

***PAYE Bulletin 10 - Payments of PAYE, PPS and RPS
Deductions to the Commissioner by Large Remitters
- General Guidelines***

PAYE Bulletin

Number 10

Payments of PAYE, PPS and RPS Deductions to the Commissioner by Large Remitters – General Guidelines

Valid from 1 July 1999

About this bulletin

There are three categories of remitters: large, medium and small. Each category has different payment obligations under the law.

This bulletin explains:

- who is a *large remitter*; and
- the obligations of a large remitter to pay deductions to the Commissioner made under the Pay As You Earn (PAYE) system, the Prescribed Payments System (PPS) and the Reportable Payments System (RPS).

PAYE Bulletin Number 7 provides guidelines concerning the exercise of the Commissioner's discretion to extend the due date for payment of deductions of tax by a large remitter.

PAYE Bulletin Number 11 explains the obligations of medium and small remitters.

The meaning of the term large remitter and the consequential obligations to pay PAYE, PPS and RPS deductions to the Commissioner are set out in Division 1AAA of Part VI of the *Income Tax Assessment Act 1936*. This Division applies to amounts deducted on or after 1 July 1998.

Who is a large remitter?

1. A person who has deductions in excess of \$1 million

You are a large remitter from 1 July 1998 if the total deductions you made PAYE, PPS and RPS (referred to as 'total deductions' elsewhere in this bulletin) for the year ended 30 June 1997 exceeded \$1 million.

If your total deductions exceeded the \$1 million threshold for the first time for the financial year ended on 30 June 1998, you become a large remitter from 1 September 1998. This is to allow you sufficient time to make the necessary administrative and accounting changes so you can comply with the new rules for payment.

Similarly, if your total deductions exceed the \$1 million threshold **for the first time** for any financial year ending on or after 30 June 1999, you will not be a large remitter until 1 September of the following financial year. To be a large remitter in relation to July or August of any financial year (after the 1998/99 year) you must have been a large remitter in relation to the immediately preceding June.

For example, if you were a medium remitter throughout the 1998/99 financial year and at the end of that year your total deductions for the year exceed \$1 million, you will become a large remitter from 1 September 1999. You will continue to be a medium remitter in relation to July and August 1999.

2. A company that is part of a company group for which deductions exceed \$1 million

You will also be a large remitter from 1 July 1998 if you were included in a company group (see below) at 30 June 1997 and the total deductions for the year ended 30 June 1997 of the companies included in that company group exceeded \$1 million.

If the total deductions of the members of a company group exceed the \$1 million threshold for the first time for any financial year ending on or after 30 June 1998, those companies will become large remitters from 1 September of the following financial year.

Where you belong to a company group at the end of a financial year your total deductions for the entire financial year are taken into account in determining the total deductions of the company group even if you have not been a member of the group for the entire year.

Once the combined total deductions of the members of the company group exceed the \$1 million threshold, each member of the group is a large remitter - even those whose total deductions are below the threshold.

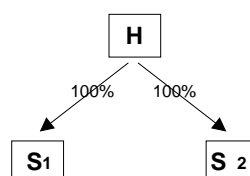
What is meant by the terms company group and group company?

A company group consists of any collection of two or more companies each of which is a group company in relation to each of the others. A company will be a group company in relation to another company if it satisfies either of the following tests:

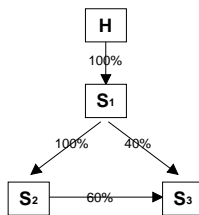
- one of the companies is a 100% subsidiary of the other; or
- each of the companies is a 100% subsidiary of the same third company.

A company will be a 100% subsidiary of another company (the holding company) and therefore within the company group if all the shares of the company are beneficially owned by:

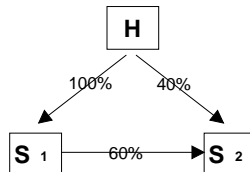
- the holding company;



- one or more 100% subsidiaries (including 100% subsidiaries of 100% subsidiaries) of the holding company; or



- the holding company and one or more 100% subsidiaries (including 100% subsidiaries of 100% subsidiaries) of the holding company.



3. Commissioner determines a person to be a large remitter

The Commissioner may, by written notice served on a person who would otherwise be a medium or a small remitter, determine that the person is a large remitter even though the person might not otherwise meet the requirements, (e.g. the \$1 million threshold). The Commissioner may consider the following matters:

- whether the person entered into an arrangement after 15 August 1989 for purposes that included avoiding the application of either the new large remitter payment requirements, or the previous early remitter payment requirements;
- the extent to which the person pays reportable payments, salary or wages or prescribed payments to persons who were previously paid such payments by another person;
- the amount of PAYE, PPS and RPS deductions that the Commissioner considers the person is likely to make in the next 12 months; and
- any other matter considered relevant.

The Commissioner may, for example, use this power in circumstances where employment contracts with a company that would otherwise be a large remitter are transferred to another related (but not a 100% subsidiary) company that is not a large remitter resulting in neither company being a large remitter. Similarly, the Commissioner may also use this power where trust structures have been used in an artificial or contrived manner to circumvent the grouping provisions and to avoid large remitter status.

A notice deeming a person to be a large remitter will not come into effect until the start of the second month following the month in which the notice is received by the person. For example, a notice received on 12 September 1998 will make the person a large remitter from 1 November 1998.

