



We enclose a Pay-As-You-Go Withholding and reporting obligations Update for Employers for the exclusive use of clients of The Mischel & Co Group of Companies.

Dear Client,

Removing tax deductibility of non-compliant Payments

From 1 July 2019, businesses will only be able to claim deductions for payments that are made to workers (employees or contractors) when the employer has complied with the pay-as-you-go (PAYG) Withholding and other tax reporting obligations for that payment.

The aim is to provide a greater incentive for employers and entities engaging contractors and employees to comply with their withholding obligations.

If the PAYG withholding rules require a business to withhold an amount from a payment that the business makes to a worker, the business must:

- 1) withhold the amount from the payment before it is paid, and
- 2) report the amount to the ATO.

Any payments that are made where the business hasn't withheld or reported the PAYG tax are dubbed by the Tax Office to be "non-compliant payments", and for these payments the employer will be denied a tax deduction for.

Note however that if the employer makes a mistake and withholds or reports an incorrect amount, they will generally not lose the tax deduction as long as the ATO is notified and a correction is made.

Payments that must comply

Under the Australian Pay-As-You-Go (PAYG) withholding tax system, businesses must withhold tax from certain payments for work and services. An employer can only claim a deduction for the following payments if they comply with these PAYG withholding rules:

- 1) salary, wages, commissions, bonuses or allowances to an employee
- 2) directors' fees
- 3) payments to a religious practitioner
- 4) under a labour hire arrangement, and
- 5) for a supply of services (except from supplies of goods and real property) where the contractor has not provided their ABN.

Exception

This measure does not apply in relation to an amount required to be withheld from a payment or to an amount required to be paid to the Commissioner of Taxation if:

- 1) the amount to be withheld is nil;
- 2) the employer, making a payment to an employee, genuinely believes they are a contractor; or
- 3) before the Commissioner commences an audit or other compliance activity, the business voluntarily tells the Commissioner of Taxation that they have failed to withhold an amount.

Non-cash benefits

A non-cash benefit is something that is provided instead of paying cash — for example goods or services. In this case, a business still needs to report to the ATO in order for this to be classified as a compliant payment and therefore allow the employer to claim a tax deduction.

Correcting a mistake

A deduction that would otherwise be denied under these amendments will be allowed if the taxpayer voluntarily notifies the Commissioner of Taxation, in the approved form, of their mistake, before the Commissioner commences an audit or other compliance activity.

If a business withheld the correct amount but made a mistake when reporting it, they also won't lose their deduction if they advise the ATO of the mistake as soon as possible. This voluntary

disclosure can be made by reporting the amount to the Tax Office via an amended activity statement or through Single Touch Payroll (STP).

Mistaking an employee for a contractor

There may be a situation where a business honestly believes their employee is acting as a contractor, and so believes they are not obliged to withhold PAYG tax from payments as the “contractor” has provided their ABN.

In this instance, although the business made a mistake and did not withhold PAYG tax from payments made to that worker, the business generally will not lose their deduction for these payments if they complied with both of the following obligations:

- 1) The business obtained an invoice, or some other document relating to the payment that quoted the contractor's ABN; and
- 2) The business had no reasonable grounds to believe that it's not the contractor's ABN or that the ABN is not correct.

Again, a correction will need to be made via the approved form.

THE TAKEAWAY

With the implementation of Single Touch Payroll, employers will need to ensure that they are compliant with the PAYG withholding and reporting rules. Where employers do not comply with PAYG withholding, not being able to claim a deduction for salary costs will be an additional penalty, which will result in increased costs for employers.

Remember also that should PAYG withholding obligations not be met, apart from losing a deduction there is also the prospect of having to face the already existing penalties that apply for both failing to withhold and failing to report such amounts to the ATO.



The information supplied in this memorandum has been sourced from numerous publications available to The Mischel & Co Group of Companies including the Australian Taxation Office website and other superannuation specialist.

The content of this information memorandum is general information only and hasn't taken your circumstances into account. It's important to consider your particular circumstance before deciding what is right for you as it does not reflect all the superannuation legislation and announcements but simply highlights those points which we believe are most likely to affect our clients.

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