

# Australia: No deduction for certain non-compliant payments for work and services

May 7, 2019

## In brief

From July 1, 2019, companies will only be able to claim corporate income tax deductions for payments that are made to workers (employees or contractors) when they have complied with the Pay-As-You-Go (PAYG) withholding and 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.

Companies should ensure they are compliant with the PAYG withholding rules to ensure a deduction will not be denied.

## In detail

### 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, such as payments that are:

- salary, wages, commissions, bonuses (including directors' fees);
- pursuant to a labour hire arrangement; and
- for contractors of services where the contractor has not provided their ABN.

Companies also must report and remit withheld amounts to the Commissioner of Taxation.

Companies generally are entitled to claim an income tax deduction in relation to such payments.

### Removal of tax deduction for non-compliant payments

From July 1, 2019, any payments businesses make where they have not withheld or reported the PAYG tax to the ATO are called non-compliant payments.

Companies will not be able to claim a deduction in relation to non-compliant payments.

### 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:

- the amount to be withheld is nil;
- the employer, making a payment to an employee, genuinely believes they are a contractor; or
- before the Commissioner commences an audit or other compliance activity, the company

voluntarily tells the Commissioner of Taxation that they have failed to withhold an amount.

### **Correcting a mistake**

A deduction that would otherwise be denied under these amendments is maintained (in the original income year) 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.

### **The takeaway**

This measure can have particular application to multinational companies who may second employees to

Australia, but keep them on their home country payroll.

Currently, there are two approaches to ensure the company remains compliant in this instance in Australia:

- The company can run a shadow payroll to ensure that the correct withholdings are applied for the employees.
- The company also may submit a PAYG withholding variation to the ATO to reduce the withholding to nil and pay any taxes due via an employee's income tax return submission.

Where the payer does not comply with the Australian PAYG withholding rules, the Australian entity may be denied a deduction for the salary cost charged by the foreign entity; this can be the case even though the Australian entity is not the ultimate payer.

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 in Australia for salary costs will be an additional penalty, which will result in increased costs for employers.

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## Let's talk

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For a deeper discussion of how these issues might affect your business, please contact your Global Mobility Services engagement team, or one of the following professionals:

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