

22/04/2024

The Treasury

Attention: Director

Personal Rates and Thresholds Unit

Personal and Small Business Tax Branch

Personal and Indirect Tax and Charities Division

By e-mail: medicarelevylumpsums@treasury.gov.au

Dear Treasury Officer

Re: Exempting lump sum payments in arrears from the Medicare levy

The Australian Workforce Compliance Council Ltd (AWCC) is Australia's first and only membership based (not for profit) association for Payroll and Payroll related Digital Service Providers. AWCC was incorporated on the 22 October 2022 as a result of three years research into Wage-Theft and other payroll related non-compliance.

After almost four years of research and planning, AWCC Ltd is nearing its 2024 launch date, however, due to the April 2024 Exempting lump sum payments in arrears from the Medicare levy Consultations, AWCC is advancing for public release its position to support the industry position on these matters.

AWCC submits the following response which includes a number of recommendations for ensuring the taxpayer cohort of those potentially eligible for the lump sum payment in arrears tax offsets is accurately identified.

Our contact for any queries is Deanne Windsor, Director AWCC Ltd and President of the Employment Technology Providers Australia division via email [REDACTED]

Your sincerely,

Deanne Windsor

Director

Australian Workforce Compliance Council Ltd



Australian Workforce
Compliance Council

2024
Exempting
lump sum
payments in
arrears from
the Medicare
levy – The
Treasury



The Australian Workforce Compliance Council Ltd

Australian Company Number (ACN): 663 421 805

Australian Business Number (ABN): 1166 342 1805

A public company limited by guarantee

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1. About AWCC Ltd

1.1 Background on the creation of AWCC Ltd

- (a) AWCC Ltd was created as a result of three years of research into Wage-Theft and other payroll related non-compliance.
- (b) The Australian Workforce Compliance Council Ltd (AWCC), Australia's first and only membership based (not for profit) association for Payroll and Payroll related Digital Service Providers (DSPs) was incorporated on 22 October 2022.

1.2 Area of interest in proposed changes to lump sum payment in arrears tax offsets

- (a) Whilst the proposed changes to exempt lump sum payments in arrears from the Medicare Levy relates to taxpayer amendments of prior financial year completed tax returns, the source of the data used for this purpose is typically from the Income Statements reported by employers and other payers.
- (b) AWCC's submission focuses on employers and other payers correctly reporting payments in arrears greater than 12 months as Lump Sum E¹ in Single Touch Payroll reporting to the ATO.
- (c) If Lump Sum E amounts are not correctly identified and reported via Single Touch Payroll, then taxpayers may not realise they are eligible to claim the lump sum payment in arrears tax offset².
- (d) In order to rectify the issue identified in the Senate Economics Committee's Inquiry into unlawful underpayment of employees' remuneration³ released in March 2022, it is imperative that those potentially eligible to claim the offset are provided with that information by their employers or payers in the ATO Income Statement

2. Submission Details

2.1 ATO Guidance – Tax and Reporting

- (a) Employers and other payers rely on the accuracy and robustness of the ATO's website guidance to assist them to get their employer obligations correct: Pay As You Go Withholding (PAYGW), Superannuation Guarantee (SG) and Single Touch Payroll (STP) reporting.
- (b) The ATO tax tables define the tax treatment for specific payments to employees and payees. One such tax table (Schedule 5⁴) defines the marginal tax approach to taxing payments in arrears.
- (c) The calculation of tax for payments in arrears is consistent, regardless of the retrospective period for which those payments were payable. That is, the same method to calculate tax is

¹ <https://www.ato.gov.au/businesses-and-organisations/hiring-and-paying-your-workers/single-touch-payroll/in-detail/single-touch-payroll-phase-2-employer-reporting-guidelines/reporting-the-amounts-you-have-paid/back-pays>

² <https://www.ato.gov.au/individuals-and-families/income-deductions-offsets-and-records/tax-offsets/lump-sum-payment-in-arrears-tax-offsets#ato-Reportingalumpsumpaymentinarrears>

³ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Underpaymentofwages/Report

⁴ <https://www.ato.gov.au/tax-rates-and-codes/payg-withholding-schedule-5-tax-table-for-back-payments-commissions-bonuses-and-like-payments/about-this-schedule?anchor=Usingthisschedule#Usingthischedule>

used for an arrears payment that was payable earlier in the financial year, a prior financial year or many financial years prior to when it is actually paid⁵.

