PS LA 2011/2 - Administering penalties for failing to electronically notify or pay Goods and services tax or Pay as you go liabilities

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The Administrative Review Tribunal (ART) was established by the *Administrative Review Tribunal Act 2024* and commenced operations on 14 October 2024, replacing the Administrative Appeals Tribunal (AAT).

In this Practice Statement, a reference to a right to seek review of a reviewable objection decision or an extension of time refusal decision in the AAT should instead be read as a reference to a review in the ART.

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This Law Administration Practice Statement provides guidance on the policies and practices for administering penalties for large entities that do not electronically notify or pay GST or PAYG liabilities.

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

1. What this Practice Statement is about

Electronic lodgment and payment by large entities makes Australia's tax system more responsive, efficient and consistent by better matching tax collections with the economic conditions faced by traders. Therefore, penalties apply to large entities when they do not lodge a range of Goods and services tax (GST) and Pay as you go (PAYG) notices and payments electronically. This Practice Statement provides guidance on:

- how the non-electronic notification (NEN) and the non-electronic payment (NEP) penalties apply
- when and how to exercise the Commissioner's discretion to remit these penalties, and
- the taxpayer's review rights when we decide not to remit.[1]

2. When are electronic notification and electronic payment required?

The following entities ('relevant entities') must notify and pay electronically:

- any entity with a GST turnover of $20 million or more[2]
- any entity with a base assessment instalment amount[3] of $20 million or more[4]
- any entity that is participating in the 'Deferred GST Scheme'[5], and
- any entity classed as a 'large withholder' under the PAYG withholding system.[6]

Any entity that chooses or is required to lodge its GST return[7] electronically must also notify all other business activity statement (BAS) amounts due on the same day[8]

An entity with a GST turnover below $20 million may choose[9] to lodge its GST return electronically. If an entity chooses to do this, it must also electronically notify all other BAS amounts that are due on the same day. However, an entity is only liable to a penalty if it is required to lodge and/or pay electronically and does not do so.

3. When are the NEN and the NEP penalties imposed?

A NEN penalty applies each time a relevant entity makes a non-electronic:

- lodgment of a GST return[10]
- notification of monthly PAYG instalment, even when the amount is nil[11], or

[1] All legislative references in this Practice Statement are to Schedule 1 to the *Taxation Administration Act 1953* (TAA), unless otherwise indicated.
[2] Subsections 31-25(2), 31-25(4) and 33-10(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
[3] Your base assessment instalment amount is the amount of your assessable income that the Commissioner determines is instalment income for the base year (subsection 45-320(2)).
[4] Subsection 45-20(2A) and section 45-72.
[5] Paragraphs 33-15.01A(a) and 33-15.01B(2) of the *A New Tax System (Goods and Services Tax) Regulations 2019.*
[6] Subsection 8AAZMA(2) of the TAA and the definition in subsection 16-95(1).
[7] 'GST return' is defined in section 195-1 of the GST Act.
[8] Section 388-80.
[9] Subsection 31-25(1) of the GST Act.
[10] Subsection 31-25(2) of the GST Act.
[11] Subsection 45-20(2A).

- notification of another BAS amount.[12]

A NEP penalty is imposed each time a relevant entity makes a non-electronic payment of an assessed net amount for:

- a tax period[13]
- a debt[14]
- a withheld amount[15], or
- an instalment.[16]

4. How are the NEN and the NEP penalties applied?

We must notify an entity in writing if a penalty applies and give reasons.[17]

The penalties are calculated as follows:

- a NEN penalty of 5 penalty units[18] where an entity has made the lodgment or notification in another way[19]
- a NEP penalty of 5 penalty units where an entity has made the payment in another way.[20]

The penalty is due and payable on the date specified in the notice, which must be at least 14 days after the notice is given to the entity.[21] The general interest charge applies to any unpaid penalty from the due date for payment of that penalty.[22]

5. When to remit the NEN and the NEP penalties

We can exercise the Commissioner's discretion to remit some or all of the NEN and/or the NEP penalty when it is fair and reasonable to do so, with or without a request from the taxpayer.[23]

While the Commissioner's discretion to remit is unfettered, when deciding whether to remit a penalty, you should consider the following:

- the facts and circumstances relevant to the taxpayer's case, including what they (or their registered agent) have provided to us, and
- the principles of natural justice, and those outlined in the Taxpayers' Charter, including that we
  - be fair and reasonable, and
  - treat clients as being honest and give them an opportunity to explain any discrepancies.

Compliance with tax obligations other than the electronic notification/payment obligation is relevant to considering whether to remit the penalties.

While it is not possible to identify every circumstance where it would be fair and reasonable to remit the NEN or the NEP penalty, we will usually remit where the entity can show that:

- they did not have access to the appropriate infrastructure to lodge or pay electronically
- access to the appropriate telecommunication infrastructure was prohibitively expensive
- there was a telecommunications fault that could not be repaired in time
- they were affected by a natural disaster (such as flood, fire, drought, earthquake or state of emergency)
- they were affected by another disaster, which had significant impact on the entity, or the region where it, or its branches, operate
- a key staff member responsible for electronically notifying or paying for the entity was seriously ill, and there was no other person that could have notified or paid electronically
- the entity has taken steps to ensure electronic payment or notification will occur in future, but those arrangements were not yet available at the time of this payment or notification, or
- there was ATO action resulting in the delay of the electronic lodgment and payment.

