

STP 2019/2 - Explanatory statement -



Explanatory Statement

Taxation Administration – Single Touch Payroll – Exemption for Insolvency Practitioners and Employers subject to their appointment

General Outline of Instrument

1. This instrument is made under subsection 389-10(1) of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument exempts insolvency practitioners from reporting under Single Touch Payroll for the 2018-2019 financial year in respect of the employers they are administering.
3. This instrument also exempts from reporting under Single Touch Payroll for the 2018-2019 financial year those employers subject to the appointment of an insolvency practitioner, in relation to payments they make after the commencement of the appointment of the insolvency practitioner.
4. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument commences on the day after its registration on the Federal Register of Legislation.
6. It applies retrospectively from 1 July 2018 to ensure that affected entities will not be disadvantaged by not having the exemption apply from the beginning of the financial year.
7. For the purposes of subsection 12(2) of the *Legislation Act 2003* this instrument does not adversely affect the rights or liabilities of any person. It applies for the 2018-2019 financial year.

What is this instrument about

6. Division 389 of Schedule 1 to the *Taxation Administration Act 1953* establishes Single Touch Payroll reporting. That Division provides for the reporting of employee payroll and superannuation information by certain entities.
7. There may be instances where the business of an employer that is required to report through Single Touch Payroll during the 2018-2019 financial year comes under the control of an insolvency practitioner.
8. This can include:
 - a. control of the business by the insolvency practitioner on behalf of an entity (such as a liquidator appointed over a company), or
 - b. control of the business by an insolvency practitioner in their own right (such as a trustee in bankruptcy that continues the business of a bankrupt).
9. Subsection 389-10(1) allows the Commissioner of Taxation to exempt by way of legislative instrument a class of entities from reporting under Single Touch Payroll.
10. This instrument exempts insolvency practitioners from mandatory reporting through Single Touch Payroll for the 2018-2019 financial year in respect of the employers they administer.
11. This instrument also exempts from reporting under Single Touch Payroll for the 2018-2019 financial year employers which are subject to the appointment of an insolvency practitioner, in relation to payments the employers make after the commencement of the appointment of the insolvency practitioner.

What is the effect of this instrument

12. The effect of this instrument is to provide additional time for insolvency practitioners to prepare for reporting under Single Touch Payroll in relation to employers that they administer by exempting them from that reporting for the whole 2018-2019 financial year.
13. This instrument also exempts employers administered by insolvency practitioners in relation to payments they make after the commencement of the appointment of the insolvency practitioner. Any payments made by employers before an insolvency practitioner is appointed are not covered by this exemption, and should be reported in accordance with Single Touch Payroll obligations.
14. However, insolvency practitioners and employers which are subject to the appointment of an insolvency practitioner may still choose voluntarily to report under Single Touch Payroll in accordance with Division 389 notwithstanding their exemption.
15. This instrument does not exempt insolvency practitioners from Single Touch Payroll reporting obligations they may have in their capacity as an employer of their own staff.

Consultation

16. The rules specified in this instrument have been developed in consultation with payroll software developers and bodies representing payroll users.

Legislative references:

Acts Interpretation Act 1901

Bankruptcy Act 1966

Corporations Act 2001

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Taxation Administration Act 1953

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This instrument exempts insolvency practitioners from mandatory reporting through Single Touch Payroll for the 2018-2019 financial year in respect of the entities they administer.

It also exempts from reporting under Single Touch Payroll for the 2018-2019 financial year employers which are subject to the appointment of an insolvency practitioner.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because it is of a minor or machinery nature. The exemption gives insolvency practitioners the freedom to choose whether they report amounts through Single Touch Payroll in relation to the employers they administer for the 2018-2019 financial year.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.