee is offered an opportunity to stay for a further 4 weeks by an affiliate company.

Although this work is unrelated to her duties in Australia, her Australian employer agrees to continue to pay her. They see it as a good opportunity to develop Renee's professional skills and the relationship with the affiliate.

For the initial 2-week period, Renee's employer determines that her earnings do not have a foreign source. However, Renee's employer determines that her earnings in the following 4-week period do have a foreign source.

Accounting for foreign tax

You should reduce the PAYG withholding if:

- your employee's foreign earnings are assessable in Australia
- you pay tax to a foreign government on their behalf.

It should be reduced by the Australian dollar equivalent of the amount of tax paid to the foreign country.

You do not need to withhold any further amount, if the tax paid to the foreign government is equal to or greater than the amount you would have otherwise withheld for Australian tax purposes.

Use the **tax tables** to work out how much to withhold from payments you make to your employee.

Example: calculating Australian tax

Norman is an Australian resident who has been sent to work in Papua New Guinea for 4 months from July 2019. Norman is paid in local currency, the Papua New Guinea kina, by his Australian employer. He receives K3,850 weekly, and K1,413.26 is required to be withheld for Papua New Guinea income tax.

Norman has claimed the tax-free threshold for his Australian employment but is not eligible for any tax offsets. He does not have a Higher Education Loan Program or Student Financial Supplement Scheme debt. He is not entitled to leave loading.

In this example, the exchange rate for converting Papua New Guinean kina to Australian dollars is 2.36.

He calculates the Australian tax as follows:

- **Step 1:** Convert the earnings in K to A\$
 - $K3,850 \div 2.36 = \$1,631.36$

- **Step 2:** Calculate the Australian amount to be withheld from the amount calculated at Step 1, using the relevant PAYG withholding tax table
 - Amount to be withheld from \$1,631 = \$401
- **Step 3:** Convert the amount withheld and paid to the foreign country to A\$
 - $K1,413.26 \div 2.36 = \$598.84$
- **Step 4:** Reduce the amount calculated at Step 2 by the amount calculated at Step 3
 - Amount to be withheld $\$401 - \$598.84 = 0$.

As the amount of tax paid to the foreign government is greater than the amount that would have been withheld for Australian tax purposes, no further withholding is required.

Reporting accrued leave

You will be required to report an employee's leave as foreign employment income, if the leave is accrued while the employee worked in a foreign country. This is regardless of whether the earnings are exempt from tax.

Example: reporting leave accrued overseas

Suresh works for her Australian employer in Fiji for a period of 12 weeks. Her employer determines the earnings from this period of foreign employment are required to be reported as foreign employment income as she was in Fiji for 84 consecutive days.

During this time, Suresh accrues one week of annual leave. She will need to report that week's leave, when taken, as foreign employment income.

Fringe benefits tax (FBT)

If you provide a fringe benefit to your employee, you may also be required to:

- record the value of the benefit, if
- the grossed-up value exceeds \$2,000 in a fringe benefits tax year.

You must report the grossed-up taxable value of those benefits through STP or their payment summary for the corresponding financial year.

Follow our steps to help you work out the **reportable fringe benefits**.

Superannuation

Generally, if you pay an employee, you'll also be responsible for their super. This includes if:

- you are an Australian resident employer
- your Australian resident employee is employed outside Australia.

If you don't meet your **super guarantee obligations**, you may have to pay penalties and a general interest charge.

If you have not correctly provided super guarantee for an employee (because you did not contribute the right amount to the super fund by the due date or did not meet their choice of fund) you must lodge and pay the super guarantee charge to us.

You must continue to meet your superannuation obligations in Australia for an employee you send to temporarily work in another country. You may also be required to pay super (or equivalent) in the other country.

However, if you send an Australian employee to work temporarily in a foreign country that Australia has a **bilateral social security agreement** with, you may be able to apply for a certificate of coverage so you won't have to pay super in both countries.

Foreign resident withholding – who it affects

How to pay foreign residents for activities listed in regulations to the Taxation Administration Act 1953.

Last updated 26 October 2016

This information will assist you if you pay foreign residents for the following activities:

- for promoting or organising casino gaming junket arrangements
- for entertainment and sports activities
- under contracts for the construction, installation and upgrading of buildings, plant and fixtures and for associated activities.

Next steps

- Withholding from payments to foreign residents for casino gaming junket activities
- Withholding from payments to foreign residents for construction and related activities
- Withholding from payments to foreign residents for entertainment or sports activities

QC 17765

Insurance with non-resident insurers

How insurance premiums paid to non-resident insurers are taxed and how to fulfil tax obligations under Division 15.

Last updated 2 December 2024

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Tax obligations

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Division 15 – how to fill out the tax file number application form

Division 15 – how to fill out the company tax return

Tax obligations

You may have to fulfil certain tax obligations on behalf of non-resident insurers if you either:

- insure Australian property, or events that can happen only in Australia, with non-resident insurers
- are an insurance broker or agent who facilitates insurance for residents of Australia with non-resident insurers, where insured properties can be situated, or the insured event can occur, anywhere in the world.

Contracts of life assurance with non-resident insurers are excluded from these tax obligations.

The following information doesn't apply if you are an Australian insurer and you reinsure with non-resident reinsurers.

For more information see [Reinsurance with non-resident reinsurers](#).

Income tax requirements

If you pay insurance premiums to a non-resident insurer, the non-resident insurer may be required to pay tax on either the:

- premiums they receive from you
- profit they make from premiums received, that may be partly or wholly from you.

You, and any person in Australia acting on the insurer's behalf, may be considered an agent of the insurer. You may need to:

- apply for a tax file number (TFN), separate to your own TFN, for this specific purpose
- lodge a tax return using this separate TFN
- pay the relevant tax to us on behalf of the non-resident insurer.

For more information see Division 15 of Part III of the Income Tax Assessment Act 1936.

When the premium or profit is taxable in Australia

Premiums you pay or payable to, or profits made by, a non-resident insurer under an insurance contract are taxable if either:

- you are the insured person and the insured property is situated in Australia at the time the insurance contract is made, or the insured event can happen only in Australia – this is regardless of whether you are an Australian resident or non-resident
- an agent or representative of the non-resident insurer in Australia is instrumental in you entering into the contract and you are an Australian resident – this is regardless of where the insured property is situated or where the event may occur.

Note: Where an insurance contract covers properties or events than can occur both in and outside of Australia, but there is no separate identification or allocation of premium to the specified properties situated in Australia or events that can occur in Australia within the insurance contract, such premiums won't be assessable under subsection 142(1).

For more information see ATO IDs 2004/411; 412; 413 and 416.

Premiums paid to an Australian principal office or branch of a non-resident insurer aren't covered by the rules relating to insurance with non-resident insurers. However, the Australian principal office or branch of the non-resident insurer may be subject to Australian tax on its Australian source insurance business.

How taxable income of non-resident insurer tax is calculated

The taxable income of non-resident insurers is calculated in one of two ways.

The 10% method

Under this method, the taxable income for the year is calculated as 10% of the total amount of the premiums that were paid or payable by you in that year to non-resident insurers.

