



Explanatory Statement

Taxation Administration – Single Touch Payroll – 2019-20 and 2020-21 Income Years Closely Held Payees Exemption 2021

General outline of instrument

1. This instrument is made under subsection 389-10(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).
2. The instrument exempts certain entities from the requirement to report through Single Touch Payroll (STP) on payments made to closely held payees. The exemption applies in the 2019-20 and 2020-21 income years.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. 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. The instrument is taken to have commenced on 1 July 2019.
6. 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 as the retrospective action of this instrument is beneficial by providing a reporting exemption.

What is the effect of this instrument

7. This instrument exempts a class of entities from the obligation under section 389-5 of Schedule 1 to the TAA 1953 to report to the Commissioner of Taxation amounts that are paid to certain employees defined for the purposes of this instrument as “closely held payees”.
8. An entity is within the class of entities if it:
 - (a) was not a ‘substantial employer’ for the purposes of STP reporting before 1 April 2019;
 - (b) paid an amount to a closely held payee and is required to report that an amount was paid in STP;
 - (c) is registered with the Commissioner of Taxation in respect of pay as you go withholding (Subdivision 16-BA of Schedule 1 to the TAA 1953), and

- (d) is not a large withholder for the purposes of pay as you go withholding (section 16-95 of Schedule 1 to the TAA 1953).
9. A closely held payee is an employee of the entity who is also an associate of the entity.
 10. Typical examples of a closely held payee include a son or daughter employed by a company operating a family business controlled by his or her mum and dad, a director or shareholder employed by the company which they control, and an employee of a trust who is also a beneficiary of that trust.
 11. Entities will be exempt from the reporting requirement in the 2019-20 and 2020-21 income years. The 2019-20 income year is the first year of mandatory reporting through STP.
 12. An entity to which this instrument applies may still choose to report that an amount has been paid to a closely held payee through STP. If the entity chooses to do so, it will be able to access relief from its obligations to provide payment summaries to the closely held payees, as well as a payment summary annual report to the Commissioner, provided the entity makes a declaration under section 389-20 of Schedule 1 to the TAA 1953 by the due date.
 13. An entity to which this instrument applies is not exempt from being required to report amounts paid to employees that are not closely held payees. The entity is still required to report this information through STP.
 14. Compliance cost impact: Minor – there will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

Background

15. Subsection 389-10(1) of Schedule 1 to the TAA 1953 allows the Commissioner of Taxation by legislative instrument to exempt a class of entities from reporting under STP.
16. Subsection 389-10(2) of Schedule 1 to the TAA 1953 provides the exemption may be limited to the extent specified in the instrument.
17. Prior to 2019, the ATO received feedback from payroll, tax and bookkeeping professionals that many small businesses would find it challenging to transition to reporting amounts they paid to closely held payees using STP from 1 July 2019. In response to this feedback the ATO determined that it would be appropriate to exempt these businesses from reporting amounts they paid to their closely held payees through STP for the first financial year (2019-20) to assist those which also had regular employees to successfully commence STP reporting in relation to those employees from 1 July 2019.
18. In early 2020, in response to the additional pressures experienced by small businesses as a result of the coronavirus situation, the Commissioner determined that it would be appropriate to extend the exemption for another year (2020-21).
19. The exemption provided by this instrument ends on 30 June 2021. The ATO has introduced concessional reporting arrangements to support businesses that were covered by this exemption transition to STP reporting from 1 July 2021.

Consultation

20. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.
21. The draft determination and draft explanatory statement were published on the ATO Legal Database seeking feedback and comments on 11 June 2020 for a period of four weeks. Notice of the draft determination was also published on ato.gov.au and subscriptions alerts issued.
22. Tax professionals and tax associations regularly review both the Legal database and <http://www.ato.gov.au> and further promulgate advice of new drafts issued in their internal news bulletins.
23. The major legal publishers also publish news of the drafts in their key tax alerting services – such as the Weekly Tax Bulletin (published by Thomson Reuters Australia) and Tax Tracker and Tax Week (published by CCH Australia).
24. Following the closure of the formal comments period, the draft determination and explanatory statement remained available on the ATO Legal Database for a further 10 months.
25. No submissions on the draft determination and explanatory statement were received.

Legislative references:

Acts Interpretation Act 1901

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

The instrument provides an exemption for the 2019-20 and 2020-21 financial years from mandatory reporting through Single Touch Payroll to employers that make payments to closely held payees such as a son or daughter employed by a company operating a family business controlled by his or her mum and dad, a director or shareholder employed by the company which they control, and an employee of a trust who is also a beneficiary of that trust.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because the instrument is minor or machinery in nature and allows a certain group relief from a reporting requirement for a specified period.

Conclusion

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