

PAYG withholding: new penalties for non-compliance

Combating the black economy has been a key priority of the government in recent years. To reduce business activity that takes place “under the radar” of the tax system, new laws commencing on 1 July 2019 will prevent businesses from claiming deductions for payments to employees and certain contractors if they fail to comply with their pay-as-you-go (PAYG) withholding and reporting obligations. Although these measures target participants in the black economy, all businesses should understand the new laws to ensure they do not inadvertently risk losing their deductions.

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In 2017, a government taskforce on the black economy reported concerns that some Australian businesses are making payments to employees and contractors that are not being properly recorded. In response, the government has acted to deny deductions for payments where businesses fail to comply with the PAYG withholding and reporting rules.

Specifically, new laws commencing on 1 July 2019 will prevent an employer from claiming a deduction for payments to employees such as salary, wages, commissions and bonuses if the employer fails to:

- withhold an amount from the payment as required under PAYG withholding rules; or
- report a withholding amount to the ATO as required.

Deductions will similarly be denied for non-compliant payments to directors or religious practitioners, or payments under a labour-hire arrangement.

The new laws also cover non-cash payments, such as goods and services. Generally, businesses must pay a withholding amount to the ATO before making a non-cash payment (equal to the amount they would be required to withhold if the payment were money, based on the market value of the benefit). Under the new laws, businesses will not be allowed to deduct the non-cash payment if they do not comply with the withholding and reporting rules.

Special rules apply for payments to contractors. Businesses are generally required to withhold PAYG from a payment to a contractor where the contractor does not provide their ABN (known as the “no ABN withholding” rules). However, a business that fails to comply with these rules will only be denied a deduction if the payment (either cash or non-cash) relates to a contract for the supply of services; contracts for goods and real property are excluded from the operation of the new laws.

What happens if my business makes a mistake?

If you make a mistake by failing to withhold an amount (or to report it), you will not lose your deduction if you voluntarily disclose this to the ATO *before* it commences an audit or other compliance activity in relation to your tax affairs. However, you may still incur penalties.

Ensure your business is compliant

Now is a great time to check that your PAYG withholding affairs are in order. Taking early action to correct and disclose PAYG withholding mistakes will make a big difference to whether your business remains eligible for deductions. We can assist you with the process of correcting and disclosing to the ATO any mistakes that may arise.