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Foreign employment income and section 23AG – employers

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If you employ an Australian resident individual who works overseas continuously for 91 days or more, you need to check if you are meeting your tax and superannuation obligations.

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Approved overseas projects

Employees working in a foreign country on an Austrade 'approved overseas project', may be exempt from Australian income tax.

See also:

- Working on an approved overseas projects

Class variation for employees

If you have a number of Australian resident employees working overseas, you can request a class variation to withhold less Australian tax in anticipation that your employees will have nil or very little Australian tax to pay.

You may apply for a variation based on your employees' particular circumstances, for example, the country they work in and the rate of foreign tax they pay in that country. The variation should reflect your employees' actual end-of-year tax liability.

Based on the information you provide, we will work out how much you can reduce the Australian withholding rate by for these employees.

See also:

- PAYG withholding variations for payers

Employment categories

Exemption from income tax on foreign employment income is only available when directly attributable to any of the following:

- your delivery of Australian official development assistance, except when your employer is an Australian Government agency
- your activities in operating one of the following
 - a public fund declared by the Treasurer to be a developing country relief fund
 - a public fund established and maintained to provide monetary relief to people in a developed foreign country that has experienced a disaster
- as a prescribed charitable or religious institution that is exempt from Australian income tax because the prescribed institution is located or pursuing objectives outside Australia

- a deployment outside Australia as a member of a disciplined force and you are part of, or an authority of, the Australian Government
- an activity specified in the regulations.

See also:

- Exempt foreign employment income

Foreign resident employers

Foreign resident employers paying for Australian resident employees working overseas

In 2011, we published a taxation determination (TD 2011/1) to explain the withholding and FBT obligations a foreign resident employer may have when paying an Australian resident for work performed overseas.

The determination provides guidance and an interpretation of the statutory obligations for foreign resident employers.

See also:

- TD 2011/11 *Income tax and fringe benefits tax: can a non-resident entity be:*
 - (a) *required to withhold amounts from salary and wages paid to an Australian resident employee for work performed overseas under section 12-35 of Schedule 1 to the Taxation Administration Act 1953?*
 - (b) *subject to obligations under the Fringe Benefits Tax Assessment Act 1986 in relation to benefits provided to an Australian resident employee in relation to work performed overseas?*

Fringe benefits tax (FBT)

FBT liability

You may have an FBT liability if you provide a fringe benefit to an employee or associate. An obligation to pay FBT will only arise if there is an obligation to withhold from payments made to an employee under PAYG Withholding legislation.

If an employee's individual fringe benefits amount is more than \$2,000, you must report the grossed-up value of that amount on the

employee's payment summary. This amount is known as your reportable fringe benefits amount.

Grossing up means increasing the taxable value of benefits you provide to reflect the gross salary employees would have to earn at the highest marginal tax rate, including Medicare levy, to buy the benefits after paying tax.

See also:

- Fringe benefits tax – a guide for employers (NAT 1054)

FBT exemption for fly-in/fly-out arrangements

In some circumstances, you can apply the FBT exemption for travel you provided to employees under a fly-in/fly-out arrangement. This exemption is available:

- where an employee's usual place of employment is
 - on an oil rig, or other installation, at sea
 - at a location in a state or internal territory but not in, or adjacent to, an eligible urban area, or
 - at a remote location that is not in a state or internal territory
- and where
 - you provide the employee with accommodation at or near the worksite on working days
 - you provide transport so employees can return to their usual place of residence on their days off
 - it would be unreasonable to expect the employees to travel to and from work on a daily basis.

FBT living-away-from-home provisions

Provided your employee is required to live away from their usual place of residence in order to perform their employment-related duties and the other requirements of the living-away-from-home (LAFH) provisions are satisfied, the LAFH provisions can apply to your employees if they are living overseas.

