



Employer obligations update

Last updated 18 November 2022

On this page

[Single Touch Payroll \(STP\)](#)

[Pay as you go withholding \(PAYGW\)](#)

[Fringe benefits tax \(FBT\)](#)

[Superannuation guarantee \(SG\)](#)

[Good governance](#)

[Conclusion](#)

Good afternoon everyone.

And thank you to PWC for inviting me to address this group. It's great to see so many of you interested in your obligations to your employees.

Before I start I'd like to pay my respects to the Kurna people, the traditional owners of the land from which I'm joining you today.

As large employers, I'm sure you'll be very aware that you have a number of reporting and payment obligations that the ATO has oversight of, including:

- Working out how much tax to withhold for your employees and remitting this to the ATO.
- Paying superannuation guarantee on time for your employees.
- Calculating FBT amounts and lodging your FBT return.
- Reporting through Single Touch Payroll.

Today I'll share some insights about our top areas of focus in relation to these obligations.

So firstly, let's talk about STP.

Single Touch Payroll (STP)

Single Touch Payroll is now the way that we expect employers to report to the ATO about their tax and super obligations for their employees. We now have over 895,000 employers reporting through STP in the 2021-22 financial year, covering 13.5 million employees.

Phase 2 of STP reporting officially commenced on 1 January 2022. Implementation is ongoing with over 253,000 employers reporting STP Phase 2 information for over 4.8 million individuals as at 30 October 2022.

Phase 2 phase builds on Phase 1 and requires employers to provide more granular payroll information to the ATO which is shared with Services Australia to assist with administering the social security in a more efficient, accurate and timely manner. It reduces the burden on employers having to provide information to multiple government agencies.

Many Digital Service Providers needed additional time to update their STP-enabled products and to transition their customers to Phase 2 reporting. Where a provider has been granted extra time by the ATO to get ready, this deferral will also cover their customers.

But even with deferrals in place it is important that you do not leave your transition to the last minute.

There are still various steps which can be done now to prepare and these include:

- Accessing the information and resources published by the ATO to understand the new requirements and determine how the changes impact your payroll.
- Determining whether you need to undertake a payroll review to ensure you are meeting Fair Work requirements along with taxation and superannuation obligations.
- Undertaking a pay code/category and allowance review – this will help you understand how the types of payments you make now will need to be reported in your STP Phase 2 report.

- Ensuring you have the relevant information in your payroll system. There may be some data/information which is now required in your STP report that is captured/stored elsewhere such as in HR or time and attendance systems.
- Having readiness plans, timelines, schedules and resourcing in place.
- Engaging your trusted advisors such as PwC and your payroll professional associations for advice and support.

Make sure you stay in touch with your provider to know when your solution will be ready and the steps you need take to transition to Phase 2 reporting.

You may also recall that in March 2022 the former government announced a measure to facilitate sharing of STP data with State and Territory Governments on an ongoing basis to cater for pre-filling payroll tax returns.

The ATO is supporting this measure with State Revenue Offices, however, further work is subject to policy approval and funding by both Federal and State governments.

Now, lets talk about PAYGW.

Pay as you go withholding (PAYGW)

There is generally a high level of voluntary compliance in the PAYG withholding system. We estimate that employers are paying about 97% of the PAYG withholding they are required to, without intervention from us. The introduction of STP has made it even easier for employers to meet their obligations through their natural business systems.

However, we know there are still gaps. In our latest batch of 675 employer reviews we raised \$470m in unpaid PAYGW and general interest charge. By comparing the end of year finalised PAYGW reported amount with the total PAYGW amounts paid on accounts, we were able to identify discrepancies that required investigation.

The discrepancies were either a PAYGW shortfall, or instances where PAYGW has been paid to the wrong ABN or an incorrect payment reference number was used. In the last 12 months we have identified over \$2.4b of PAYGW paid to an incorrect ABN or using an incorrect

payment reference number. These simple errors create work for both you and us to reconcile.

In our latest reviews we found errors that showed inadequate payroll governance procedures and failures to undertake reconciliations and verification checks. What was more concerning though, was that some employers relied solely on a third-party provider to report and pay their withholding and did not have checks in place to ensure these amounts were correct, or that the payments were actually being made to the ATO.

The quality of reporting of this information by employers will be an ongoing focus for the ATO. As we increasingly use STP information at scale and in more automated ways, the quality and confidence in the data reported becomes even more important.

The ATO already has products to support good reporting governance in the tax context, and we will be developing a similar product containing tips to help you to implement good payroll governance, and we'll talk about some of the common errors that I mentioned earlier, such as payments made to the wrong ABN or using an incorrect payment reference number.

Fringe benefits tax (FBT)

We recognise complexity in the law can make it difficult for you – with the FBT gap estimate showing that the primary driver of non-compliance stems from a lack of awareness and understanding. The current FBT net gap is 20.3%.

Our primary focus is on increasing FBT awareness and assisting you to meet your registration, reporting and payment obligations, through our pro-active education, advice and guidance.

We are seeing an increasing number of employers providing wide and varied incentives when recruiting or retaining staff. It is important that you consider the tax implications before you put that incentive in place. Think, does FBT apply, and what would your FBT liability be?

There are a number of ways to reduce your FBT liability, including:

- Providing benefits that would be deductible for the employee.
- Providing exempt or concessional benefits.

- Providing a cash bonus (which the employee includes as taxable income) as an alternative.