- (d) This logic is important for Employment Technology (such as payroll software) that is designed to operationalise the tax treatment for payments by employers and payers.
- (e) However, the tax table for back payments, commissions, bonuses and similar payments also includes guidance to the employer/payer “End-of-year” reporting that used to apply prior to the introduction of Single Touch Payroll.
- (f) Single Touch Payroll Phase 2 introduced the option to report Lump Sum E⁶ amounts in real time or at the end of financial year.
- (g) The detailed guidance in the tax table is written as if the employer/payer reporting to government occurred only at the end of financial year rather than the Single Touch Payroll reporting option of real time.
- (h) The guidance⁷ erroneously states that “...for each payment accrued more than 12 months before the date of payment of \$1,200 or more, include the gross amount of the payment at ‘Lump sum E’ ...”. This is understood by employers/payers to mean that EACH payment must be for an amount of \$1,200 or more, rather than the annual sum total for any arrears payment that was payable more than 12 months prior to the actual payment.
- (i) This ATO-centric guidance, which focuses on the annual assessment of income, has not been revised to tailor the advice for payroll (regular frequent payments progressively throughout the financial year).
- (j) This results in many employers/payers only reporting arrears payments that were payable more than 12 months ago if each instance of arrears payments reaches that threshold. This may result, for example, in an employer who pays many payments in arrears that individually do not exceed the threshold but annual exceeds the threshold not being reported as Lump Sum E at all.
 - (i) Use Case A – if an employer/payer had four occasions in the financial year to make an arrears payment of \$800 each that had accrued more than 12 months prior to the payment, then they may not report the total amount of \$3,200 as Lump Sum E, as per the current ATO guidance
 - (ii) Use Case B – if an employer/payer had only one occasion in the financial year to make arrears payments that had accrued more than 12 months prior to the payment of \$1,250 then they may report the total amount of \$1,250 as Lump Sum E, as per the current ATO guidance.
- (k) Both of these taxpayers should have potential opportunities to claim the lump sum payment in arrears tax offset, if both employers/payers correctly reported these amounts as Lump Sum E via Single Touch Payroll.

⁵ <https://www.ato.gov.au/tax-rates-and-codes/payg-withholding-schedule-5-tax-table-for-back-payments-commissions-bonuses-and-like-payments/about-this-schedule?anchor=Usingthisschedule#ato-Backpaymentsincludinglumpsumsinarrears>

⁶ <https://www.ato.gov.au/businesses-and-organisations/hiring-and-paying-your-workers/single-touch-payroll/in-detail/single-touch-payroll-phase-2-employer-reporting-guidelines/reporting-the-amounts-you-have-paid/back-pays>

⁷ <https://www.ato.gov.au/tax-rates-and-codes/payg-withholding-schedule-5-tax-table-for-back-payments-commissions-bonuses-and-like-payments/end-of-year-reporting?anchor=Endofyearreporting#ato-Completingtheindividualnonbusinesspaymentssummary>

- (l) Even the terminology and examples used in the ATO Single Touch Payroll employer guidance⁸ uses the same inaccurate and misleading language as the tax table.
- (m) It is recommended that the ATO tax and reporting guidance be amended to more explicitly identify that Lump Sum E is a three-stage process:
 - (i) Stage 1 – any arrears payments that are paid more than 12 months after the payment was payable are potential to be considered as Lump Sum E payments at the end of financial year
 - (ii) Stage 2 – at the end of financial year, if the sum of all payments defined in Stage 1 is equal to or greater than the annual threshold (\$1,200), then those amounts must be reported as Lump Sum E
 - (iii) Stage 3 – for Lump Sum E payments, the amounts must be reported per financial year of accrual, when those payments were payable
- (n) Given this recommendation, there should not be any occasion to report Lump Sum E amounts throughout the financial year, rather the amounts should be part of the finalisation process by employers/payers at the end of financial year only.