See also:

- Working overseas
- Fringe benefits tax – a guide for employers (NAT 1054)

Income tax

Limited exemptions from income tax

In 2009 and 2016, changes to the *Income Tax Assessment Act 1936* took effect that limited exemptions for foreign employment income to certain types of employment. Foreign employment income that is not exempt may be subject to Australian income tax.

These changes meant Australian government employees who earn foreign income while delivering Australian official development assistance won't be exempt from Australian income tax on their foreign employment income.

Members of a disciplined force, such as the Australian Defence Force and Australian Federal Police, delivering official development assistance are eligible for exemption from Australian income tax on their foreign employment income.

See also:

- Foreign deployment as a member of a disciplined force
- Foreign employment income and section 23AG – employees

Your employee's income is not exempt

If your employee's income is not exempt, you need to:

- withhold from payments of foreign income you make to your employees according to the Australian pay as you go (PAYG) withholding rules
- issue a *PAYG payment summary - foreign employment* (NAT 73297) for the foreign income
- meet any FBT obligations for any benefits you provide to your employee.

See also:

- PAYG withholding and employees who work in a foreign country

- PAYG withholding
- PAYG payment summary – foreign employment (NAT 73297)

PAYG

Meeting your PAYG obligations

If you employ an Australian resident who works overseas, you need to complete a **PAYG payment summary – foreign employment** (NAT 73297).


On this form you provide details of payments you made and amounts you withheld. The details you provide include the foreign tax you withheld and paid to a foreign government, from foreign employment income. This includes income earned for work in the Joint Petroleum Development Area paid to an Australian resident.

Next step:

- To obtain the payment summary
 - PAYG payment summary – foreign employment (NAT 73297)
 - phone us on **13 28 66** and ask for the *PAYG payment summary – foreign employment* (NAT 73297) and instructions.

Registering for PAYG withholding in Australia

If you make a withholding payment to a payee, you are required to register for PAYG withholding in Australia.

If you do not have an Australian business number (ABN), you will need to apply for one. You can do this online at abr.gov.au .

You should apply for PAYG withholding registration as part of this process.

If you already have an ABN, you can register for PAYG withholding by phoning us on:

- **13 28 66**
- **+61 2 6216 1111** (for overseas callers).

You will need to be the authorised contact to make this request.

If you are not eligible for an ABN, you will need to obtain a withholding payer number. You will need to complete NAT 3377 – Application to register a PAYG withholding account and lodge it with us.

Applying for a withholding variation if you are an employee

An employee may seek an individual variation to their withholding liability from us. We will tell you the amount to withhold if your employee applies for a variation.

See also:

- PAYG withholding variations for payers
- Schedule 1 – Statement of formulas for calculating amounts to be withheld (NAT 1004)

Varying PAYG withholding amounts for employees

You may reduce the Australian PAYG withholding on certain payments by the amount of the foreign tax withheld and paid to the foreign government for that payment.

Example: Varying PAYG withholding amounts

Norman is an Australian resident working in Papua New Guinea (PNG) for four months from July 2017. His Australian employer pays him in PNG kina (K). He earns K3,850 weekly and pays K462 of this in tax in PNG.

In this case, Norman:

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

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

You convert the earnings in K to AU\$:

$$K3,850 \div 2.36 = \$1,631.36$$

You work out the Australian amount to be withheld from this amount according to the relevant PAYG withholding tax table:

$$\text{Amount to be withheld from } \$1,631.36 = \$401$$

You reduce this amount by the amount to be withheld and paid to the PNG government:

$$\text{Amount to be withheld and paid to foreign country} = K462$$

$$\text{Convert this amount to AU\$} = K462 \div 2.36 = \$195.76$$

$$\text{Amount to be withheld} = \$401 - \$195.76 = \$205.24$$

$$\text{Rounded to the nearest dollar} = \$205$$

The amount to be withheld for Australian PAYG withholding purposes from the payment of K3,850 is AU\$205.