Generally, we would not exercise the discretion to remit the NEN or the NEP penalty when:

- a deliberate act or omission of the entity resulted in non-electronic lodgment or payment
- the entity chose not to set up systems for electronic lodgment or payment and has not taken subsequent steps to set up such systems, or
- the entity did not have the cash flow to enable electronic lodgment or payment and did not seek an extension of time to lodge or pay.

[12] Section 388-80.
[13] Subsection 33-10(2) of the GST Act.
[14] Section 8AAZMA of the TAA.
[15] Subsection 16-85(1).
[16] Section 45-72.
[17] Section 298-10.
[18] The value of a penalty unit is provided by section 4AA of the *Crimes Act 1914* and is indexed regularly. A table containing relevant historic penalty values can be found by searching for 'penalty unit' on ato.gov.au.
[19] Section 288-10.
[20] Section 288-20.
[21] Section 298-15.
[22] Section 298-25.
[23] Subsection 298-20(1).

When we decide to not remit or partially remit the NEN or the NEP penalty, we must give the entity a written notice with reasons for the decision.[24] It is not necessary to notify the entity, or to record the penalties on the entity's tax account, where the penalties were remitted in full.

6. Exemption from electronic lodgment for GST returns

An entity with a GST turnover of $20 million or more may not be required to lodge electronically if the Commissioner 'otherwise approves'.[25] We generally expect large entities to have the facilities required to comply with electronic lodgment and payment requirements.

However, we may approve an exemption from the electronic lodgment requirement for a GST return (and, consequently, the other BAS amounts due on the same day) if the telecommunication infrastructure is:

- inadequate where the taxpayer is conducting the accounting work for these liabilities, or
- prohibitively expensive to the entity.

7. Objection and appeal rights

If we do not fully remit a penalty, and the amount that remains payable is more than 2 penalty units, the taxpayer may object to our decision.[26]

If they object and are dissatisfied with the objection decision, they may either apply to the Administrative Appeals Tribunal (AAT) or to the Federal Court for a review of the objection decision.

The AAT is a less complex and costly option. If the entity is dissatisfied with the AAT decision, they may appeal to the Federal Court.

If the remaining penalty is 2 units or less, the taxpayer cannot object to our decision not to remit, however they may seek a review of the decision under the *Administrative Decisions (Judicial Review) Act 1977* in the Federal Circuit Court or the Federal Court.

Under the Taxpayers' Charter, we must include review rights in our correspondence when advising a taxpayer of a decision which is subject to review rights.

8. Privacy

We must comply with the *Privacy Act 1988* and the requirements of the Australian Privacy Principles and the *Privacy (Tax File Number) Rule 2015* when collecting or handling personal information relating to penalty remission.

9. More information

For more information, see:

- ATO privacy policy
- Australian Privacy Principles
- Privacy (Tax File Number) Rule 2015
- PS LA 2011/15 *Lodgment obligations, due dates and deferrals*
- Taxpayers' Charter

Date issued	14 April 2011
Date of effect	14 April 2011

[24] Subsection 298-20(2).
[25] Subsection 31-25(2) of the GST Act.
[26] Subsection 298-20(3).

Amendment history

Date of amendment	Part	Comment
5 January 2023	Footnote 18	Update the footnote to include missing hyperlink.
4 February 2021	All	Rewrite into the new style and format.
17 December 2014	Paragraphs 2, 5, 11 and 12	Updated to reflect a legislative amendment to section 288-10 to Schedule 1 of the TAA to include monthly PAYG instalment payers.
	Paragraphs 25 to 27	Updated to promote consistency on remission of penalties.
11 March 2014	Paragraph 34	Insert new paragraph 34 to reflect amendments to the Privacy Act 1988.
	Legislative references	Include reference to *Privacy Act 1988.*
25 September 2013	Paragraph 4	New paragraph to advise that penalty arises separately for each activity statement.
	Paragraph 8	New paragraph to advise that penalty does not apply to entities that are not under legal obligation to lodge electronically but choose to do so.
	Paragraph 23	Removed reference to example of using compliance history as a factor in remission consideration as per trend in PS LA 2012/5.
	Paragraph 26	Removed example in 4th dot point of factors to consider when remitting penalty, as the example has been misconstrued by clients.
	Various	Revised general structure to enhance the readability of the LAPS.

References

Legislative references	ANTS(GST)A 1999 195-1 ANTS(GST)A 1999 31-25(1) ANTS(GST)A 1999 31-25(2) ANTS(GST)A 1999 31-25(4) ANTS(GST)A 1999 33-10(2) ANTS(GST)R 2019 33-15.01A(a) ANTS(GST)R 2019 33-15.01B(2) TAA 1953 8AAZMA TAA 1953 8AAZMA(2) TAA 1953 Sch 1 16-85(1) TAA 1953 Sch 1 16-95(1) TAA 1953 Sch 1 45-20(2A) TAA 1953 Sch 1 45-72 TAA 1953 Sch 1 45-320(2) TAA 1953 Sch 1 288-10 TAA 1953 Sch 1 288-20 TAA 1953 Sch 1 298-10 TAA 1953 Sch 1 298-15 TAA 1953 Sch 1 298-20 TAA 1953 Sch 1 298-20(2) TAA 1953 Sch 1 298-20(3) TAA 1953 Sch 1 298-25 TAA 1953 Sch 1 388-80 ADJR Act 1977 Crimes Act 1914 4AA Privacy Act 1988 Privacy (Tax File Number) Rule 2015
Other references	Taxpayers' Charter
File references	1-5AHLM0M
Related practice statements	PS LA 2011/15

ATO references

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