2.2 ATO Guidance – Superannuation Guarantee

- (a) Payroll technology solutions offer different functionality for different markets and price points. For arrears payments, there are two different types of payroll solutions:
 - (i) Manual – where data exists for the pay period being generated only, no date-effected capture that would support automated calculation of arrears payments. For these solutions, typically for micro-businesses (fewer than 5 employees) and small and medium enterprises, any arrears payments must be manually calculated and entered as specific amounts that are set up to be taxed marginally.
 - (ii) Automation – where data exists for effective dates that are used for the pay period as either current or arrears payments, where the arrears calculations for gross, tax, superannuation and other on-costs are fully automated
- (b) For those products that offer manual arrears payments, the manual calculation effort is high and risk of error is also high. Many calculations are performed as “backpay” as if it is a single amount to be paid, rather than identifying the separate pay components as required by the Fair Work Regulations 2009⁹ and the disaggregation of gross in Single Touch Payroll reporting.
- (c) That increases the likelihood that payments that are ordinary time earnings (OTE) are “lumped in with” payments that are not OTE, resulting in employers/payers inadvertently failing to meet their superannuation guarantee obligations by short paying their contributions.
- (d) It is imperative that the ATO is given every opportunity to scrutinise and confirm that employers/payers are meeting their superannuation guarantee obligations. This requires transparency of the components of pay that aligns with the Fair Work payslip obligations.

⁸ <https://www.ato.gov.au/businesses-and-organisations/hiring-and-paying-your-workers/single-touch-payroll/in-detail/single-touch-payroll-phase-2-employer-reporting-guidelines/reporting-the-amounts-you-have-paid/back-pays>

⁹ S3.46(1)(g) <https://www.legislation.gov.au/F2009L02356/latest/text>

- (e) By ensuring that employers/payers meet the many and varied employment obligations, it is vital that any arrears payments are reported throughout the year, when paid, as the components of pay to which they relate, rather than homogenised as “Lump Sum E” amounts that does not offer regulator transparency.
- (f) It is recommended that Lump Sum E amounts are reported at finalisation at end of financial year only, to ensure that arrears payments, even those that were payable more than 12 months prior to payment, are separately identified in Single Touch Payroll.
- (g) This will maximise the likelihood of employer/payer compliance to accurately report arrears payments as Lump Sum E, by focussing on the annual threshold amount rather than for “each” payment as per the current ATO guidance referenced in paragraph 2.1 above.

2.3 Employment Technology

- (a) During the design of Single Touch Payroll Phase 2, the ATO provided extensive controlled documents to the digital service providers (DSPs) who were developing STP-enabled solutions.
- (b) Those extensive, detailed controlled documents included details of Lump Sum E calculations that explicitly identified the three-stage approach referenced in paragraph 2.1(m) above. It is an extremely complex matter for coding to address all of the interdependent transactions that interact with Lump Sum E calculations.
- (c) That detail only exists in the ATO DSP controlled documents (ATO STP2 DSP Disaggregation of Gross Position Paper) that is not available in an employer/payer option in the ATO website guidance. This should be considered as source material to assist the ATO to tailor its Lump Sum E guidance to more explicitly reference the three stage approach.
- (d) It must be noted that the option enables automated solutions to streamline the calculation and reporting of Lump Sum E, whilst not addressing the manual calculation options.
- (e) It is important that every taxpayer/employee/payee who may have eligible Lump Sum E arrears payments is provided with the correct information via their ATO Income Statement.
- (f) The ATO Income Statement will display both the Lump Sum E amount and the corresponding Lump Sum E financial year that provides the taxpayer with the information they need to assess if they are eligible for the lump sum payment in arrears tax offset.