See also:

- PAYG withholding variations for payers
- Tax tables

You can only vary your employee's Australian withholding amount based on the amount of foreign tax you withheld and paid to a foreign government, and you have a withholding obligation in the foreign country.

Super guarantee

You have a super guarantee obligation if you pay your employee a salary or wage, unless the income or form of employment is exempt.

If you're:

- not an Australian resident employer, you're **not liable** for the super guarantee for the period your Australian resident employee is employed outside Australia
- an Australian resident employer, you're **not exempt** from the super guarantee, even where your Australian resident employee is employed outside Australia.

If you do not meet your super guarantee obligations, you must lodge and pay the super guarantee charge and may have to pay penalties and a general interest charge.

See also:

- [Super for employers](#)

QC 27232

Director penalties

How a director must ensure their company complies with tax and super obligations to avoid personal liability.

Last updated 29 January 2025

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What is a director penalty

As a company director you are responsible for ensuring that the company's tax and superannuation obligations are reported and paid on time. If your company does not pay certain liabilities by the due date, we can recover these amounts from you personally as a current or former company director.

This means you will become personally liable for your company's unpaid amounts of:

- pay as you go withholding (PAYG withholding)
- goods and services tax (GST)
- super guarantee charge (SGC).

These amounts that you are personally liable for are called 'director penalties'. We can recover the penalty amounts from you once we issue you a [director penalty notice](#).

Becoming a company director

Before you become a company director, check if the company has any unpaid or unreported PAYG withholding, GST or SGC liabilities. Once you are appointed as a company director you become personally liable for any unpaid amounts.

As a new director you can avoid becoming liable for director penalties that were **due before** your appointment. That is if within **30 days of your appointment**, you ensure the company does one of the following:

- pays their debts in full for PAYG withholding, net GST from 1 April 2020 (including luxury car tax (LCT) and wine equalisation tax (WET) amounts) and SGC from 1 April 2012
- appoints an administrator under section 436A, 436B or 436C of the *Corporations Act 2001*
- appoints a small business restructuring practitioner under section 453B of that Act
- begins to be wound up (within the meaning of the *Corporations Act 2001*).

Even if you resign as a company director within the 30-day period, you will still be liable for the company's unpaid PAYG withholding, net GST or SGC liabilities that were due before your appointment.

Example: appointment of a new director

Kevin and Ashley are directors of XYZ Pty Ltd. During the January to March quarter of the 2023–24 income year, the


company withholds tax from employees' wages but fails to pay PAYG withholding. When the company does not pay by the due date of 28 April 2024, Kevin and Ashley both became personally liable for a penalty amount equal to the unpaid amounts.

On 2 June 2024, Michael becomes a director of the company. Michael has 30 days from the date of his appointment to ensure that the company:

- pays the amount
- appoints a voluntary administrator
- appoints a small business restructuring practitioner, or
- is put into liquidation.

If Michael fails to ensure the company does at least one of the above within 30 days of the date of his appointment, he too will become liable for the unpaid PAYG withholding.

Director ID

You will need a [director identification number](#)  (director ID) if you're a director of a company, registered Australian body, registered foreign company or Aboriginal and Torres Strait Islander corporation.

Once you become a director

Once you become a director, you are responsible for ensuring the company meets its **PAYG withholding**, net **GST** and **super guarantee** obligations in full by the due date.

If these obligations are not met, you become personally liable for [director penalties](#). This is unless you take steps to ensure the company lodges and pays its:

- PAYG withholding by the due date
- net GST (as well as LCT and WET amounts) by the due date, and
- super guarantee (SG) to employees' super funds by the due date. If that doesn't occur, the company must lodge a **superannuation guarantee charge (SGC) statement** and pay the resulting SGC liability.

A director penalty is a parallel liability

If the company has more than one director, the amounts owed are likely to be the same for all directors.

This is because the company liability (what the company owes) and the director penalty liability are [parallel in nature](#).

When we recover director penalties we may do so equally from all the directors, depending on each director's circumstances.

