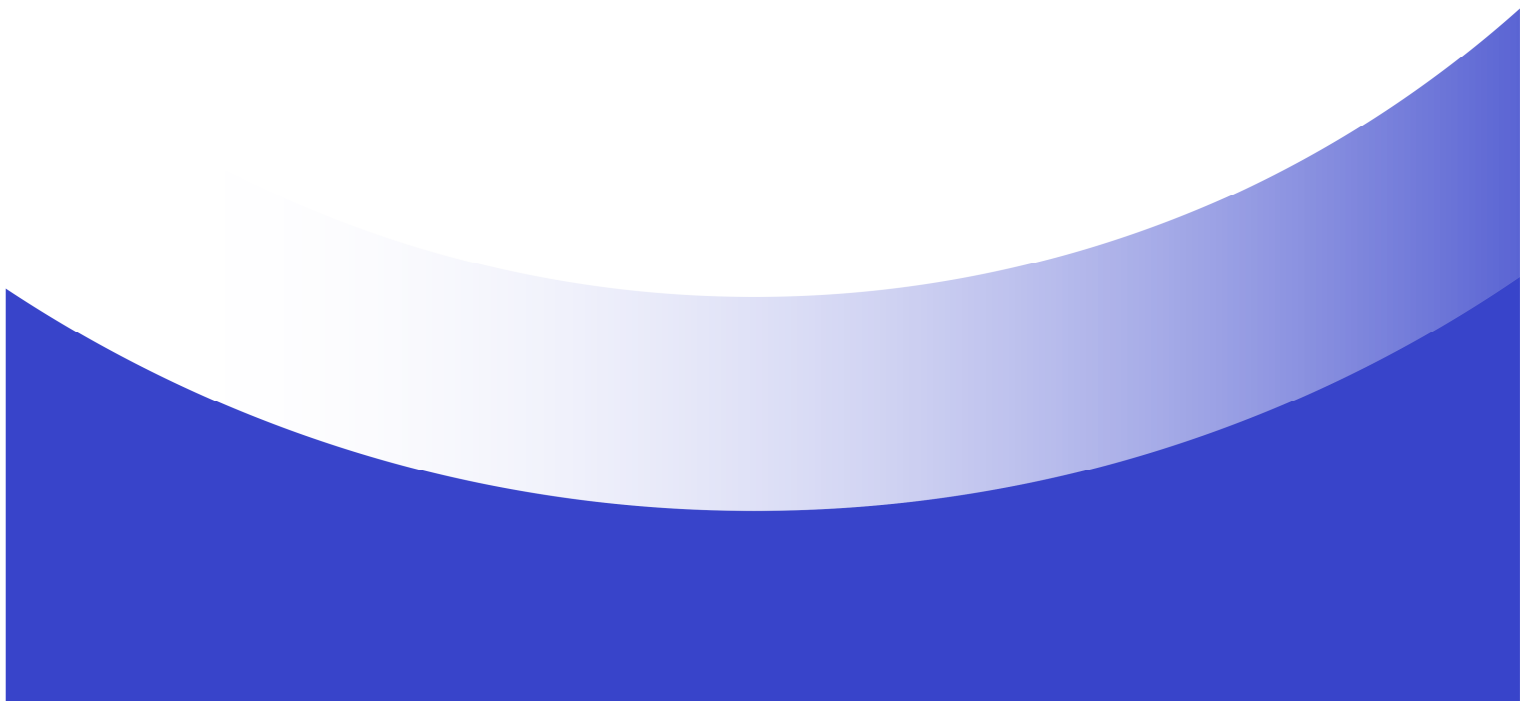




Australian Government
Australian Taxation Office

ATO submission

Winding down Australia's cheques system



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Introduction

The Australian Taxation Office (ATO) welcomes the opportunity to make a submission in response to Treasury's consultation paper on winding down Australia's cheques system. We look forward to working with Government, the States and Territories, industry, and the community to progress towards a more streamlined and secure digital ecosystem.

We acknowledge and broadly support the Government's plan to phase out the use of government cheques by 2028, which aligns with the ATO's Digital Strategy 2022-25¹ and our aspiration to be fully digitalised by 2030. We already encourage clients to adopt electronic payments, as they are faster and more secure, and welcome the Government's support to further transition away from cheques.