For more information see [What do premiums encompass?](#)

The actual profit or loss method

Under this method, the taxable income for the year is calculated as the actual profit (or actual loss) made by the non-resident insurer in respect of all premiums that were paid in that year to the non-resident insurer.

If an agent of a non-resident insurer seeks to apply the actual profit or loss method, the agent must not only determine the actual profit or loss attributable to those taxable premiums paid on insurance contracts for which that agent has acted on behalf of the non-resident insurer, but also satisfy the Commissioner:

- that there are no other premiums that might be assessable to the non-resident insurer; or
- as to the actual profit and loss attributable to all premiums (including the other premiums) that might be assessable to the non-resident insurer.

Where an agent is unable to satisfy the Commissioner, the agent is limited to calculating the taxable income of the non-resident under the 10% method.

For more information see [Establishing actual profit or loss to the satisfaction of Commissioner](#).

Establishing actual profit or loss to the Commissioner's satisfaction

Whether the actual profit or loss can be established to the satisfaction of the Commissioner is a matter of substantiation.

Note: It may be difficult to establish the actual profit or loss on all premiums, including when the non-resident insurer has either:

- received premiums from more than one agent in Australia
- entered insurance contracts directly with insured persons.

What do premiums encompass?

For the purposes of determining the taxable income of non-resident insurers, premium is the total amount you are required to pay the non-resident insurer for an insurance policy to have effect. However, premium excludes GST payable, as the tax law doesn't include GST payable on a taxable supply in assessable income.

The taxable premium includes expenses paid on behalf of the non-resident insurer such as:

- brokerage commissions
- state and territory stamp duties, and
- levies

But does not include:

- GST payable on that premium.

For further information see:

- ATOID 2013/59 Income Tax: Income derived by non-resident insurer
- Section 17-5 of the ITAA 1997: GST and increasing adjustments.

Example: calculation of taxable income relating to insurance with non-resident insurers under the 10% method

You pay \$1,190 under an insurance contract to an ordinary corporate non-resident insurer to insure property situated in Australia.

The amount includes GST of \$100, stamp duty of \$90.

Under the relevant stamp duty legislation, the non-resident insurer is liable to pay the stamp duty.

As premiums encompass the total amount that must be paid by the insured person for the insurance cover, net of GST, the taxable income in this example is \$109, that is, $10\% \times (\$1,190 - \$100)$.

This is not a withholding tax

Tax relating to insurance with non-resident insurers that is remitted by you is different to withholding taxes. You don't:

- have pay as you go (PAYG) obligations
- need to obtain an Australian business number
- need to complete a business activity statement.

Substituted accounting periods

If you have a substituted accounting period (SAP) and you want to lodge the *as agent for the non-resident insurer return* using the same SAP, you need to make a separate SAP application.

For more information see **Application for a substituted accounting period**.

What you need to do

As an agent (either insured person or person in Australia acting on behalf of the non-resident insurer), you have the following tax obligations

Steps for an agent

Apply for a TFN

If you don't have a TFN as agent for the non-resident insurer, you need to apply for one – see **TFN application for companies and other organisations**. The TFN is separate to your own TFN.

Identify you are acting as agent for the non-resident insurer on the TFN application form, for example 'ABC Company Pty Ltd as agent for non-resident insurers'. For more information see instructions at [Division 15 – how to fill out the tax file number application form](#).

Retain funds to cover the tax

When you pay insurance premiums to non-resident insurers, you must retain funds to cover the tax payable. This amount to be retained is calculated using either of the following methods:

- [10% method](#) – applying the applicable corporate tax rate to 10% of the premiums you paid to the non-resident insurer
- [actual profit or loss method](#) – actual profit made by the non-resident insurer multiplied by the applicable corporate tax rate.

Complete the tax return

At the end of the income year, complete an 'as agent for' tax return (AAF return).

Where you use the 10% method, complete an aggregated AAF return to cover amounts paid to all non-resident insurers.

Where you can use the actual profit or loss method, disclose any taxable income calculated separately from taxable income calculated using the 10% method, that is in a separate AAF return with a different TFN.

The AAF return is separate to your own tax return.

You must use the ANZSIC industry code '99050' on the AAF return.

See [Division 15 – how to fill out the company tax return](#).

Lodge the tax return

You must lodge your AAF return by the first day of the sixth month of the following year of income – unless we advise it must be lodged by a different date.

Pay the tax

Generally, you pay the tax by the due date specified in the notice of assessment.

If you lodge your AAF return late, you must pay the tax due within 21 days after the due date for lodgment.

Example: agent of non-resident insurer

On 2 February 2024, you pay Client A's insurance premiums of \$700 to an ordinary corporate non-resident insurer, X.

On 2 March 2024, you pay Client B's insurance premiums of \$300 to an ordinary corporate non-resident insurer, Y.

You are considered an agent of the non-resident insurers.


If the tax is calculated under the 10% method, you must keep \$30. That is, 10% of the total \$1,000 insurance premiums, being \$100, multiplied by the ordinary company tax rate of 30%.

You must apply for a TFN as agent for non-resident insurers if you don't already have a TFN for this purpose.

On 1 December 2024, you lodge an AAF return for the 2023–24 income tax year. This needs to include the premiums you paid to the non-resident insurers of \$1,000.

On 15 December 2024, we issue you a notice of assessment for tax payable of \$30. The amount must be paid by 8 January 2025, which is the payment due date specified in the notice of assessment on 15 December 2024.

Division 15 – how to fill out the tax file number application form

These instructions are only for the purpose of applying for a TFN as agent for non-resident insurers and cover the information to be provided for certain questions. You need to download a copy of the form (NAT 3799) from our website at [online ordering](#) .

Section A: Applicant information

Question 1 – Type of applicant

Select **Other unincorporated entity**.

Question 2 – What is the entity's legal name?

Provide the name of the entity that is acting as agent.

For example: ABC Company Pty Ltd as agent for non-resident insurers.

Question 3 – Does the entity have an Australian Company Number (ACN) or an Australian Registered Body Number (ARBN)?

Select **No**.

Question 4 – Is the entity a subsidiary company?

Select **No**.

Section B: Address details

Question 5 – Where is the entity's main business location or address?

Provide the business address of the entity that is acting as agent (not the address of the non-resident insurer). In the example given for Question 2, this will be the business address of ABC Company Pty Ltd.

Question 6 – What is the entity's postal address for service of notices and correspondence?

Is the entity's postal address the same as the business address?

If you select **No**, provide the business address of the entity that is acting as agent where notices and correspondence should be sent (not the address of the non-resident insurer).

Section D: Business activity details

Question 10 – On what date was the entity established?

Provide the date from which premiums were paid, or became payable, to the non-resident insurer.

Question 11 – What is the main industry that the entity operates in?

Select **Financial and insurance services**.

Question 12 – Describe the main activity from which the entity derives the majority of its business income

Provide the description 'Acting as agent for non-resident insurer'.

Section E: Taxation details

Answer each of the following questions for the entity that is acting as agent:

- Question 13 – Is the entity a resident of Australia for tax purposes?
- Question 14 – Is the entity exempt for income tax purposes?
- Question 15 – Is the entity a non-profit organisation?

Section F: Associates of the entity

Question 17 – Who is its public officer?