If you are no longer a director

If you resign as a director of the company, you remain liable for [director penalties](#) for liabilities of the company that:

- were due before the date of your resignation
- fell due after your resignation if
 - for PAYG withholding and net GST (including LCT and WET), the first withholding event in the reporting period occurred before your resignation
 - for SGC liabilities, the date the charge became payable.

If you resigned as a director before:

- the first withholding event in that period for **PAYG withholding** and **net GST**, you will also be liable for any unpaid liabilities for reporting periods that started while you were a director
- the date the **SGC** became payable, you will also be liable for any unpaid liabilities for reporting periods that started while you were a director.

As former director of a company you also remain liable for some debts that occurred after the company is deregistered.

Example: resigning as director within 30 days of appointment

On 2 June 2024, Gabrielle becomes a director of 123 Pty Ltd. The company owes \$20,000 in PAYG withholding and \$30,000 in net GST. To avoid becoming personally liable for penalty amounts

equal to the above liabilities, Gabrielle has 30 days starting on the day of her appointment to do **one** of the required actions:

- cause the company to pay the debt
- appoint an administrator under section 436A, 436B or 436C of the *Corporations Act 2001*
- appoint a small business restructuring practitioner under section 453B of that Act, or
- have a liquidator appointed to wind up the company.

On 13 June 2024, Gabrielle resigns from being a director of the company.

By 1 July 2024, the company has not paid the above amounts, nor entered into administration, restructuring or liquidation.

Gabrielle is liable for the \$20,000 PAYG withholding and \$30,000 net GST.

Although Gabrielle resigns as director of the company within 30 days of appointment, she does not cause the company to do one of the 4 required actions within those 30 days. As a result, she incurs a director penalty at the end of that 30th day.

How we recover director penalties

Director penalty notices

We will issue you with a director penalty notice (DPN) to recover director penalties. The DPN is a notice we must give you that allows us to recover the company's unpaid amounts.

The notice outlines the unpaid amounts and [remission options](#) available to you.

We can recover the amounts of the director penalty by:

- issuing a garnishee notice
- offsetting any of your tax credits against the director penalties
- initiating legal recovery proceedings against you to recover the director penalty.

If you are a current director, when we give you the DPN, we will use the address you registered with Australian Securities & Investment Commission (ASIC). Otherwise, we will use the address last known to us. It is important you keep your address updated.

The date we post (or leave the DPN at the address registered with ASIC) is the date the notice is **given** to you.

How a parallel liability works

Once DPNs have issued, we may commence or recommence recovery action from each director personally, because these penalties are a parallel liability.

To recover the debt, we can pursue either:

- the company
- the directors.

This means that any payment or credit applied to the company's account or to a director's account to reduce the penalty will reduce the director penalty amount for the other directors and the company's corresponding liability for the same reporting period.

Example: issuing parallel liabilities

Kerry and Claire are directors of ABC Pty Ltd, that is required to pay PAYG withholding on a quarterly basis. For the January to March quarter in the 2023–24 income year, the company withholds \$4,000 PAYG from payments made to its employees and directors.

If ABC Pty Ltd does not pay its PAYG withholding liability, we will issue Kerry and Claire DPNs. We will then seek to recover the amount of the director penalty (\$4,000) from either Kerry or Claire, or both.

If Kerry pays \$1,000 against her director penalty liability, both the liability of the company and Claire's director penalty will be reduced by \$1,000 as they are parallel liabilities. Alternatively, if the company pays \$1,000 against its liability, both Kerry and Claire's director penalty will be reduced by \$1,000 as they are parallel liabilities.

Remittance of the director penalty

PAYG withholding and net GST

Remission of a director penalty is possible, but it depends on when the PAYG withholding and net GST payable was reported to us.