The ATO handles a large volume of inbound and outbound cheques. While we anticipate the usage of cheques will continue to trend downward naturally, the tax law only mandates electronic payments in limited circumstances. This means that until such time as cheques are no longer a legal form of payment or electronic payments are mandated in all circumstances, the ATO cannot fully transition away from dealing with cheques.

Further, our payment and processing systems have been designed and built to operate within the current payment landscape. Fully transitioning away from cheques will necessarily require extensive system, processing, and guidance modifications. Once the consultation period has closed and the Government has a clearer idea of the barriers facing other participants in the system, we will continue to explore the administrative and legislative changes that are required, the cost of implementing any required changes, and the time it will take to implement a complete phaseout of cheques.

We welcome the opportunity to discuss this submission and to be a part of any further consultation should this occur.

¹ [ATO digital strategy | Australian Taxation Office](#)

ATO usage of cheques

1. The ATO's submission largely focuses on questions 21 and 22 in chapter 4 of the consultation paper that relate to government use of cheques.

Question 21 – How significant are the barriers to reducing government use of cheques? What timeframes, support or legislative changes are required for agencies transitioning away from cheque use?

Question 22 – What coordination is required between the Commonwealth, State and Territory governments to coordinate a transition away from cheques?

2. We process both inbound cheques (cheques we receive) and outbound cheques (cheques we pay). In our experience, cheque usage over the last number of years has been steadily declining. The majority of inbound cheques we receive are from small or micro businesses paying their activity statement obligations, and paying by cheque is usually part of their long-standing business practices. The majority of the outbound cheques that we pay are in relation to individual income tax refunds.
3. We are already undertaking work to reduce cheque usage in the tax and superannuation systems by encouraging entities to provide valid financial institution account (FIA) details when they interact with us. For example:
 - a. We have been communicating with tax agents on the importance of providing current FIA details and liaising with digital service providers (DSPs) to modify their software products to prompt tax agents to record FIA details. We anticipate that our efforts to educate tax agents about including bank details in tax returns should lead to a natural decline in outbound cheques to tax agents.
 - b. We are also working on a campaign to reduce outbound cheques where we:
 - i. contact clients to seek to obtain FIA details after the Reserve Bank of Australia (RBA) returns a cheque to the ATO; and
 - ii. send an automatic notification to clients when electronic payment of their refund fails, which allows them to provide valid FIA details to avoid receiving a cheque. This has been successful in 75-80% of cases.

Barriers to reducing cheques

4. The most significant barrier for the ATO in completely transitioning away from cheques is that cheques are currently a legal form of payment, and the Commissioner generally has an obligation to both pay and collect monies as soon as practicable in the circumstances. Also, our payment systems have been designed and built to operate within the current legislated payment framework, which includes support for cheques. Therefore, we must continue to both:

- a. accept inbound cheques in satisfaction of taxation debts (i.e., where a client chooses to make a payment by cheque) so long as they remain a legal form of payment and the law does not prevent us from doing so; and
- b. provide outbound cheques where the law requires us to make a payment and does not prevent us from using cheques, and no other payment option is available.

Inbound cheques

- 5. As noted above, inbound payments to us via cheque occur in instances where a client chooses to make a payment using a cheque and the law does not specifically preclude them from doing this. There are limited instances where making payments via cheque is specifically contemplated by the taxation law.

Cheques in the withholding regime

- 6. We currently receive several cheques from entities in relation to withholding obligations when they enter into specific transactions and are required to withhold money and remit it to us². Under current legislative parameters:
 - a. larger entities must pay these obligations electronically (these entities are also required to pay all other associated tax debts electronically³);
 - b. smaller entities are able to pay this money to us in any way we allow⁴. This currently includes payments via cheques.
- 7. When cheques are discontinued, there are two main transaction types in relation to which we receive cheques (settlements of certain residential property transactions and transactions involving foreign residents), where barriers may exist.

