



**INFORMATION
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AUSTRALIAN TAX ADVISER

2402 : AUGUST 2023

The IFX Legal Tax Team

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SECTION 1 – PROFESSIONAL DEVELOPMENTS

EMPLOYEE OR CONTRACTOR?

When hiring casual (and sometimes longer term) workers, the question often arises about how the hirer (for want of a better term) determines their responsibilities in relation to:

- PAYG withholding
- leave entitlements
- superannuation obligations
- payroll tax obligations.

The issue is made more complex by the fact that each of these obligations is outlined in different legislation, so just because one of these aspects is judicially settled, it doesn't mean they all are. This article attempts to unwrap the issues and analyse which of them are settled and which aren't.

¶2.1 PAYG withholding

An employer's obligation in relation to PAYG withholding is outlined in Schedule 1 of the *Tax Administration Act 1953*. The relevant table is reproduced below as a handy reference:

Summary of withholding payments		
Item	Withholding payment	Section
1	A payment of salary etc. to an employee	12-35
2	A payment of remuneration to the director of a company	12-40
3	A payment of salary etc. to an office holder (e.g. a member of the Defence Force)	12-45
3A	A payment to a religious practitioner	12-47
4	A return to work payment to an individual	12-50
5	A payment that is covered by a voluntary agreement	12-55
6	A payment under a labour hire arrangement or a payment specified by regulations	12-60
7	A superannuation income stream or an annuity	12-80
8	A superannuation lump sum or a payment for termination of employment	12-85
9	An unused leave payment	12-90
10	A social security or similar payment (e.g. old age pension)	12-110
11	A Commonwealth education or training payment	12-115
12	A compensation, sickness or accident payment	12-120
13	A payment arising from an investment where the recipient does not quote its tax file number, or in some cases, its ABN	12-140
14	Investor becoming presently entitled to income of a unit trust	12-145
14A	A trustee of a closely held trust distributing an amount from the trust income to a beneficiary, where the beneficiary does not quote its tax file number	12-175