Liabilities reported within 3 months of the due date

If the unpaid amount of PAYG withholding or net GST is reported **within 3 months** of the due date (or, in the case of new directors, within 3 months of the date of their appointment), the penalty can be remitted by ensuring the company does one of the following:

- pays the debt in full
- appoints an administrator under section 436A, 436B or 436C of the *Corporations Act 2001*
- appoints a small business restructuring practitioner under section 453B of that Act
- begins to wind up the company (within the meaning of the *Corporations Act 2001*).

Liabilities reported 3 months after the due date

If the unpaid amount of PAYG withholding or net GST:

- is reported **more than 3 months** after the due date (or, in the case of new directors, 3 months or more after the date of their appointment), the only way to remit the director penalty is to pay the debt in full
- **remains unreported after 3 months**, the corresponding director penalty can only be remitted by payment in full.

Example: remittance of director penalty amounts for PAYG withholding and GST

Kerry and Claire are directors of ABC Pty Ltd, that is required to pay PAYG withholding on a quarterly basis. For the January to March quarter in the 2023–24 income year, the company withholds \$4,000 from payments made to its employees and directors. It also fails to report or pay \$2,000 in GST collected.

The company does not report or pay the above amounts within 3 months of the due date of liability.

Kerry and Claire each receive DPNs. The only way their director penalties can now be remitted is by Kerry or Claire making sure that the amounts are paid in full within 21 days of the date the notices are given to them.

Kerry and Claire place the company into administration. However, Kerry and Claire's director penalty amounts are still payable by **either one or both** to the equivalent amount of \$6,000 (\$4,000 + \$2,000).

SGC amounts

For super guarantee charge (SGC), remission of the director penalty depends on when we have been notified about SGC amounts.

If the unpaid amount of the SGC is **reported by the due date** for the SGC statement, the penalty can be remitted by ensuring the company does **one** of the following:

- paying the debt
- appointing an administrator under section 436A, 436B or 436C of the *Corporations Act 2001*
- appointing a small business restructuring practitioner under section 453B of that Act
- beginning to wind up the company (within the meaning of the *Corporations Act 2001*).

The only way to remit the amount is to pay the debt in full if:

- the unpaid amount of the SGC obligation is reported **after the due date**
- any part of the liability remains unreported.

Example: remittance of SGC liability

Kerry and Claire are directors of ABC Pty Ltd. The company incurs a SGC liability as it fails to remit employees' superannuation to a complying super fund by the due date. It

also fails to report the unpaid amounts to the ATO by the due date for the SGC statement.

Kerry and Claire each receive DPNs. The only way their director penalties can now be remitted is by Kerrie or Claire causing the amounts to be paid in full within 21 days of the date the notices were given to them. This is because the company did not report or pay the SGC amounts by the due date for the SGC statement.

Once we give you a director penalty notice

Once we give you a DPN, you have 21 days to either:

- pay the corresponding penalty amounts in full
- engage with us and negotiate a payment plan for the company debt – we may still offset your personal credits against this debt.

If neither of the above happens, we may recommence action against you to recover the director penalty amounts.

Example: failing to report and pay within 3 months

Kerry and Claire are directors of ABC Pty Ltd that is required to pay PAYG withholding on a quarterly basis. For the January to March quarter in the 2023–24 income year, the company withholds \$4,000 from payments made to its employees and directors. It also collects net GST of \$10,000 for the same period.

The company does not report or pay the amounts withheld within 3 months of the due date of the liability.

Kerry and Claire each receive DPNs. The only way their director penalties can now be remitted is by Kerry or Claire causing the amounts to be paid in full within 21 days of the date the notices are given to them.

Estimates

If the company fails to report PAYG withholding, net GST or SGC obligations by the due date, we may make a reasonable estimate of the unpaid and overdue amounts.

The director penalty provisions apply to these estimated liabilities.

The estimate is due and payable by the company on the day we give the company the estimate notice.

The estimated amounts of PAYG withholding, net GST or SGC are treated as an unreported amounts.