Provide the details of the public officer of the entity that is acting as agent, for example: the public officer of ABC Company Pty Ltd.

Where public officer details can't be completed because the entity acting as agent is a non-resident and doesn't have an Australian resident public officer, complete Question 19. Specifically, provide details of at least one individual associated with the entity, together with 2 certified copies of proof of identity documents if that individual doesn't have a TFN.

For further information, see also:

Proof of identity – applicants outside Australia

Copies of identity documents for applicants outside Australia

Section G: Declaration

Question 21 – Who is the authorised person signing this declaration?

Complete this section as usual.

How to lodge your application

Send the TFN application to:

AUSTRALIAN TAXATION OFFICE
PO BOX 3373
PENRITH NSW 2740

Division 15 – how to fill out the company tax return

These instructions are only for the purposes of completing a return as agent for non-resident insurers (AAF return).

Unless specific instructions are given below, the company tax return should be completed as normal.

Company information

Tax file number (TFN)

Use the TFN allocated for AAF return purposes only.

Name of company

Provide the name of the entity that is acting as agent, for example ABC Company Pty Ltd as agent for non-resident insurers.

Question 2 – Description of main business activity

Provide the description 'Acting as agent for non-resident insurer'.

Provide the industry code number '99050'.

Question 3 – Status of company

Select **Resident C1**.

Select **Private D9** or **Public D10**.

Select **Significant global entity G1** if the entity acting as agent was a SGE at any time during the income year.

Don't select **Country by country reporting entity G2**.

Question 6 – Calculation of total profit or loss

Where the 10% method has been used:

- enter at label R **Other gross income**, an amount equal to '10% of the total amount of the premiums paid by you to non-resident insurers'
- enter the amount you have shown at label R also at label S **Total income** and at label T **Total profit or loss**.

Where we agree you can use the actual profit or loss method, complete all the relevant income and expenses items.

Question 7 – Reconciliation to taxable income or loss

At label G **Did you have a CGT event during the year?** select **No**.

Complete label T **Taxable/net income or loss**, as usual. This is the amount shown at label T Total profit or loss in Question 6.

Overseas transactions or interests/thin capitalisation

At labels **X** and **Y** for the questions under the heading **International related party dealings/transfer pricing**, select **No**.

At label **Z** for the question under the heading **Overseas interests** select **No**.

At label **O** for the question under the heading **Thin capitalisation** select **No**.

Calculation statement

Complete as usual.

Declarations

Complete as usual.

QC 50679

Reinsurance with non-resident reinsurers

This applies to you only if you carry on an insurance business in Australia and you reinsure with non-residents.

Last updated 8 July 2025

On this page

Income tax requirements

What you need to do as agent for a non-resident reinsurer

Division 15 – how to complete the AAF company tax return

Income tax requirements

The rules relating to reinsurance with a non-resident reinsurer are contained in section 148 of the *Income Tax Assessment Act 1936* (ITAA 1936).

If you make an election under this section, you may be liable to pay tax as agent for the non-resident reinsurer.

For more information, see **section 148 of the ITAA 1936**

When the premiums are taxable in Australia

If you make an election under section 148, the premiums paid or credited in respect of the reinsurance are included in the assessable income of the non-resident reinsurer.

Premiums paid to an Australian principal office or branch of a non-resident reinsurer are not covered by the rules relating to reinsurance with non-resident reinsurers. However, the Australian principal office or branch of the non-resident reinsurer may be subject to Australian tax on its Australian source insurance business.

Consequences of election for the Australian insurer

If you make an election under section 148, you are allowed a deduction for the premiums from your assessable income. Further, amounts you recover from the non-resident reinsurer in respect of a loss on any risk reinsured need to be included in your assessable income.

An election applies to all the premiums paid or credited to non-resident reinsurers by you. Therefore, an election can't be in respect of only some of the premiums.

An election operates from the date of commencement of the income year to which the election applies, not the date the election is made. You need to retain monies to cover the tax payable, but only from those premiums applicable to contracts made after the election starts to operate. An election is irrevocable.

If you don't make an election under section 148, you are not allowed a deduction for the premiums. Also, your assessable income won't include any amounts recovered from the non-resident reinsurer, nor normal fixed amount of commission and expenses paid to you under the reinsurance agreement.

For more information, see:

- Taxation Ruling IT 2367 *Income tax: reinsurance with non-residents : calculation of premiums paid and unearned premium reserve*
- Taxation Determination TD 93/31 *Income tax: insurance: reinsurance: can an election be made under subsection 148(2) in*

respect of some, as against all, of the reinsurance premiums a resident insurer pays to non-resident reinsurers?

- Taxation Determination TD 96/10 *Income tax: general insurance: when an election is made under subsection 148(2) of the Income Tax Assessment Act 1936 ('the Act'), are all amounts paid or credited or received or debited in respect of reinsurance contracts made prior to the making of the election, deductible or assessable respectively to the Australian insurer?*
- Taxation Determination TD 96/11 *Income tax: general insurance: what obligations does an Australian insurer have under the Income Tax Assessment Act 1936 ('the Act') when an election is made under subsection 148(2) of the Act?*

How tax relating to reinsurance with non-resident reinsurers is calculated

If you have made an election under section 148, the tax payable is calculated as 10% of the gross amount of the premiums paid to non-resident reinsurers, multiplied by the applicable corporate tax rate.

Where an election is made under section 148, premiums are inclusive of commissions paid to you by the non-resident reinsurer, including ceding commissions. Accordingly, commissions receivable from the non-resident reinsurer don't reduce the amount on which liability to pay tax is worked out.

What you need to do as agent for a non-resident reinsurer

You need to fulfil certain tax obligations as agent for a non-resident reinsurer if you have made an election under section 148:

- If you don't have a tax file number (TFN) as agent for the non-resident reinsurer, apply for one – see [TFN application for companies and other organisations](#). This TFN is separate to your own TFN.
- Retain sufficient monies from the gross amount of the premiums paid to the non-resident reinsurer to cover the tax. The amount to be retained is 10% of the gross premiums paid or credited to the non-resident reinsurer multiplied by the applicable corporate tax rate.

- Complete an as agent for tax return (AAF return) at the end of the income year. Where you paid premiums to more than one non-resident reinsurer during the year, complete an aggregated AAF return. For further detail, see [Division 15 – how to complete the AAF company tax return](#).
- Lodge an AAF return in respect of each income year to which the election applies. You must lodge the AAF return by the first day of the sixth month of the following year of income – unless we advise it must be lodged by a different date.
- Pay the tax to us by the due date specified in the notice of assessment.

Example: agent of non-resident reinsurer

You are an Australian insurer.

You made an election under section 148 on 1 January 2020.

On 1 March 2024, you enter into an agreement to reinsure your risks with an ordinary corporate non-resident reinsurer.

Calculating tax payable by you as agent for the non-resident reinsurer

Calculation element	Amount
Gross amount of premiums	\$1,100
<i>less</i> Ceding commission payable by the non-resident reinsurer to you	\$100
Net amount payable to non-resident reinsurer	\$1,000

To work out the tax payable, apply the ordinary company tax rate of 30% to 10% of the gross amount of premiums. That is, $30\% \times (10\% \times \$1,100) = \$33$.

