

# ***TR 2005/16W - Income tax: Pay As You Go - withholding from payments to employees***

⚠ This cover sheet is provided for information only. It does not form part of *TR 2005/16W - Income tax: Pay As You Go - withholding from payments to employees*

⚠ This ruling is being reviewed as a result of a recent court/tribunal decision. Refer to Decision Impact Statement: Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd (P5/2021 WAD 584 of 2019 VID 1191 of 2018).

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *14 December 2022*



---

# Notice of Withdrawal

---

## Taxation Ruling

### Income tax: Pay As You Go – withholding from payments to employees

Taxation Ruling TR 2005/16 is withdrawn with effect from 15 December 2022.

1. TR 2005/16 provides guidance as to whether an individual is paid as an employee for the purposes of section 12-35 of Schedule 1 to the *Taxation Administration Act 1953*, which imposes an obligation on the paying entity to withhold an amount from the relevant payment. The Ruling considers the various indicators the courts have considered in establishing whether a person engaged by another entity is an employee within the common law meaning of the term.
2. It is being replaced by Taxation Ruling TR 2022/D3 *Income tax: pay as you go withholding – who is an employee?*, which will issue on 15 December 2022. TR 2022/D3 incorporates the Commissioner's view expressed in TR 2005/16 to the extent that it continues to apply and updates the Commissioner's view to incorporate recent developments in case law.

---

**Commissioner of Taxation**

14 December 2022

---

---

ATO references

NO: 1-UYVPMOG  
ISSN: 2205-6122

---

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).