Example: ATO estimate of unpaid PAYG withholding

Kerry and Claire are directors of ABC Pty Ltd, which is required to pay PAYG withholding on a quarterly basis. For the January to March quarter in the 2019–20 income year, the company withheld from payments made to its employees and directors but failed to report or pay this to the ATO by the due date of 28 April 2020.

On 21 August 2020, the ATO estimated the unpaid amount of PAYG withholding for the January to March quarter and gave the company written notice of the estimate that same day. At the end of this day, both Kerry and Claire are both personally liable for a director penalty amount equal to the unpaid amount of the estimate.

A DPN based on the estimated amount of PAYG withholding was issued on 21 September 2020.

As the unpaid amount was not reported within 3 months of the due date of the liability, the director penalty can only be remitted by the company or directors paying the amount of the estimate.

Example: ATO estimate of unpaid GST

Kerry and Claire are directors of ABC Pty Ltd, that collects GST on sales on a monthly basis. The company is required to report and pay GST collected during the month of April 2024 by 21 May 2024 but fails to do so.

On 21 September 2024, we estimate the unpaid amount of GST for April 2024 and give written notice of the estimate to the company that same day. At the end of this day, both Kerry and Claire are both personally liable for a director penalty amount equal to the unpaid amount of the estimate.

A DPN based on the estimated amount of GST is issued on 21 October 2024.

As the unpaid amount was not reported within 3 months of the due date of the liability, the director penalty can only be remitted by the company or directors paying the amount of the estimate.

Defence to a director penalty notice

The director penalty regime outlines circumstances in which a director is not liable for director penalties. You can ask us to consider a defence you may have to your director penalty before any legal recovery proceedings begin.

You will have a defence and not be liable for a director penalty if:

- you did not take part (and it would have been unreasonable to expect you to take part) in the management of the company during the relevant period because of illness or other acceptable reason
- you took all reasonable steps, unless there were no reasonable steps you could have taken, to ensure that **one** of the following happened
 - the company paid the amount outstanding
 - an administrator was appointed to the company
 - a small business restructuring practitioner was appointed to the company
 - the directors began winding up the company (within the meaning of the *Corporations Act 2001*)
- in the case of an unpaid SGC liability, the company treated the *Superannuation Guarantee (Administration) Act 1992* as applying in a way that could be reasonably argued, was in accordance with the law, and took reasonable care in applying that Act.

The courts have:

- held that these defences must be proved for the entire period the director was under the obligation
- also ruled that, as a director, it is not a defence if you relied on others (including fellow directors and professional advisors) to ensure your obligation was met

- ruled that the natural meaning is that the combined defences must cover the whole of the period between the breach of the obligation on the due date, and the expiry of the notice (*Canty v Deputy Commissioner of Taxation* [2005] NSWCA 84). See also *DCT v George* [2002] NSWCA 33).

A director's non-participation in the management of the company will usually involve a breach of the duty, **whether the director is aware of this or not** (*DCT v Lesley Frances Robertson* [2009] NSWSC 597).

A DPN defence needs to be submitted to the Commissioner in writing, clearly articulating what defence you are seeking to rely on. It should provide all the necessary information and supporting documentation to substantiate the defence.

Once you have completed your application, you can either:

- ask your tax agent to lodge the application through Online services for agents
- mail it to

**Attention: Debt Case Leadership
AUSTRALIAN TAXATION OFFICE
PO BOX 327
ALBURY NSW 2640**

As a company director, you must ensure your company complies with its tax and super obligations. Failure to do so will result in a personal liability.

QC 44005

Employers of working holiday makers

What you need to do as an employer of working holiday makers (backpackers) holding a Working Holiday visa (subclass 417) or Work and Holiday visa (subclass 462).

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Working holiday makers (WHMs) are temporary visitors to Australia who hold a Working Holiday visa (subclass 417) or Work and Holiday visa (subclass 462).

Tax rate for working holiday makers

A special tax rate applies when you employ a WHM. However, WHMs are entitled to the **same superannuation benefits** as other employees.