This is not a withholding tax

Tax relating to reinsurance with non-resident reinsurers is different to withholding taxes. You don't:

- have pay as you go (PAYG) obligations
- need to obtain an Australian business number
- need to complete a business activity statement.

Substituted accounting periods

If you have a substituted accounting period (SAP) and you want to lodge the *as agent for non-resident reinsurer return* using the same SAP, you need to make a separate SAP application.

For more information, see [Applying for a substituted accounting period](#)

Application to a life insurance company

Where the Australian insurer is a life insurance company, the rules relating to reinsurance with a non-resident reinsurer only apply to the accident and disability business of the life insurance company. This business includes risks covered by:

- accidental death insurance
- total and permanent disability insurance
- trauma insurance
- income protection insurance.

The non-resident reinsurer rules don't apply to pure death life insurance, such as term life insurance, nor to a contract for consumer credit insurance.

Example: life insurance company

You are an Australian life insurance company.

Premiums paid or credited to non-resident reinsurers for year ended 30 June 2024

Premium element	Amount
-----------------	--------

Accidental death	\$500
Term life	\$750
TPD	\$600
Trauma	\$400

The premiums related to reinsurance agreements entered after the date you made an election under section 148.

To work out the tax, apply the ordinary company tax rate of 30% to 10% of the gross amount of premiums relating to accident and disability business. That is,
 $30\% \times 10\% \times (\$500 + \$600 + \$400) = \$45$.

Division 15 – how to complete the AAF company tax return

These instructions are only for the purpose of completing a return as agent for non-resident reinsurers (AAF return).

Unless the following instructions specify, complete the company tax return as normal.

Company information

Tax file number (TFN):

- Use the TFN allocated for AAF return purposes only.

Name of company

Provide the name of the entity that is acting as agent, for example ABC Company Pty Ltd as agent for non-resident reinsurers.

Question 2 – Description of main business activity

Provide the description 'Acting as agent for non-resident reinsurer'.

Provide the industry code number '99050'.

Question 3 – Status of company

Select **Resident C1**.

Select **Private D9** or **Public D10**.

Select **Significant global entity G1** if the entity acting as agent was a significant global entity (SGE) at any time during the income year.

Don't select **Country-by-country reporting entity G2**.

Question 6 – Calculation of total profit or loss

Enter at label R **Other gross income**, an amount equal to 10% of the gross amount of the premiums paid to the non-resident reinsurers.

Enter the amount you have shown at label R also at label S **Total income** and at label T **Total profit or loss**.

Question 7 – Reconciliation to taxable income or loss

At label G **Did you have a CGT event during the year?** – select **No**.

Complete label T **Taxable/net income**, as usual. This is the amount shown at label T Total profit or loss in Question 6.

Overseas transactions or interests/thin capitalisation

At labels **X** and **Y** for the questions under the heading **International related party dealings/transfer pricing**, select **No**.

At label Z for the question under the heading **Overseas interests**, select **No**.

At label O for the question under the heading **Thin capitalisation**, select **No**.

Calculation statement

Complete as usual.

Declarations

Complete as usual.

Refund of over-withheld withholding: how to apply

How to complete the Refund of over-withheld withholding application form (NAT 75265) for non-residents.

Last updated 7 August 2024

On this page

Requesting a refund of over-withheld tax

Who completes the application

Applying if you're not a custodian/payer or registered tax agent


Applying as a custodian/payer or registered tax agent

Supporting evidence

Requesting a refund of over-withheld tax

The *Refund of over-withheld withholding application form* (Nat 75265) is for **non-residents**. The application form is used to claim a refund if too much non-resident withholding tax has been withheld from interest, dividend or royalty payments or from managed investment trust (MIT) distributions.

If you request a refund of overpaid tax, we'll aim to issue your refund within 28 days of receiving all the required information.

You must make your request in writing and attach evidence to support your application. Complete the application form online (it can be saved to your computer). When you have completed the application, you can lodge it online by logging into [Online services for business](#) .

Alternatively, you can print your completed application form and mail it to us.

To access a link to the form and for more information, see [Applying if you're not a custodian/payer or registered tax agent](#).

Note: if applying as a custodian/payer or registered tax agent, the application is lodged with an excel (XLSX) file. For a link to the file and instructions, see [Applying as a custodian/payer or registered tax agent](#).

For further information and examples, see:

- Investment income and royalties paid to foreign residents
- Interest, dividends, royalties and MIT payments
- Stapled Structures
- Straddle holding period rule

Who completes the application

You (the beneficial owner or representative of the beneficial owner) may be able to claim a refund if:




- too much withholding tax has been withheld from an amount of interest, dividend or royalty payments made in Australia and the error is discovered
 - by 30 June of the relevant year – your payer refunds the amount to you
 - after 30 June of the relevant year – you apply to us
- too much withholding has occurred because of managed investment trust (MIT) distributions – you apply to us.

To apply you must either be the individual or entity entitled to the refund or act on behalf of them with a power of attorney.

For certain tax treaties, you can apply to us for a refund if too much withholding tax has been withheld from a non-portfolio intercorporate dividend as a result of satisfying any ownership and other conditions in the particular tax treaty after the dividend was paid. The tax treaties that apply are listed on Straddle holding period rule.

Applying if you're not a custodian/payer or registered tax agent


To apply for a refund of over-withheld withholding tax on your own behalf you need to:

- Download the [Refund of over-withheld withholding application form \(PDF, 279KB\)](#)   and complete the form on your computer.
- Save a copy for your records and print the application form if mailing it to us.
- Included in your supporting documents must be a *Certificate of Residency* from your tax authority for the requested years, or your claim may be rejected.
- If you're unable to obtain a certificate, you must contact the ATO at the following address for further help.
- You can lodge your form online by logging into [Online services for business](#) . Alternatively, you can mail your claim and supporting documents to:

Australian Taxation Office
PO Box 1032
ALBURY NSW 2640



Applying as a custodian/payer or registered tax agent

We recommend that you use a desktop or laptop device to ensure that you can fill out the document correctly.

To apply for a refund of over-withheld withholding tax on behalf of another entity, you need to download the [Application for Non Resident over-withheld withholding refund \(XLSX, 643KB\)](#)  file.

To do this:

1. Right click on the link and select **Save**.
2. Save the link in Microsoft Excel format (.xls or .xlsx only – don't convert this form to PDF).
3. Open the form and enable JavaScript if prompted.
4. Complete the form on your computer.
5. Select **Save** at the bottom and save to your computer as Microsoft Excel format (.xls or .xlsx only – do not convert this form to PDF).

6. Lodge your form by logging into [Online services for business](#)  or [Online services for agents](#) .

7. Submit your form by attaching it to your secure mail message.

You can attach up to 6 attachments in the application mail message. Attachments are limited to 6MB each.

Failure to follow these instructions correctly might lead to a delay in the processing of your application.

Supporting evidence

You need to provide supporting evidence with your application.

Generally, the beneficial owner submits their refund request through their Australian custodian or payer.

If you want the refund cheque to be made out to an entity other than the beneficial owner (for example, to the Australian custodian), then you must provide a declaration signed by the beneficial owner (or their authorised representative) that:

- confirms we are authorised to make the cheque out in favour of the other entity
- indemnifies us from any adverse legal consequences, including any further claims to the refund entitlements.

