



## **EXTRACT from KPMG advice to WaiS**

### ***Use of Statement by Supplier Form***

***19 December 2016***

#### **Context for Use of the Statement by Supplier Form**

“Under the Tax Administration Act 1953 (“TAA 1953”), suppliers who provide goods or services are generally required to quote an Australian Business Number (ABN) to the payer of consideration for those goods or services. If a supplier does not provide an ABN, the payer may need to withhold and remit an amount of 49% from the payment for that supply to the Australian Taxation Office (ATO).

As noted, this requirement only arises to the extent that the supplier is to receive payment for the services to be provided. It should not therefore be relevant for volunteers, who provide services for free, notwithstanding that they may receive a reimbursement of any costs outlaid.

However, certain exceptions exist, under which a payer does not have to withhold an amount from payments to a supplier. In some of these cases, the supplier may be able use a Statement by Supplier form. The form is provided by the supplier to the payer to inform them that withholding is not required. As noted in further detail below, the Statement by Supplier form cannot be used in employer/employee relationships and therefore is restricted to Contractors.”

#### **Eligibility for Use of the Statement by Supplier Form**

“An individual or a business that supplies goods or services can only complete a Statement by a supplier form if one or more the following applies:

- they are not carrying on an enterprise in Australia
- they are an individual under 18 years and the payment does not exceed \$350 per week
- the payment does not exceed \$75, excluding goods and services tax (GST)
- they are an individual, and a written statement is provided to the payer to the effect that the supply is either:
  - made in the course or furtherance of an activity done as a private recreational pursuit or hobby, or
  - wholly of a private or domestic nature
- they are individual or a partnership without reasonable expectation of profit or gain
- the whole of the payment is exempt income.

A supplier **cannot** however use this form if any of the following apply:

- they are receiving payments for the supply as an employee
- their activity is not wholly of a private or domestic nature

- they are receiving payments for the supply as a company director or office holder
- they are receiving payments for the supply under a labour hire arrangement or specified payment
- they are receiving payments for the supply as a religious practitioner
- they are entitled to an ABN for the relevant activity.

Therefore, one of the first considerations is whether the supplier of the assistance is undertaking the work as part of the carrying on of an enterprise in Australia or whether it is a private arrangement with the recipient. If it is not a private arrangement and relates to the carrying on of an enterprise, then the Statement by Supplier form cannot be used.”

## **Private and Domestic in Nature**

“As noted above, where the supplier is an individual and the supplier has given the payer a written statement to the effect that the supply is made in the course of a private recreational pursuit or hobby, or is wholly of a private or domestic nature for the supplier, no withholding is required. In such a case, the payer must have **no** reasonable grounds to believe that the statement is false or misleading in a material particular (s.12-190 (6) TAA 1953).

The terms ‘private recreational pursuit’ or ‘hobby’ are not defined in the Australian Taxation Law and therefore take their ordinary meaning. Typically such activities are restricted to creative work and therefore would not usually be available for support workers.

The terms ‘domestic’ or ‘private’ are also unfortunately not defined in Australian Taxation Law and are often given their ordinary meaning. The Macquarie Dictionary (third edition) defines ‘domestic’ to mean ‘of or relating to the home, the household or household affairs’ and ‘private’ to mean ‘belonging to oneself’, ‘being one’s own’, ‘individual or personal’.”

“In our [KPMG] view, work of a domestic or private nature ordinarily means work relating personally to the individual making payment for the work or the person’s home, household affairs or family organisation. For example, people employed by someone to clean their home, to mind their children, to effect repairs or maintenance of their home, or tend their home garden would be engaged in domestic or private work.”

## **Entitlement to an ABN**

“As noted above, where a supplier is entitled to an ABN for the relevant activity the supplier is unable to use a Statement by Supplier form. To be entitled to receive an ABN, certain requirements must be satisfied. Generally, the entity must:

- Be carrying on an enterprise in Australia;
- In the course of carrying on an enterprise make supplies connected with Australia; or
- Have undertaken sufficient activities to commence an enterprise.

Carrying on an enterprise generally includes activities done in the form of a business. Factors that may indicate the carrying on of a business include, for example:

- A significant commercial activity;
- An intention to make profit from the activity;
- Activities other than a hobby;
- Repetition of the activity;

- Commercial sales of products;
- An existing business plan;
- Activities organised and carried on in a businesslike manner and records are kept; and
- Activities are of a reasonable size and scale.”

## Supplier is an Employee

“As noted above, where a supplier receives payments for their supply as an employee they are not eligible to use a Statement by Supplier form.”

### Summary

“In light of the above, when determining whether a Statement by Supplier form can be provided by the support worker to enable payments to be made to them without withholding tax, the following approach should be adopted.

- Firstly, consideration should be given to whether the activities of the supplier are such that they should be held as carrying on an enterprise and hence are eligible for an ABN.
- Secondly, the payer needs to consider whether the support worker is an employee. As noted above, this is not always easy to determine, but is a critical first step for the payer to consider.
- Assuming an employer/employee relationship does not arise, the final consideration is for the supplier to consider whether the nature of the services fall to be treated as wholly private or domestic in nature such that they fall within one of the eligibility criteria. Where this is not the case, then a Statement by Supplier form is unlikely to be able to be used.

As noted, whilst two of the above points are considered by the supplier, the payer has an obligation to consider whether they have any reasonable grounds for determining whether the use of a Statement by Supplier form is inappropriate.

It should also be noted that the use of a Statement by Supplier form to remove the need for the payer to withhold tax does not alter the tax treatment of the income in the hands of the supplier. That is, the ability to use the Statement by Supplier form does not mean that the underlying income is tax-free to the supplier. As a result, appropriate records will need to be maintained to support disclosures in the relevant income tax return.”