Property settlement

- 8. In certain circumstances, an entity that purchases a residential property from another entity must withhold an amount from the purchase price paid to the supplier and pay it to the Commissioner⁵. The entity with withholding obligations may satisfy this obligation through either:
 - a. transferring the funds to the ATO directly (including via electronic settlement (e-settlement / e-conveyancing), BPAY, or a credit or debit card); or
 - b. providing a cheque to the supplier made payable to the Commissioner.
- 9. Generally, a penalty applies if an entity fails to withhold an amount and pay it to the Commissioner. However, this penalty does not apply in relation these transactions if the entity pays the amount to the Commissioner on or before settlement, or if the purchaser provides a cheque made payable to

² Division 12 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

³ Section 8AAZMA of the TAA.

⁴ Section 16-85 of Schedule 1 to the TAA.

⁵ Subdivision 14-E of Schedule 1 to the TAA.

the Commissioner to the seller⁶. Therefore, there is currently a legislative requirement for us to be able to receive inbound cheques in relation to these settlements.

10. However, given cheques are not the exclusive method of payment, and other options currently exist, when cheques are discontinued entities will have alternative ways of satisfying this obligation.
11. A solution for eliminating cheque usage in relation to these transactions could be by encouraging and facilitating greater adoption of e-settlement processes. For entities currently entering these transactions in States and Territories that have mandated e-settlement, withholding and paying by cheque is not an option. The withholding and payment obligation is entirely satisfied through the e-settlement process.
12. As more States and Territories mandate e-settlement, the use of cheques in these transactions will reduce. Some States and Territories have already begun to move towards amending their legislation to require e-settlement (although some entities and / or transactions are currently excluded), whereas other States and Territories utilise both electronic and paper-based settlements.

Foreign resident capital gains tax withholding (FRCGTW)

13. Another instance where the ATO has regular dealings with cheques in the withholding regime is where entities enter certain transactions with foreign residents and are required to withhold and pay amounts to the Commissioner⁷.
14. Like the obligation discussed above, this obligation can be satisfied by the entity making the payment through BPAY, in person at Australia Post, or via the provision of a cheque to the Commissioner. Cheques are only one option; once cheques are discontinued, entities will continue to have other ways to satisfy this obligation.

Australia Post services

15. The ATO benefits from Australia Post's 'Billpay' service, which allows Australia Post to accept payments on our behalf over the counter. Under this program, Australia Post accepts several different payment options for people who choose to make ATO payments in person, including cheques.
16. Entities make a significant number of cheque payments at Australia Post in satisfaction of ATO obligations via Billpay. In the 2022-23 financial year, close to 339,000 payments were made using cheques via this channel (which was triple the number of cheques the ATO received directly that year).
17. We understand that Australia Post, as a corporate Commonwealth entity, will be subject to the 2028 deadline for government entities to phase out the use of cheques.
18. The consultation paper acknowledges that Australia Post's Bank@Post service will likely play an important role in managing the transition away from cheques,⁸ as this service provides regional

⁶ Section 16-30 of Schedule 1 to the TAA.

⁷ Subdivision 14-D of Schedule 1 to the TAA.

⁸ Page 12 of 'Winding down Australia's Cheque System' consultation paper.

communities with a familiar and accessible avenue through which to access basic banking and financial services. Similarly, as government entities transition away from receiving cheques directly, the community's usage and reliance on BillPay may increase in the short term.

19. To allow a smooth transition and not adversely impact communities and groups using these services, consideration could be given to exempting Australia Post from the 2028 government entity phase out deadline.
20. This would allow entities who currently use Billpay and Bank@Post to continue to engage with government entities through cheques for a limited period of time after those entities cease accepting and sending cheques directly.

Outbound cheques

21. Outbound payments made by the ATO via cheque occur in part due to the current legislative settings of the tax system, which generally requires to the Commissioner to make payments in a timely manner including via cheque (where other means are not available).