If the declaration is signed by the authorised representative, you must attach a duly executed power of attorney document that gives the authorised representative the authority to act for the beneficial owner in this matter. If you give us a copy, it must be a certified copy.

You need to provide the following if any have been issued:

- a copy of the ATO exemption letter or private ruling covering the periods when the non-resident withholding tax has been deducted
- a certificate of residency from your tax authority for the requested years.

For information on requirements for copies of documents for applicants outside Australia, see: [Copies of identity documents](#).

Additional evidence - interest, dividend or royalty payments

If too much withholding tax has been withheld from an amount of interest, dividend or royalty payments made in Australia and you want a direct refund of the over-withheld withholding, you need to also provide the following supporting evidence with your application form:

- a letter from your Australian custodian or payer on their letterhead, confirming details of the withholding
- a copy of the dividend or distribution advices issued to the beneficial owner by the payer, detailing the
 - gross interest or gross dividend amount
 - security
 - date paid
 - amount of tax withheld
- a certificate of residency from your tax authority for the requested years
- all original certificates of payment, if any have been issued, for the nominated financial years.

Additional evidence - non-portfolio intercorporate dividends

You must provide evidence that you have owned, held or controlled the required amount of capital, shares or voting rights of the company paying the dividends for the period set out in the relevant tax treaty, for example ASIC or ASX forms.

Additional evidence for MIT distributions

You must provide evidence of the managed investment trusts (MIT) distribution payments made. For example, a credit advice or distribution statement or fund payment notice that would have been issued to the ultimate beneficiary, showing the following:

- name of the ultimate beneficiary
- security
- holding
- distribution paid or deemed payment amount (or both)
- amount withheld

- date of payment or deemed payment
- a letter from your Australian custodian/payer on their letterhead that
 - confirms tax was withheld at the non-Exchange of Information (EOI) country rate from MIT payments made to the recipient
 - provides details of the withholding remitted to us for each of the fund payments.

Under the new tax system for MITs, you may receive 'deemed payments' if the MIT has elected into the attribution system. MITs that elect into the new system are called attribution managed investment trusts (AMITs). See, [Withholding for AMITs](#) for more information. Deemed payment amounts may be different to the amounts actually paid to you, and are also subject to withholding, even if you do not receive an actual or cash payment for them.

You will need to check the information provided to you by the MIT as to the amounts and types of payments that have been subject to withholding, to work out whether the correct amount of tax has been withheld from your MIT income.

QC 45331

Residency requirements for companies, corporate limited partnerships and trusts

Find Australian residency criteria for companies, corporate limited partnerships and trusts.

Last updated 13 October 2017

On this page

Companies



Corporate limited partnerships

Trusts

Court decisions regarding the meaning of shareholders

An entity that is a resident of Australia is generally assessable on ordinary and statutory income derived from all sources whether in or out of Australia.

In contrast, a non-resident entity is generally assessable only on ordinary and statutory income from Australian sources.

Therefore, it is necessary to determine whether or not an entity is a resident of Australia.

Companies, corporate limited partnerships and trusts must meet different criteria to be considered Australian residents.

Companies

A company is a resident of Australia if:

- it is incorporated in Australia, or
- although not incorporated in Australia it carries on business in Australia and has either
 - its central management and control in Australia
 - its voting power controlled by shareholders who are residents of Australia.

Corporate limited partnerships

A corporate limited partnership will be considered a resident of Australia if either:

- the partnership was formed in Australia
- the partnership either carries on business in Australia, or has its central management and control in Australia.

Trusts

Generally, trusts are considered Australian residents for an income year if:

- a trustee of the trust estate was a resident at any time during the income year, or
- the central management and control of the trust estate was in Australia at any time during the income year.

For capital gains tax (CGT) purposes, the residency conditions are the same, unless the trust is a unit trust. A unit trust is a resident trust for CGT purposes for an income year if it meets the **unit trust residency requirement** at any time during the year.

For public trading trust purposes, the conditions for determining whether a unit trust is an Australian resident for an income year are the same as those for unit trusts for CGT purposes.

The **unit trust residency requirement** has two parts. A condition in both the first and second parts must be met.

Table 1: Unit trust residency requirement

One of these requirements was satisfied:	Any property of the unit trust was situated in Australia.	The trustee of the unit trust carried on a business in Australia.
And also one of these:	The central management and control of the unit trust was in Australia.	One or more Australian residents held more than 50% of the beneficial interests in the income or property of the trust.

Note: The concept of 'property' is broad and is not restricted to tangible property. It may include items such as trading stock, cash, and software.

Court decisions regarding the meaning of shareholders

- *Patcorp Investments Ltd & Ors v. FC of T* 76 ATC 4225

- *Voting power Kolotex Hosiery (Australia) Pty Ltd v. FC of T* 75 ATC 4028
- *Control of the voting power (Mendes v. Commr of Probate Duties (Vic))* mentioned in ATO ID 2011/74 *Income Tax: Definition of 'public company': company controlled by a Government – tracing an interest held through a chain of subsidiaries*

See also

- ATO Interpretative Decision ATO ID 2002/46 *Income Tax: Residency status of a foreign company*
- Draft Taxation Ruling TR 2017/D2 *Income tax: Foreign Incorporated Companies: Central Management and Control test of residency*

QC 16953

Straddle holding period rule

How Australia's tax treaties may be impacted by Straddle holding period rule.

Last updated 14 May 2024

On this page

Overview of straddle holding period

Tax treaties impacted by a straddle holding period

Overview of straddle holding period

Under particular tax treaties, including some of those modified by Article 8 of the **Multilateral Instrument**, non-portfolio intercorporate dividends may become eligible for reduced withholding tax rates if the beneficial owner of the dividend satisfies the straddle holding period rule (usually 365 days) and any other conditions set out in the

particular tax treaty. Australia's tax treaties that may be impacted by this rule are set out in the following table.

The straddle holding period includes the day of payment of the dividend. So in the first year a beneficial interest in the shares is held, the holding period may straddle the dividend payment date. This is because the holding period rule will look both backwards and forwards in determining whether the relevant holding period is satisfied.

If the holding period has not been satisfied when a dividend is paid then the withholding tax rate, as specified in the particular tax treaty before any reduction, will apply to any unfranked part of the dividend.

If the holding period is subsequently satisfied after the dividend payment date and any other conditions set out in the particular tax treaty are met, the reduced withholding tax rate will apply to the dividend. This means the dividend withholding tax withheld at the dividend payment date may have been over-withheld. In such a case, the beneficial owner of the dividend, or a representative of the beneficial owner, may apply to the ATO for a refund of the over-withheld withholding tax.

Example: Dividend paid before the straddle holding period rule is satisfied

On 1 December 2019, Foreignco, a New Zealand resident company, acquired 20% of the shares or ownership interests in Ausco, an Australian resident company.

On 17 June 2020, 200 days after Foreignco acquired the shares in Ausco, Ausco pays an unfranked dividend to Foreignco.

