


TD 2003/D12 - Income tax: Simplified Tax System (STS): for which income year should an STS taxpayer claim an income tax deduction for an amount withheld under the Pay As You Go (PAYG) withholding rules in Division 12 of Schedule 1 to the Taxation Administration Act 1953 ('TAA 1953')?

 This cover sheet is provided for information only. It does not form part of *TD 2003/D12 - Income tax: Simplified Tax System (STS): for which income year should an STS taxpayer claim an income tax deduction for an amount withheld under the Pay As You Go (PAYG) withholding rules in Division 12 of Schedule 1 to the Taxation Administration Act 1953 ('TAA 1953')*?

This document has been finalised by TD 2003/26.



Draft Taxation Determination

Income tax: Simplified Tax System (STS): for which income year should an STS taxpayer claim an income tax deduction for an amount withheld under the Pay As You Go (PAYG) withholding rules in Division 12 of Schedule 1 to the *Taxation Administration Act 1953* ('TAA 1953')?

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. An STS taxpayer can claim an income tax deduction under section 8-1, 25-5 or 25-10 of the *Income Tax Assessment Act 1997* ('ITAA 1997'), as modified by paragraph 328-105(1)(b) of the ITAA 1997, for an amount withheld under the PAYG withholding rules, for the income year in which the amount is withheld.
2. Under paragraph 328-105(1)(b), where an amount is deductible under section 8-1, 25-5, or 25-10 of the ITAA 1997, an STS taxpayer can claim a deduction for that amount only when it has been 'paid'. This is referred to as the 'paid rule' for STS taxpayers.
3. The term 'paid' in paragraph 328-105(1)(b) is not defined. The term therefore needs to be interpreted according to its ordinary meaning and legislative context. In *Case [2000] AATA 625* (2000) 45 ATR 1019 at 1036; *Case 10/2000* 2000 ATC 189 at 203, the Administrative Appeals Tribunal referred to the Macquarie dictionary definition of 'pay':

'Pay v. paid ...1. To discharge (a debt, obligation, etc), as by giving or doing something.
2. To give (money, etc) as in discharge of debt or obligation. 3. To satisfy the claims of (a person, etc) as by giving money due. 4. To defray (cost or expense). 5. To give compensation for. 6. To yield a recompense or return to; be profitable to ...'
4. The ordinary meaning of the term 'paid' includes an action by an entity that discharges its obligation or debt to another.
5. Section 16-20 of Schedule 1 to the TAA 1953 provides that where an amount has been withheld under the PAYG withholding rules, the payer is discharged from their liability to pay that amount to anyone except the Commissioner. The payer is therefore discharged of their liability to the payee for the amount withheld.

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6. There is also some judicial comment in support of the view that withholding an amount under the former Pay As You Earn (PAYE) regime (predecessor of the PAYG withholding system) operated to discharge an employer of their liability to an employee for the amount withheld from a salary or wage payment.

7. In *FC of T v. Official Receiver* (1956) 95 CLR 300 Williams and Taylor JJ made some observations in the High Court about the operation of the former tax instalment system and its effect. They remarked at 309 and 336 that the instalments deducted from salary or wages released the employer from their obligation to pay the component withheld to the employee.

8. In *AAT Case 5125* (1989) 20 ATR 3592; *Case W50 89* ATC 475 the Tribunal said at ATR 3595; ATC 478 that ‘receipt’ in an employee context is ‘when the employer satisfies its obligation to remunerate. That obligation will be fully satisfied even though the employer withholds some part of that remuneration pursuant to a statutory obligation to do so.’

9. Therefore, the act of withholding under the PAYG withholding regime operates to discharge the payer from its liability to the payee for the amount withheld. Under the ordinary meaning of ‘pay’, a payer who is an STS taxpayer will be considered to have paid the amount withheld to the payee at the time it withholds that amount. This means that the payer can claim a deduction for the gross amount at the time of withholding under paragraph 328-105(1)(b), for the income year in which that withholding occurs.

Example

10. *John is an STS taxpayer. His salary expense for the month of June 2002 is \$3,000. This is made up of \$2,354 paid to his one employee, Antonia, on 20 June 2002 and the \$646 he withheld from the payment under the PAYG withholding rules. John will not pay the \$646 he withheld to the Commissioner until 21 July 2002. John can deduct the full salary expense of \$3,000 for the 2001-02 income year*

Administrative practice

11. Some STS taxpayers may prefer to deduct the net amount paid to the payee in the year that payment occurs, and deduct the amount withheld in the year that that amount is paid to the Commissioner, for their own ease of accounting. Such taxpayers should refer to the ATO publication, *The Simplified Tax System – A guide for tax agents and small businesses* (Nat 6459-6.2002) in which the Commissioner indicates he will not interfere with such an approach, where it is adopted in a consistent fashion.

Your comments

12. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

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Commissioner of Taxation18 June 2003

Previous draft:

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Subject references:

- deductions and expenses
- PAYG withholding
- STS accounting methods
- STS taxpayers

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 25-5
- ITAA 1997 25-10
- ITAA 1997 328-105(1)(b)
- TAA 1953 Sch 1 Div 12
- TAA 1953 Sch 1 16-20
- TAA 1953 Part IVAAA

Case references:

- AAT Case 5125 (1989) 20 ATR 3592; 89 ATC 475
- Case [2000] AATA 625 (2000) 45 ATR 1019; 2000 ATC 189
- FC of T v. Official Receiver (1956) 95 CLR 300.

ATO references

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