

# Voluntary Agreements

## General Information

A PAYG Withholding Voluntary Agreement is a written agreement between a business (the payer) and a worker (the payee) to bring work payments into the PAYG Withholding system, which roughly equates to the old Prescribed Payments System (PPS).

The worker must be an individual who must have an Australian Business Number (ABN) and the payments must not be subject to any other PAYG withholding requirements. The payer withholds amounts from payments it makes to the payee and sends the amounts withheld to the Australian Taxation Office (ATO) with the Business Activity Statement. The payee is not required to pay PAYG Installments for the income generated under the Voluntary Agreement.

Please note that you cannot enter into a Voluntary Agreement if another specific PAYG withholding category applies to the payment. Examples would be payments to a worker as an employee or under a labour hire arrangement.

A Voluntary Agreement must be a written agreement between the payee and payer and must include the following details:

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

## Amounts Withheld from Payments to a Contractor

The rate of withholding is either the payee's installment rate as notified by the ATO or a flat rate of 20 per cent. The payer then withholds at the appropriate rate from the gross amount payable after deducting any goods and services tax (GST) charged.

For the purpose of voluntary agreements, the installment rate used must be the rate notified by the ATO - this is called the Commissioner's Installment Rate (CIR). The payee must disclose their CIR or state that they do not have one. If the payee's CIR is not known at the time of the agreement, the flat rate of 20 per cent applies.

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## **Length of the Voluntary Agreement**

A voluntary agreement can cover a specific task or apply to successive arrangements between the payer and payee. When the payee is first advised of their CIR, or advised of a new CIR, they may need to enter into a new agreement after considering the rules applying to the rate of withholding (as discussed above).

Either party can end a voluntary agreement at any time by notifying the other in writing.

## **General Taxation Obligations of Contractors**

### Business Activity Statements (BAS)

If the contractors (payees) are registered for GST, they are still required to lodge a Business Activity Statement. This applies even if there is nothing to report.

Payments received from a Voluntary Agreement, generally do not attract GST, however contractors are still entitled to claim the GST input tax credits for expenditure related to the generation of their income.

Any other income that the contractor earns that is not from a Voluntary Agreement will be subject to the normal GST reporting rules.

### Goods and Service Tax Implications for Contractors

If a contractor (payee) is registered for GST, they only charge GST under the Voluntary Agreement if the payer is not entitled to a full GST input tax credit for the goods or services being supplied. The payer must indicate, on the voluntary agreement form, whether or not they are entitled to a full input tax credit.

Regardless of the registration status of the payer, a GST-registered contractor can claim input tax credits for any GST paid on goods or services bought and used in performing the work under your Voluntary Agreement.

### PAYG Installments

When completing the activity statement, please note that the installment income (generally reported at figure T1) does not include income the worker received under a Voluntary Agreement. This is because such income has already been subject to PAYG Withholding through the Voluntary Agreement.

### Income Tax Return

A Voluntary Agreement does not change the contractor's obligation to lodge an income tax return.

## **Superannuation Contributions**

As an employer, the superannuation guarantee requires you to contribute towards the superannuation support of most employees, including some contractors who you employ.

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An employee for superannuation guarantee purposes includes a person engaged under a contract that is wholly or principally for the person's labour. Labour can include mental and artistic effort as well as physical work. This means that a contractor (the party to the contract) can be considered to be an employee under the superannuation guarantee.

Superannuation support is required for contractors where the terms of the contract and the subsequent conduct of the parties indicate that:

- the person is remunerated (either wholly or principally) for their personal labour and skills
- the person must perform the contractual work personally (there is no right of delegation), and
- the person is not paid to achieve a result.

Please note, if the contract is partly for labour and partly for something else (for example, the supply of goods, materials or hire of plant or machinery), it will still be a contract for labour if it is principally (chiefly or mainly) for labour.

### Super – Choice Legislation

This applies and in general terms if the worker is eligible you must give them the choice of choosing their own superannuation fund. This must be done by completing the appropriate ATO form.

### **Workers Compensation Insurance**

#### Factors to consider

The factors that assist in determining if a contractor is a deemed worker for workers' compensation purposes are as follows:

- The terms of the arrangement;
- Whether the contractor can employ other people to perform the work;
- Whether the contractor works at stated hours on usual days and the contract specifies the hours and/or days;
- Whether the contractor measures and inspects the site and provides a fixed price quotation inclusive of labour and material;
- Whether the contractor deals directly with the client requesting the work or the principal contractor for whose benefit the work is to be done;
- Whether the contractor can make a profit or loss over the market rate for a tradesman working in the industry;
- Whether the contractor supplies the materials, machinery and equipment used in completion of the job; and
- Whether the contractor could be liable for bad work.

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## NSW Definition

The definition of a 'worker' for NSW Workers Compensation legislation states people working as contractors (including subcontractors and contractors under labour-hire service agreements) may be considered as 'deemed workers'. Workers compensation law does not rely on the tax status of the person carrying out the work to determine whether that person is a worker, deemed worker or contractor.

## QLD Definition

Under the [Workers' Compensation and Rehabilitation Act 2003](#), a 'worker' is someone who is employed under a [contract of service](#), regardless of their tax paying status. In general this means the person:

- earns a salary or [wages](#) from their employer
- has set hours
- is supervised and can be disciplined or dismissed by their employer.

The following persons are also eligible for workers' compensation:

- a person who fails the 'results test'
- a person who works under a contract, at piecework rates, for labour only or for substantially for labour only
- a person who is not regularly carrying on a trade or business
- a person who performs work outside their usual trade or business.

Workers' compensation legislation specifically excludes some people from being defined as 'workers' for example company directors, trustees, partners engaged by their partnership, professional sportspersons and self-employed individuals.

## **Summary**

Please find below a summary of the information discussed above in this correspondence.

- A PAYG Withholding Voluntary Agreement is a written agreement between a business and a worker who has an ABN instructing the business to withhold amounts from the worker's payment and forward the withheld amounts to the ATO.
- The payee (worker) is not required to pay PAYG Installments to the ATO.
- A Voluntary Agreement must be signed by the both the payer and payee.
- The rate of PAYG withholding to be withheld from the payee's payments is the higher rate of 20% or the payee's PAYG Installment rate as notified by the ATO.
- The length of the Voluntary Agreement can cover a specific task or successive arrangements.
- A new agreement needs to be entered into when the payee's Installment rate is changed by the ATO.
- Either party can end the agreement at any time by notifying the other in writing.

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- If the payee is GST registered then they do not charge GST for the goods and services they have provided on a Voluntary Agreement.
- If the payee is GST registered they can claim input tax credits for the GST paid on goods and services bought and used whilst performing their work under the Voluntary Agreement.
- Generally, Superannuation Guarantee Contributions must be paid by the employer for employees or those under a contractual agreement.

*If you have any questions or require any further information please feel free to contact your Client Manager and they will be happy to assist you.*

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