As Foreignco has only owned the shares in Ausco for 200 days when the dividend is paid the 365-day straddle holding period requirement under the Australia New Zealand tax treaty as modified by the Multilateral Instrument (the New Zealand treaty) has not been satisfied. Accordingly the reduced withholding tax rate of 5% potentially available to Foreignco under Article 10(2) (a) of the New Zealand treaty will not apply at the date of payment of the dividend.

When Ausco pays the dividend on 17 June 2020, Foreignco is subject under Article 10(2)(b) of the New Zealand treaty to

dividend withholding tax at 15% of the gross amount of the dividend.

Foreignco continues to hold the shares in Ausco throughout a 365-day period that includes the day of payment of the dividend. Once Foreignco has held the shares in Ausco for a continuous 365-day period, the reduced dividend withholding tax rate of 5% under Article 10(2)(a) of the New Zealand treaty will from that time apply to any dividends paid by Ausco to Foreignco from 1 December 2019 being the date of acquisition of the shares.

From the date at which the straddle holding period is satisfied Foreignco can apply to the ATO for a refund of the dividend withholding tax which was over-withheld from the dividend paid on 17 June 2020.

Tax treaties impacted by a straddle holding period

The following table summarises the intercorporate dividend concessional provisions in Australia's tax treaties that may be impacted by the straddle holding period rule in the first year the beneficial interest in the shares is held.

Provisions that may be impacted by the straddle holding period rule

Jurisdiction	Date of effect of the relevant treaty article (see Note 1)	Treaty article (modified by Article 8 of the MLI where applicable)	Non-portfolio dividend rate if holding period and other criteria are satisfied
Argentina	–	10(2)(a)(i)	10%
Canada	01/01/2020	10(2)(a)(i)	5%
France	01/01/2019	10(2)(a)	0%

		10(2)(b)	5%
Germany (see Note 2)	01/01/2017	10(2)(a)	5%
Iceland (see Note 2)	01/01/2024	10(2)(a)	5%
Israel (see Note 2)	01/01/2020	10(2)(a)	5%
Mexico	01/01/2024	10(2)(a)	0%
New Zealand	01/01/2019	10(2)(a) 10(3)	5% 0%
Norway	01/01/2020	10(2)(a)	5%
Romania	01/01/2024	10(2)(a)	5%
Russia	01/01/2021	10(2)(a)	5%
South Africa	01/01/2023	10(2)(a)	5%

Table notes:

- **Note 1:** Where date of effect is left blank, the treaty partner has yet to action its ratification, acceptance or approval of the MLI and notify the OECD.
- **Note 2:** The tax treaties with Germany, Israel and Iceland are not modified by the MLI.

For more information see:

- Refund of over-withheld withholding: how to apply
- International tax agreements

Tax on Australian income for foreign residents

What you need to know about how tax applies to your Australian income.

Last updated 28 July 2017

This page is for foreign residents who source an income in Australia – you will find information on the income you must report in your annual Australian tax return.

See also:

- [Work out your residency status for tax purposes](#) to see if you are considered a foreign resident

As a foreign resident, you must lodge a tax return in Australia. You must pay tax on all Australian-sourced income, except for income that has already been correctly taxed (such as interest, unfranked dividends and royalties).

Australia has tax treaties with other countries and this may affect the amount of tax you need to pay. Ensure your Australian financial institutions have your updated overseas address and residency status so they deduct the correct amount of tax. This will reduce follow-up actions by Australia or a treaty country when discrepancies are found.

Table: How tax applies

Income type	How tax applies
Australian pensions and annuities	You must include Australian pensions and annuities you receive in your Australian tax return, unless an exemption is available under Australian tax law or an applicable treaty
Australian employment income	Working in Australia – what you need to know explains how to engage in the tax

	system if you are taking up work in Australia
Australian investment income	Investing in Australia – what you need to know explains how to treat income from passive investments in Australia such as securities and rental properties, as well as interest and royalties
Interest, unfranked dividends and royalties	You do not need to include this income in your Australian tax return if tax has been correctly withheld – refer to Investing in Australia – what you need to know
Franked dividends	Franked dividends you receive are exempt from Australian income and withholding taxes – refer to Investing in Australia – what you need to know
Rental income	Investing in Australian property outlines the way tax applies to rental income you receive from a property in Australia
Australian business income	Doing business in Australia – what you need to know explains how tax applies to income you receive from Australian business activities you conduct
Income from exports of goods and services to Australia that is defined as Australian income	You must include this income in your Australian tax return and pay tax on the amount you receive unless an exemption is available under an applicable treaty – refer to

	Doing business in Australia – what you need to know
<p>Income from:</p> <ul style="list-style-type: none"> • promoting or operating casino gaming junket arrangements • entertainment and sports activities • construction, installation and upgrading of buildings, plant and fixtures and for other works and related activities 	<p>Foreign resident withholding tax is withheld by the payer. You need to report this in your Australian tax return – refer to Foreign resident withholding – who it affects</p>
<p>Capital gains on disposal of Australian assets</p>	<p>Generally, you must include capital gains you make on assets that are considered taxable Australian property in your Australian tax return and pay tax on that amount – refer to Capital gains in Australia</p>

QC 18342

Withholding from a foreign resident

Foreign resident PAYG withholding and how it affects non-residents receiving specific payments from Australian payers.

Last updated 13 December 2022

On this page


When to withhold tax

Reporting and paying

A foreign resident is someone who is not an Australian resident for tax purposes.

The withholding requirements for foreign resident employees are similar to those that apply to Australian workers. However, a foreign resident:

- can't claim the tax-free threshold
- is subject to special rates of withholding.

It is your responsibility to check if your foreign resident worker can legally work in Australia. The Department of Home Affairs (Home Affairs) has an [online verification tool](#)  you can use to check visa conditions.

Related pages

- **Tax file number declaration**
Complete the TFN declaration form so your payer can work out how much tax to withhold from payments they make to you.

When to withhold tax

You are required to withhold amounts when making payments to foreign resident employees.

It is not compulsory for foreign resident employees to have a tax file number (TFN). However, without a TFN, your payee can't:

- lodge a *PAYG foreign resident withholding variation (FRWV) application*
- lodge an Australian tax return
- apply online for an Australian business number (ABN).

Also, it will be more difficult for us to look up and discuss your employee's tax records with them.

The employee may also be liable for more tax if they do not provide a TFN.

Where the payment is to an individual foreign resident, withhold at the foreign resident rates in the weekly, fortnightly or monthly tax tables.

However, special withholding rates apply if they are employed under any of the following:

- working holiday makers
- Seasonal Worker Programme and Pacific Labour Scheme
- Pacific Australia Labour Mobility scheme
- entertainment, sports, construction and casino gaming activities.

Withholding when a payee does not quote an ABN

If a payee is required to supply you with an Australian business number (ABN), and they don't, you must withhold the top rate of tax from the payment.

In limited circumstances they do not need to supply you with an ABN. These include when the:

- income is exempt
- payee is not required to pay tax due to a tax treaty
- 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 take precedence over foreign resident withholding requirements. Therefore, if you have withheld because an ABN was not quoted, you do not also withhold under foreign resident withholding rules.

It is your responsibility to be satisfied that you do not need their ABN.

Making a payment in a foreign currency

To make a payment in a foreign currency, you need to calculate the equivalent Australian dollar value 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.