To employ a WHM in Australia on a visa subclass 417 or 462, you must:

- register with us as an employer of WHMs to withhold tax at the WHM tax rate (before making your first payment to them)
- check your worker's visa status using the [Visa Entitlement Verification Online](#)  service.

Penalties may apply if you fail to register.

You should not employ, or pay someone for work, if they don't have permission to work in Australia.

How to tax a working holiday maker

A person will advise you that they are a WHM on their **Tax file number declaration**. The form asks workers to declare if they're a WHM, Australian resident, or foreign resident for tax purposes.

You should use the **working holiday maker tax table** to work out how much tax to withhold from payments you make to a worker who holds a visa subclass 417 or 462. However, if you receive a **PAYG variation** notice from us to vary the rate to withhold from payments made for an employee, you would then withhold at the varied amount.

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Registered employers

If you're registered with us as an employer of WHMs, you should withhold tax at the WHM tax rate of 15% from the first dollar your WHM earns up to \$45,000. Tax rates change for amounts above this.

Use the [tax table for working holiday makers](#) to calculate the tax on **all** payments made to WHMs, including:

- salary or wages
- termination payments
- unused leave
- back payments, commissions, bonuses and similar payments
- payments to actors and entertainers.

WHMs must provide their tax file number (TFN). If they don't, you need to withhold **tax** at the top rate.

You should continue to withhold amounts based on the WHM tax table, unless you receive a PAYG variation notice from us for a particular individual WHM.

If a worker questions you about the tax treatment of their payments, you may refer them to our website ato.gov.au/WHM

Unregistered employers

If you're not registered with us as an employer of WHMs, you must withhold tax at 30% from every dollar earned up to \$135,000. For income over \$135,000, you need to apply **foreign resident withholding rates**.

Penalties may apply if you employ someone with a visa subclass 417 or 462, but don't register as an employer of WHMs.

Superannuation

WHMs are entitled to superannuation on the same basis as other employees. WHMs can apply to have this super paid back to them as a **Departing Australia superannuation payment (DASP)** when they leave Australia.

Employing working holiday makers as contractors

Make sure you understand the differences between employees and contractors for tax and super purposes. Penalties and charges could apply if you incorrectly treat an employee as a contractor.

If your arrangement with your WHM means they're an employee, you must tax them using the WHM tax table even if they provide you with an ABN.

Payment summaries

Unless you report using Single Touch Payroll, you're required to give a payment summary to every WHM you employ.

All payments to a WHM must be shown in the gross income section of the payment summary and identified using **H** in the **gross payment type** box.

If your payment summary doesn't have this box, then put the letter **H** next to the income earned by the WHM. This is to help your worker to prepare their income tax return.

If an employee, who has been a WHM, advises you they are no longer on a working holiday visa, you'll need to withhold tax at a different rate and provide two payment summaries for the financial year:

- one payment summary while they worked using visa subclass 417 or 462
- one payment summary for the period they were not.

Ensure the employment dates you put on the payment summary are accurate.

High Court decision

On 3 November 2021, the High Court handed down its decision (in the matter of **Addy v Commissioner of Taxation**) in favour of the taxpayer.

It was decided that a British citizen who held a working holiday visa and was found to be an Australian resident was entitled to be taxed on the same basis as a resident Australian national, and not the WHM rates of 15% that normally apply. This was due to the operation of a non-discrimination article in the Australia-UK Double Tax Treaty. This only applies when a WHM is a national of certain countries and is a resident of Australia for tax purposes. Most WHMs are **not** residents for tax purposes.

This decision does not have any impact on employers.

If the worker is eligible to be taxed on the same basis as a resident Australian national, they can apply to vary their PAYG withholding. If their variation application is approved, we will inform you, as their employer, by sending you a **PAYG variation** notice.

If a WHM questions the taxation of their payments, you may refer them to our website ato.gov.au/WHM

QC 50741

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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