1. **Statement**

The objective of this Standard is to provide information relating to the PAYG withholding obligations of Queensland Health from payments to foreign residents.

2. **Scope**

Compliance with this standard is mandatory.

This standard applies to all employees, contractors and consultants within the Department of Health divisions and commercialised business units as well as Hospital and Health Services.

3. **Content**

**Introduction**

The term “non-resident” is used in ITAA36, and “foreign resident” is used in ITAA97. Both terms are interchangeable, as such this procedure will use only the term non-resident to avoid confusion.

Queensland Health engages locum doctors and other staff from foreign countries to work within Hospital and Health Services and the department (including Commercialised Business Units). At the initial agreement or contract, PAYG withholding issues will need to be determined based on the circumstances and intentions of the appointee for being in Australia.

There are two main issues that first need to be determined before PAYG withholding obligations can be correctly identified.

1. **Resident v Non Resident** – it is necessary to determine the residency status of the appointee as either a Resident or Non Resident for income tax purposes as this will impact on whether PAYG must be withheld and at what rates and if superannuation will apply. To determine the residency status of an appointee please read Standard: Foreign Resident Staff- Resident or Non Resident for Income Tax Purposes.

2. **Employee v Contractor** – it is necessary to determine whether the engagement is a contract of services (Direct / Deemed Employee) or a contract for services (Contractor) as this impacts on whether PAYG must be withheld and whether superannuation will apply. To determine if the appointee is an employee or contractor please read the Employee/Contractors Evaluation Guideline.

Once the appointee’s residency and employee/contractor status has been determined the following table details the applicable PAYG withholding and superannuation obligations.
<table>
<thead>
<tr>
<th>Residency Status</th>
<th>Assessable Income</th>
<th>PAYG Withholding</th>
<th>Superannuation</th>
<th>ABN Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident</td>
<td>All Income is assessable in Australia.</td>
<td>Income is subject to PAYG withholding at normal rates</td>
<td>Ordinary superannuation rules apply</td>
<td>No</td>
</tr>
</tbody>
</table>
| Foreign Resident       | Only Australian sourced Income is assessable in Australia. | Income is subject to PAYG withholding special rates refer to ATO tax scales  
Foreign resident can apply to the ATO for a PAYG Withholding exemption or varied rate, but this cannot be applied until notified by ATO it has been accepted  
Double Taxation Agreements may apply | Ordinary superannuation rules apply | No           |
<table>
<thead>
<tr>
<th>Residency Status</th>
<th>Assessable Income</th>
<th>PAYG Withholding</th>
<th>Superannuation</th>
<th>ABN Required</th>
</tr>
</thead>
</table>

Please note: Any material printed is regarded as an uncontrolled copy. It is the responsibility of the person printing the document to refer frequently to the relevant Department of Health site for updates.
### Resident

- **All Income is assessable in Australia.**
- **Obligation to withhold PAYG is Limited to those situations in which an ABN is not Quoted.**
  - PAYG would be withheld at the top Marginal Tax Rate + Medicare Levy.

### Foreign Resident

- **Only Australian sourced Income is assessable in Australia.**
- **Obligation to withhold PAYG is limited to those situations in which an ABN not Quoted.**
  - PAYG would be withheld at the top Marginal Tax Rate.

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**Double Taxation Agreements, ATO PAYG withholding variations and ATO PAYG withholding exemptions**

As stated in the above table there are provisions for non-resident employees to obtain PAYG withholding variations and exemptions. A non-resident may also be eligible for a double taxation agreement which avoids incidences of double taxation, where the taxpayer is deemed a dual resident for taxation purposes. In all cases Queensland Health would not be able to amend or stop PAYG withholding without written advice from the ATO. Therefore it is the responsibility of the appointee to seek independent taxation advice based on their individual circumstances.

### Related legislation and documents

- Standard: Foreign Resident Staff: Resident or Non Resident for PAYG.
- Employee/Contractors Evaluation Guideline
- Income Tax Assessment Act 1936
- Income Tax Assessment Act 1997
• Taxation Ruling TR 98/17 residency status of individuals entering Australia
• Taxation Ruling TR 2005/16 “Income tax: Pay As You Go – withholding from payments to employees”
• Taxation Ruling TR 2003/11 “Income tax: the interpretation of the general exclusion provision of the Dependent Personal Services Article, or its equivalent, of Australia’s Double Tax Agreements”
• Taxation Ruling TR 1999/10 “Income tax and fringe benefits tax: Members of Parliament – allowances, reimbursements, donations and gifts, benefits, deductions and recoupment’s”
• Taxation Ruling TR 1999/13 “Income tax: tax instalment deductions”
• Superannuation Guarantee Ruling SGR 2005/1 “Superannuation Guarantee: Who Is An Employee?”
• Determine the status of your workers, Australian Taxation Office Website
• PAYG withholding and labour hire firms, Australian Taxation Office Website
• How to determine if workers are employees or independent contractors, Australian Taxation Office Website
• Taxation Administration Act 1953, Schedule 1: sec 10-5(1), sec 12-1(1), sec 12-35, sec 12-6
5. **Definitions**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>ABN</td>
<td>Australian Business Number</td>
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<tr>
<td>ATO</td>
<td>Australian Taxation Office</td>
</tr>
<tr>
<td>ITAA36</td>
<td>Income Tax Assessment Act 1936 (Cwlth)</td>
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<tr>
<td>ITAA97</td>
<td>Income Tax Assessment Act 1997 (Cwlth)</td>
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<tr>
<td>PAYG</td>
<td>Pay As You Go income tax withholding</td>
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**Version Control**

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<td>Vanessa Hafemeister</td>
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<tr>
<td>2</td>
<td>01/06/2015</td>
<td>Policy Rationalisation Project</td>
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<td>3</td>
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<td>Richard Baker</td>
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