We have very clear information and examples on our website to help you identify whether you are providing fringe benefits, and if so, how they should be treated. In addition, we run live and interactive webinars regularly on common fringe benefits that many employers find really useful.

Given the Qantas court cases regarding 'commercial parking station', we published **Taxation Ruling 2021/2 Fringe benefits tax: car parking benefits**, which outlines the ATO view on car parking, and our views on the meaning of 'commercial parking station', which applies from FBT year 1 April 2022.

We encourage you to review any car parking arrangements you currently have in place. You must ensure you have adequate records available to determine if a commercial parking station is within 1km of a work car park in preparation for lodging your 2023 FBT return.

Also, a draft addendum to the ruling was recently published on 2 November 2022, addressing the concept of 'primary place of employment' in light of the of the Full Federal Court decision in *Commissioner of Taxation v Virgin Australia Regional Airlines Pty Ltd* [2021] FCAFC 209.

We undertake targeted risk-based reviews and audits, to address non-compliance and to support employers to get their FBT obligations right. But please, engage with us early if you require advice or need to correct past FBT returns.

Superannuation guarantee (SG)

Most employers do the right thing and pay their SG contributions on time. Overall we estimate that employers are paying more than 94% of the super guarantee they are required to pay without intervention from the ATO. But that means that the gap of around \$3.4bn (or 4.9% of contributions) is not paid and is a large amount of money. At the ATO we are very aware that this gap is money that belongs to other people.

Employers must pay their SG contributions quarterly but can pay more frequently if they choose to. Over 40% of employers pay more frequently.

Where an employer does not meet the minimum requirement by the due date, they must lodge an SG Charge (SGC) statement and pay the SGC to the ATO. We will then distribute the shortfall and interest amounts to the employee's super fund. You cannot just make up the payments to a super fund.

Whether you pay your SG contributions weekly, monthly, or quarterly, it's important that you check that the SG paid takes into account the new SG changes that started on 1 July 2022.

These were:

- Increase in the SG rate from 10% to 10.5%.
- Removal of the \$450 per month eligibility threshold when paying SG.

Additionally, when hiring a worker, it is important that you check whether their worker is an employee or contractor, because it affects their tax, super and other obligations. Whether a worker is an employee or contractor is heavily dependent on the facts of each arrangement, and is determined by examining the terms and circumstances of the contract. There is also an extended definition of employee in the *Superannuation Guarantee Administration Act 1992* which requires superannuation guarantee to be paid for contractors who are engaged wholly or principally for their labour. This is very important to note – they can genuinely be a contractor, but still be entitled to super.

Paying SG contributions on time is really important, because an SGC statement must be lodged every time you are late in meeting your obligations, even if you are only a few days late. The ATO does not have any discretion to waive this requirement or provide extra time to pay the contributions.

If you have to pay the SG Charge it is made up of the shortfall contributions (but this is based on the higher base of salary and wages, not ordinary times earnings); an administration component; an interest component and Part 7 penalties. The only element here that the Commissioner has any discretion to remit is the Part 7 penalty. This starts at 200% and can be remitted down.

The current settings for making a decision on the remission are contained in PS LA 2021/3 Remission of additional SG charge, released in November 2021. Under this Practice Statement, the principles aim to provide an approach to remission that recognises the full range of

compliance behaviours in SG and allows the ATO to differentiate between good compliers and those who repeatedly pay late or fail to pay.

Our compliance program has a strong focus on preventative help and education, as well as tailored compliance activities which graduate in firmness to reflect employer behaviours. We take non-payment of superannuation very seriously and follow up all notifications by employees advising us that their employer has not paid superannuation on their behalf correctly. We also proactively identify and review employers where there appears to be discrepancies in the amount of super they have paid, or where they have made their SG contributions late.

For the 2021-22 financial year, the ATO raised over \$1b in SGC liabilities of which the 17,300 ATO compliance actions accounted for around \$765m. \$360 million was made in voluntary disclosures by employers.

In response to the ANAO audit recommendations made earlier this year, the ATO will be reviewing targets for SG performance measures, such as the SG gap, and will publish more detailed explanations and information around our compliance performance results.

Good governance

My final point, and probably the most critical point, is around the importance of good governance in each and every one of your organisations.

The nature of the relationship between an employer, contractors and employees brings several tax and super obligations which have real consequences if you get them wrong. And unlike your tax obligations, when mistakes are made with employer obligations there is a very real impact for the workers who are helping you grow and sustain your business success.

STP data is now a critical component of the tax and super systems and being used in real time for a number of purposes. The most notable uses of STP data by the ATO include pre-filing of individual tax returns and monitoring employer compliance with SG and PAYGW obligations. STP data provides the ATO with a level of assurance that things are working as intended, but also highlights where there are areas that need our attention, and those employers we need to engage with. We

also share data with other government agencies which they too will use for a range of activities in the welfare system.

And that's why it's more important than ever that you ensure that your reporting and payment is timely and accurate – and if you find that you make a mistake, to take action to correct it immediately.

Simple checks and balances will go a long way to ensuring that what you're reporting and paying is consistent and correct, and will prevent unnecessary contact from the ATO to correct or review information.

For those of you who outsource some of these functions, you must ensure that your representatives have these frameworks and governance practices in place, and that you can satisfy yourself that they are reporting and paying the correct amount to the ATO. Ultimately the responsibility is yours.

Conclusion

I'll leave my opening remarks there, but very happy to take questions.

Thank you.

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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