

Edited version of your private ruling

Authorisation Number: 1013032375253

This edited version of your ruling will be published in the public register of private binding rulings after 28 days from the issue date of the ruling. The attached private rulings fact sheet has more information.

Please check this edited version to be sure that there are no details remaining that you think may allow you to be identified. If you have any concerns about this ruling you wish to discuss, you will find our contact details in the fact sheet.

Ruling

Subject: PAYGW

Question 1

Is the worker considered to be your employee?

Answer

No.

Question 2

Were you required to withhold an amount under section 12-35 of Schedule 1 of the *Taxation Administration Act 1953* (TAA 1953), in respect of payments made to the worker.

Answer

No.

Question 3

Were you required to withhold an amount under section 12-190 of the TAA 1953 in respect of payments made to the worker where a portion of the payments were used to pay for some of your living expenses?

Answer

No.

This ruling applies for the following periods

Year ended 30 June 2015

Year ending 30 June 2016

The scheme commences on

1 July 2014

Relevant facts and circumstances

You required assistance with private matters.

The worker has been paid to achieve a contractually specified outcome.

A 'Statement by Supplier' was not provided by the worker in respect of the living expenses they paid on your behalf.

The worker can delegate or subcontract work out when unavailable.

The worker operated on their own account.

You are not carrying on a business.

Relevant legislative provisions

Taxation Administration Act 1953 Section 12-35 of Schedule 1

Taxation Administration Act 1953 Section 12-190 of Schedule 1

A New Tax System (Goods and Services Tax) Act 1999 Section 9-10

Reasons for decision

Employee and withholding

Section 12-35 of Schedule 1 to the TAA 1953 provides that you must withhold an amount from a payment of salary, wages, commission, bonuses or allowances you pay to an individual as an employee.

Taxation Ruling TR 2005/16 *Income tax: Pay As You Go – withholding from payments to employees*, outlines the various indicators the courts have considered in establishing whether a person engaged by another individual or entity is an employee within the common law meaning of the term.

These indicators include:

- The control test: The degree of control which the payer can exercise over the payee.
- The organisation or integration test: Whether the worker operates on their own account or in the business of the payer.
- The results test: Whether the worker is free to employ their own means and is paid to achieve the contractually specified outcome.
- The delegation test: Whether the work can be delegated or subcontracted (with or without the approval or consent of the principal).
- The risk test: Whether the worker bears the legal responsibility and expense for the rectification or remedy in the case of unsatisfactory performance.
- Which party provides tools, equipment and payment of business expenses?

Conclusion

After assessing the facts against these indicators, it is considered that the worker was not your employee but rather they were an independent contractor.

Therefore, section 12-35 of the TAA 1953 does not apply and you were not required to withhold an amount from payments made to them.

Statement of supply

Section 12-190 of the TAA 1953 states you must withhold an amount from a payment you make to another entity if:

- iii. the payment is for a supply that the other entity makes; and
- iv. the other entity has not quoted an ABN.

The definition of the term 'supply' is contained within section 9-10 of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* and includes a supply of goods or services. Whilst the definition is contained in the GST Act, it has the same meaning in the TAA 1953.

Where the worker has paid for goods on your behalf, it could be said that these goods have been 'supplied' to you.

However, the worker has paid for these goods from the general payments received by them from the funding package. The worker has not received payment specifically to compensate them for these purchases on your behalf.

Thus, we do not consider that the worker has received a payment for the supply of goods.

As a payment for supply has not been made section 12-190 of the TAA 1953 does not apply. You were not required to withhold amount from payments to the worker.

Disclaimer

You cannot rely on the rulings in the *Register of private binding rulings* in your tax affairs. You can only rely on a private ruling that we have given to you or to someone acting on your behalf.

The *Register of private binding rulings* is a public record of private rulings issued by the ATO. The register is an historical record of rulings, and we do not update it to reflect changes in the law or our policies.

The rulings in the register have been edited and may not contain all the factual details relevant to each decision. Do not use the register to predict ATO policy or decisions.