General requirement for the ATO to pay by cheque in certain circumstances

22. In some circumstances, the ATO must pay certain refunds and credits owing to an entity to an Australian bank account that the entity has nominated⁹. Importantly, where an entity has not provided valid FIA details for these purposes, we are not obliged to refund any amount to the entity and can lawfully retain the payment until the entity does so. However, this is only the case for the Business Activity Statement (BAS) and petroleum resource rent tax (PRRT) regimes; other refund types are not subject to this treatment.
23. For these other refunds (including income tax refunds), legislation compels us to pay the entity but does not overtly stipulate the timeframe and method via which payment must occur. Our practice is to refund amounts within a time which is reasonable in the circumstances,¹⁰ including via cheque if no valid FIA details are available but there is a valid address for sending a cheque.
24. Our guidance¹¹ also refers to some instances where cheque payments are preferred, including where the client holds religious beliefs that preclude the operation of a bank account or is not a resident of Australia and does not have a place of business or residence in Australia.
25. When cheques are discontinued, we will only be able to make payments where there are alternative means available, i.e., where we have valid FIA details. We note that in the 2023-24 Budget the Government announced a measure designed to reduce cheque usage by the ATO. Once the measure is implemented, we will have the ability to hold certain refunds that may otherwise issue via cheque for up to 90 days (or until valid FIA details are provided by the taxpayer, if sooner), allowing the ATO and taxpayers extra time to facilitate electronic payment of refunds. We think that this increase in time is a good first step towards phasing out outbound cheque usage in the tax system.

⁹ These are covered by subsection 8AAZLH(1) of the TAA and relate to amounts paid on the business activity statement (BAS) and in relation to the petroleum resource rent tax (PRRT).

¹⁰ *Commissioner of Taxation v Multiflex Pty Ltd* [2011] FCAFC 142 at [40].

¹¹ [PS LA 2011/22 | Legal database \(ato.gov.au\)](#)

Payments to foreign residents

26. The ATO is currently required to make payments to foreign residents in a few different circumstances and we have flexibility in how we make these payments. We generally do this by providing a cheque and we currently only make foreign bank transfers in rare circumstances (such as where we are making payments to jurisdictions that no longer process or accept cheque payments). This is largely because the current settings under which we can process foreign bank transfers are resource intensive and costly, as we process them manually and incur a fee for each transaction.
27. When cheques are discontinued, direct payments to foreign bank accounts may present a viable solution, but there are issues that will need to be considered and worked through before we can fully transition away from cheques to electronic payments. Our two main concerns are in relation to the cost and time it takes to process these payments and the increased risk to revenue if amounts are paid out incorrectly.

Cost and time

28. As noted above, currently when we need to make a payment to a foreign resident we provide them with a cheque because it is the most efficient and cost-effective option available to us. When cheques are discontinued, we would expect the volume of international transfers that we need to make to increase.
29. The ATO is one of many government entities that uses the services of the RBA for some of our payment service needs. This includes international transfers. The RBA's existing process for processing these payments is longstanding and is suitable under current workloads where cheques are preferred in the first instance, and international transfers are used by exception.
30. However, when cheques are discontinued and international transfer usage increases, adoption of the RBA's solution on a vastly increased scale would result in significantly increased cost and resourcing requirements on the ATO. It may also increase the RBA's workload to process these payments for government entities using their services.
31. To make this solution viable for the ATO and government entities more broadly, a more streamlined and cost-effective process could be developed to allow government entities to make international transfers.

Risk to revenue

32. Currently, cheques that are issued incorrectly (for example, if the client provides incorrect details) or under fraudulent pretenses can be cancelled if discovered in time. Additionally, cheques issued to a certain entity may only be deposited by that entity.
33. However, EFT transfers (particularly international transfers) generally increase fraud risks, as there is little to no recourse to claw back funds if they are overpaid or have been paid to the wrong overseas entity.
34. When cheques are discontinued, this risk will naturally increase as the safeguards provided by cheques no longer exist. This may pose an increased risk to Commonwealth revenue.
35. Some specific instances of where we currently make payments to foreign bank accounts are discussed below.

Departing Australian Superannuation Payments

- 36. If someone works in Australia on a temporary visa they may accumulate superannuation that has been paid by their employer under the compulsory super guarantee regime. When they subsequently leave Australia, they may be eligible to have this super (and any earnings and other contributions) paid to them (less tax) as a departing Australia superannuation payment (DASP).
- 37. The ATO pays out approximately 20% of total DASP payments, with the remainder being paid out by superannuation funds. We encourage clients to keep their Australian bank account open until such time as the DASP can be paid to them, but sometimes they close their bank account before they leave Australia. In these cases, the ATO will pay out ATO-held super by cheque.
- 38. When cheques are discontinued and the individual does not provide valid Australia FIA details, the ATO will be required to pay these amounts to the client's foreign bank account (once available).