For more information, visit [Translation \(conversion\) rules](#).

Reporting and paying

When and how you report and pay withholding amounts to us depends on whether you are a small, medium or large withholder.

To determine this, we look at how much your total withholding is, or is likely to be, each year.

If you withhold from payments to a foreign resident, you have specific end-of-year reporting obligations. For more information, visit [Paying and reporting withheld amounts](#).

QC 18617

Withholding from dividends paid to foreign residents

Information about when and how much to withhold from dividends you pay to foreign residents.

Last updated 8 April 2021

On this page

[Dividends](#)

[Your obligations](#)

[Payee obligations](#)

If you pay dividends to a foreign resident (that is, someone who is not an Australian resident), the unfranked component of each of those payments is subject to a final withholding tax.

A foreign resident can be an individual, company, partnership, trust or super fund.

Dividends

Dividends for withholding tax purposes include:

- any distribution made by a company to any of its shareholders in the form of money or other property
- any amount credited by a company to any of its shareholders
- the return on all equity interests, including non-share dividends. However, they do not include dividends paid for non-equity shares that are subject to interest withholding tax.

You must issue a statement to your shareholder or payee that indicates the extent the dividend is franked or is conduit foreign income. You do not have to withhold tax if the dividends you pay have been fully franked or they are conduit foreign income.

See also

- Conduit foreign income
- Withholding from interest paid to foreign residents
- Withholding from royalties paid to foreign residents

Who withholds

If you operate a company that is an Australian resident, you must withhold amounts from unfranked or partly franked dividends that are not conduit foreign income if either of the following applies:

- the payment is made to an entity which has an address outside Australia
- your company is authorised to pay the dividend to any entities outside Australia.

Australian payers must withhold amounts from the payments they make. An Australian payer can be either an Australian resident or foreign resident with a permanent establishment in Australia.

Permanent establishment

A permanent establishment means a fixed place through which a business entity carries on their business activities in part or in full, and can include a:

- place of management
- branch or office

- factory
- workshop
- building and construction site
- mine or quarry
- pastoral or agricultural property.

An establishment may not be counted as a permanent establishment if is just used:

- as a storage facility
- to display goods or services
- as a fixed place of business for the purpose of purchasing goods or merchandise
- to collect information for the enterprise.

See also

- Permanent establishments

Temporary resident

Temporary residents of Australia who pay dividends to foreign lenders do not have to withhold tax from the payments they make. This exemption applies to qualifying temporary residents who are also Australian residents for tax purposes.

- Exempt foreign employment income

When to withhold

You must withhold tax from dividends you pay to a foreign resident when any of the following occurs:

- you make the dividend payment
- you credit the dividend to the foreign resident's account
- you otherwise deal with the payment on behalf of, or at the direction of, the foreign resident.

If you are an Australian agent of a foreign resident, you should withhold tax when you:

- receive a dividend payment on behalf of the foreign resident
- have the amount credited to your account
- have the payments otherwise dealt with at the direction of your foreign resident payee.

Your obligations

You must:

- withhold tax from dividends you pay to foreign residents
- pay the amounts you withhold to us
- issue payment summaries to your payees
- lodge a PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report (NAT 7187).

You do not have to lodge this annual report if you have correctly reported interest or dividend payments to foreign residents in an annual investment income report (AIIR).

Registering for PAYG withholding

You must be registered for pay as you go (PAYG) withholding before you withhold tax.

See also

- Registering for PAYG withholding

Withholding rate

If the payment is made to a resident of a country which has a tax treaty with Australia, that treaty sets the rate of withholding which is required. If there is no tax treaty the rate will be 30%.


Tax treaties are special agreements that Australia has entered into with over 40 countries. The tax treaties help prevent the same income being taxed more than once.

The reduced tax rate that applies under a tax treaty only applies if the recipient of the dividend is both:

- a resident of the particular tax treaty country

- beneficially entitled to that income.

See also

- Tax treaties
- Countries Australia has tax treaties with and their required withholding tax rates are in the [Income tax treaties](#)  table on the Treasury website.

Australian resident living overseas temporarily

If you are an investment body such as a financial institution and you have Australian resident payees who temporarily live overseas, the amounts you pay to those payees are not subject to foreign resident withholding tax if they:

- advise you that they continue to be Australian residents
- provided you their tax file number (TFN) or Australian business number (ABN).

If they are Australian residents and have not provided their TFN or ABN, you must withhold at the top rate of tax (47% from 1 July 2017).

Exemptions

You do not have to withhold amounts from dividend payments you make to a foreign resident of a treaty country if **both** of the following circumstances apply – the:

- foreign resident payee carries on a business in Australia through a permanent establishment
- payment you make is effectively connected with the payee's business.

This means that the payee will need to include the dividend payment in the assessable income of the payee's business in Australia. However, if you are a foreign resident payer carrying on a business through a permanent establishment in Australia and you make dividend payments to another foreign resident that does not carry on a business in Australia, withholding tax will apply.

Payee obligations

Foreign residents do not have to pay us any more tax if their only Australian income is from interest, dividends and royalties which have had the correct amount of withholding tax withheld.

Foreign resident payees must lodge an Australian tax return if they have assessable income other than interest, dividends or royalties in Australia.

Certificates of payment

A foreign resident payee may require a certificate of payment to provide to the tax authorities in their home country.

See also

- Investment income and royalties paid to foreign residents
- Application for certificate of payment (NAT 6408)

Refunds

If you withhold more tax than you should and you discover the error early, you must refund the extra amount you withheld to the payee, even if you have already paid the amount to us. By discovering the error early, we mean either:

- you become aware of the error by no later than 30 June of the relevant year
- your payee requests a refund by no later than 30 June of the relevant year.

If you have already paid the amount to us, you can offset the amount against another withholding amount you are liable to pay us in the future for the relevant year. Remember to record this offset in your accounts.

If you have already paid the amount to us and you are not liable to pay us any further withholding amounts for the relevant year, you need to lodge a revised activity statement. Revised activity statements are available in Online services for business if you are a registered user or you can phone us on **13 28 66** to obtain a revised activity statement form.

If you withhold more tax than you should and you discover the error later than 30 June after the end of the year to which the withheld

amount relates, **do not refund the amounts to your payee** – if you do we cannot refund the amount to you.

Next step

- Refund of over-withheld withholding: how to apply

See also

- PAYG withholding

QC 47372

Withholding tax from payments to foreign residents for casino gaming junket activities

The following provides information on payments to foreign residents for arranging casino gaming junket activities.

Last updated 30 June 2017

On this page

When should I withhold tax?

What are my obligations?

This information will assist you if you pay foreign residents for arranging casino gaming junket activities. You must withhold tax from these payments under the existing pay as you go (PAYG) withholding rules.

If you are making interest, dividend or royalty payments to foreign residents, different withholding rules apply and this information is not for you.

See also

- PAYG withholding

- Register for PAYG withholding
- Paying and reporting withheld amounts
- Issue payment summaries and lodge annual reports
- How to pay
- Record keeping for small business

When should I withhold tax?

Business that arrange for foreign gamblers to come to Australia for the purpose of gaming at casinos are generally known as casino gaming **junket tour operators** (JTO). You may make payments to them in the form of:

- monetary payments, including a commission based on the gaming or losses of the people
- incentives including:
 - flights
 - accommodation
 - food and beverage
 - laundry, car hire or any other in-house services
- non-cash benefits as a reward for bringing people to a casino to gamble.

Services provided by JTOs 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 and entertainment.

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 paying the foreign resident directly. This is the case even if the agent is an Australian resident.

What are my obligations?

As a payer, you are required to withhold tax 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.

Find out about:

- [How much to withhold from payments](#)
- [Withholding when a payee does not quote an ABN](#)
- [Was the payment made in a foreign currency?](#)
- [PAYG withholding variation](#)
- [What do I do when I receive a variation notice for a payee?](#)
- [What do I do when I receive a variation withdrawal notice?](#)
- [Payment summaries and reporting](#)

How much to withhold from payments

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.

You are required to determine if the JTO will be considered to be carrying on an enterprise in Australia to ascertain if an ABN should be provided. Often, they are entitled to one.

When a JTO is entitled to an ABN and does not provide one, a 'Statement by supplier' should not be used in its place.

Withholding when a payee does not quote an ABN

If a foreign resident JTO payee is required to supply you with an ABN and they do not, you must withhold at the highest tax rate (47% from 1 July 2017).

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.

What if the payment is made in a foreign currency?

You must report and pay amounts in Australian dollars.

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.

For more information, see **Foreign exchange (forex): the general translation rule**.

PAYG withholding variation


A foreign resident JTO 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:

- there is a tax treaty in place
- where the income is exempt under Australian law.

Tax treaties are special agreements that Australia has entered into with over 40 countries. The tax treaties help prevent the same income being taxed more than once.

See also

- [The list of tax treaty countries](#) 
- What are tax treaties?

Next steps

- PAYG foreign resident withholding variation application

What do I do when I receive a variation notice for a payee?

Where a payee has been granted a variation, we will send you 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
- 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 five years.

What do I do if I 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
- you must withhold 3% from the payment.

- keep a copy of the variation withdrawal notice with your business records for five years.

For more information, see [Foreign resident income rates](#).

Need more help? FRWvariation@ato.gov.au or call our hotline number 1300 306 105

Payment summaries and reporting

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 foreign residents payment summary
- send us a PAYG withholding annual report

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 withholding where ABN not quoted – annual report.

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.

Next steps

- PAYG withholding annual report - payments to foreign residents
- Withholding where ABN not quoted – annual report
- Lodging your PAYG withholding annual reports online

QC 17607

Withholding tax from payments to foreign residents for construction and related activities

This is a guide that covers those payments made to foreign residents for construction and related activities.

Last updated 3 March 2020

On this page

When should I withhold tax?

How much should I withhold from payments?

Reporting and paying

The pay as you go (PAYG) withholding system includes certain payments made to foreign residents.

Here you can find out about withholding from payments to foreign residents for construction and related activities.

Next steps

- Register for PAYG withholding

When should I withhold tax?

You are required to withhold amounts when making payments to foreign residents for construction and related activities. Withholding is required from all payments, including payments to subcontractors.

Works include the construction, installation and upgrading of buildings, plants and fixtures. Examples of construction works include, but are not limited to:

- dams
- electricity links
- mine site development
- natural gas field development
- natural resource infrastructure
- oilfield development
- pipeline works

- power generation infrastructure
- railway or road works
- residential building
- resort development
- retail or commercial development
- road and rail developments
- airport upgrades
- telecommunications equipment upgrades
- water treatment plant works.

Related activities

Related activities such as commissioning of infrastructure, training and support of personnel to operate infrastructure and supervision during the initial phase of operation are also included.

Other related activities include activities associated with the construction, installation and upgrading of buildings, plant and fixtures.

Examples include, but are not limited to:

- administration
- assembly
- decommissioning plant
- commissioning and operation of facilities
- costing
- engineering
- erection
- fabrication
- hook up
- installation
- project management
- site management

- supervision and provision of personnel
- supply of plant and equipment
- warranty repairs.

Making payments to an agent

In some circumstances you may have to make payments to an agent on behalf of a foreign resident.

You should withhold from payments made to an agent as though the payment were made directly to the foreign resident. This is the case even if the agent is a resident in Australia.

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.

How much should I withhold from payments?

You have to withhold 5% of the total payment made to foreign residents for construction and related activities.

The amount to withhold could be different if the payee has received a variation from us or if they do not quote you an Australian Business Number (ABN).

Where a variation has been granted, we send you a written notice confirming how much you should withhold from payments to that payee.

Unless we notify you, you should withhold 5% from payments.

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

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

If the payee provides you with a variation notice issued by us, you need to do the following:

- Match the payee identity details on the notice with the payee identity details you have in your records.
- If you cannot 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.
- You 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.

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 actual tax payable on their Australian taxable income.

If a payee claims that the prescribed rate is too low or high, tell them to apply for a variation.

The payee will need to apply for a variation if they believe they are not required to pay tax in Australia either:

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

How does a payee apply for a variation?

A foreign resident payee will need to complete a PAYG foreign resident withholding variation form. There is a different application form for each financial year.

For more information, see [PAYG foreign resident withholding variation form](#).

What to do if you receive a variation withdrawal notice

A variation notice can only be withdrawn by us.

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 cannot match the details, contact us on the phone number provided on the notice.
- If you can match the details, you should withhold at 5%, unless we notify you otherwise.
- Keep a copy of the variation withdrawal notice with your business records for at least five years.

How much to withhold when a payee does not quote an ABN

In general, a payee carrying on an enterprise in Australia must supply you with an ABN.

If they don't, you must withhold 47% from any payments to them.

There are some limited circumstances where a payee is not required to supply an ABN, including where the income is exempt income for the payee.

Where the foreign resident payee believes they do not need an ABN, you still need to consider whether you are required to withhold from the payment.

The payee may need to apply for a variation.

The withholding requirements where an ABN is not quoted take precedence over the foreign resident withholding requirements.

If you have withheld because an ABN was not quoted, then you do not also withhold under foreign resident withholding.

What if the payment is made in a foreign currency?

Calculate the equivalent Australian dollar value of the payment at the time you make the payment.

Then calculate the amount to withhold at the required rate.

The amount you report and pay to us will always be the Australian dollar value.

Next steps

- Foreign exchange (forex): the general translation rule

For more information on foreign resident withholding, you can:

- phone us on **1300 306 105** between 8:00 am and 6:00 pm, Monday to Friday
- email FRWvariation@ato.gov.au

Reporting and paying

When and how you report and pay amounts to us depends on whether you are a small, medium or large withholder.

To determine this, we look at how much your total withholding is, or is likely to be, each year.

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 an annual report to us by 31 October.

You do not report these payments in your taxable payments annual report.

Your obligations are different depending on whether the foreign resident quoted you an ABN.

Next steps

- Paying and reporting withheld amounts
- Phone **13 28 66**

See also

- PAYG payment summaries: forms and guidelines
- PAYG withholding annual report – payments to foreign residents
- Lodging your PAYG withholding annual reports online
- PAYG withholding where ABN not quoted – annual report
- Taxable payments annual report
- No ABN withholding – questions and answers

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 and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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