Consular refunds

- 39. Refunds of certain indirect taxes may be available in particular circumstances under the indirect tax concession scheme (ITCS)¹². Under the ITCS, the ATO may refund certain taxes on eligible goods and services purchased in Australia by diplomatic and overseas missions, consular posts, and their privileged staff, as well as some international organisations.
- 40. These taxes may include goods and services tax (GST), luxury car tax (LCT), wine equalisation tax (WET), and excise. Entities must pay the relevant tax at the time the good or service is purchased, and then can claim a refund for the tax paid through the ITCS. The type of refund payable will depend on the entitlement package that applies to a country or organisation. The benefits available broadly mirrors the reciprocal concessions Australia enjoys in other countries¹³.
- 41. When a new mission registers for the ITCS they are asked to supply all relevant details, and we encourage them to provide valid Australian FIA details. Cheques are used to issue a refund where they do not supply FIA details, or a request is made for the refund to be paid by cheque¹⁴.
- 42. When cheques are discontinued, the ATO will be required to pay these amounts to the client's Australian or foreign bank account (once available).

Payments to domestic accounts

Incarcerated individuals

- 43. We have previously received industry feedback that some tax agents have clients who are currently incarcerated, and a majority of those clients did not, or could not, access a valid Australian bank account. As a result, they either need or prefer to receive any tax refund owing to them via cheque.
- 44. The impacts of phasing out the use of cheques in relation to incarcerated individuals is an issue that spans all levels of government, including State and Territory governments that have direct

¹² [How the ITCS works | Australian Taxation Office \(ato.gov.au\)](#)

¹³ Department of Foreign Affairs and Trade, [6.3 Indirect Tax Concession Scheme](#)

¹⁴ [Law Administration Practice Statement PS LA 2011/22 Refunds of running balance account surpluses and credits - Commissioner's discretion to retain refunds and the discretion to pay refunds in a different way](#). Paragraph 23 notes that a case where the Commissioner will pay a refund via cheque is to a non-resident entity, including a foreign dignitary or diplomatic official.

responsibility for the management of prisons. Given the ATO's role as administrator of the tax system, we are not necessarily best placed to advise how the impacts of this planned phase out of cheques could be addressed for this cohort, but welcome any opportunity to engage in finding workable solutions (including for any other vulnerable cohorts who rely on cheques).

Deceased estates

45. When someone passes away, the ATO may play a role in finalising their taxation affairs. This can include assisting the deceased individual's legal personal representative (LPR) with the lodgment of a date of death tax return, and transferring any superannuation we hold for the deceased estate.
46. Upon receiving notice of death, we stop all payments being made to a deceased individual's nominated bank account. This means that unless alternative valid FIA details are provided by the relevant LPR, we must make any associated payments via cheque.
47. When cheques are discontinued, the ATO would need to pay amounts in relation to deceased estates via EFT transfer.
48. This may present some risks. As noted above, it can be more difficult to claw back funds paid via EFT transfer than it is for cheques, including where funds are paid to the wrong person.
49. The identity of the recipient of a payment is particularly important in the case of deceased estates, where we issue cheques to the 'executor' or 'administrator' of the estate (i.e., the deceased individual's LPR) and not to a specific person.
50. In practice, a LPR must satisfy a financial institution that they are the appropriate recipient of funds when they go to deposit a cheque. Additionally, if a cheque is misplaced or stolen, no person other than the LPR can negotiate payment. These safeguards would not exist for funds paid via EFT transfer.

Coordination between the Commonwealth, State and Territory governments

51. Some issues such as those relating to succession law, property settlement, and incarceration may fall within the scope of State and Territory legislation and possibly require coordination between jurisdictions. Providing a consistent payment framework with respect to cheque usage between federal and State and Territory governments will make it easier for clients to interact across these different levels of government.
52. The ATO is committed to continuing its productive working relationship across jurisdictions and welcomes support from the Government and Treasury to achieve workable solutions to the issues identified.