Discretion to make a person NOT a large remitter

The Commissioner may, by notice in writing served on a person who would otherwise be a large remitter, determine that the person is not a large remitter. This frees the person from the large remitter obligations for the period indicated in the notice. The person will generally become a medium remitter for the relevant period.

A person who is a large remitter may apply to the Commissioner for a determination that the person is not a large remitter.

A notice issued by the Commissioner does not have effect in relation to a particular month unless the notice was served before the beginning of the month.

Given the intention of the large remitter provisions (to bring forward the due date for payment) and the potential difference between the respective obligations of large and medium remitters, it is expected that the Commissioner will exercise this discretion in limited circumstances. For example, the Commissioner would not exercise the discretion merely because a person only pays salary or wages on a monthly basis or because compliance with the obligations will create a cash flow problem for the person.

Similarly, location of the person or operational units in remote localities is not considered sufficient reason for exercise of the discretion, especially with advances in electronic communication and the requirement to make payments to the Commissioner by Electronic Funds Transfer (EFT). Delays in assembling deduction information and ultimately the amount of the payment due to the Commissioner may provide grounds for exercise of the Commissioner's discretion to extend the due date for payment (see *PAYE Bulletin Number 7* on this subject) but not the discretion to change the remitter status of the person.

Compliance with the more frequent payment obligations imposed on large remitters and the requirement to pay by EFT may generate some additional compliance costs for some persons, in order to establish appropriate systems to meet the new obligations. However, such costs would generally be of a 'one-off' nature and would not justify a relaxation of remitter status. This applies equally to persons who are large remitters because of the grouping provisions and large remitters in their own right.

Permanent reduction in number of employees/contractors and the amount of deductions

Where the number of employees/contractors and/or the amount of deductions are going to be reduced on a permanent basis, such that the PAYE, PPS and RPS deductions of the person will fall below the \$1 million threshold, the Commissioner will generally exercise the discretion to determine that the person is no longer a large remitter.

Example

Company Z has operated under a long-term contract and has made deductions under PAYE and PPS exceeding \$1 million in previous financial years. In December most of the work in respect of that contract was completed, no further long-term contract is envisaged and only a small number of staff will remain employed. It is expected that deductions for the current financial year (and for subsequent financial years) will not reach \$1 million.

As annual deductions are likely to be less than \$1 million on an ongoing basis, the Commissioner would exercise his discretion to determine that the person is no longer a large remitter.

Notification and duration of Commissioner's determination

Where the Commissioner makes a determination that a person either is or is not a large remitter, the person will be notified in writing of that determination, the duration of the notice and the facts upon which the determination has been made.

The Commissioner may revoke or vary any such determination. For example, where there is a material change to the relevant facts and circumstances upon which the determination was made, the Commissioner may revoke or vary the determination to reflect that change. It is the person's responsibility to notify the Commissioner of any such changes.

Person in a capacity of trustee

The term 'person' is defined in the income tax law to mean, among other things, a person in a particular capacity of trustee. In determining whether a person is a large remitter it is therefore necessary to consider separately the capacity of the person acting in the person's own right and each capacity of the person as a trustee. That is, the deductions made in each capacity should not be added together. For example, if A Ltd has the following deductions in the financial year ending 30 June 1998:

- \$400,000 in its capacity as 'A Ltd';
- \$500,000 in its capacity as trustee of T1; and
- \$700,000 in its capacity as trustee of T2.

A Ltd is treated as a different person in each of its three capacities and therefore (because the deductions in each capacity are less than \$1 million) it is not a large remitter in any of those capacities even though the deductions added together exceed the threshold.

A person in the capacity of trustee will not be a large remitter because of the grouping provisions. This flows from the underlying intention of the legislation to treat a trustee as a separate person for the determination of remitter status. For example, building on the above scenario, if A Ltd is a 100% subsidiary of B Ltd (which has deductions exceeding \$1 million in a financial year) A Ltd (in its capacity as 'A Ltd') will be a large remitter, but in its capacity as trustee of T1 and in its capacity as trustee of T2 it will not be a large remitter. That is, a person in the particular capacity of trustee will not be a large remitter merely because of the grouping provisions.

The member companies of a wholly owned company group are in a sense equivalent to one person, in that the ultimate holding company may exercise control over the members of the group so that they are effectively one. On this basis, it is appropriate that the law treats the members of the group as one for the purpose of determining remitter status.

However, the person in the capacity of trustee is not subject to the control of the holding company. It is subject to independent enforceable obligations in respect of its dealings with the property held in trust for the benefit of the beneficiaries. Therefore, it is appropriate that the person in the particular capacity of trustee is distinguished from the person in its own capacity, when applying the grouping provisions to determine remitter status.

Person in a capacity of agent

Where a person is registered as a group employer acting on behalf of two or more employers, the person is required to make payments to the Commissioner according to the respective remittance status of each employer for whom the person acts.

That is, provided the salary or wages is paid, and PAYE deductions are made, by the principal for whom the person acts, the PAYE, PPS and RPS deductions of each principal (or of the company group if the principal is a group company) in a financial year, will determine the remitter status of that principal and the obligations of the agent. The deductions of the

principals are not added together to determine a single remitter status such as in the case of a company group.

Therefore, if the deductions of one principal exceed \$1 million in a financial year (or the principal is a group company in a company group whose collective deductions exceed \$1 million), that principal will be a large remitter and the agent will be required to remit according to the large remitter provisions. However, this will not have the effect of making all other principals large remitters. If another principal has deductions of \$600,000 in a financial year, that principal will be a medium remitter and the agent will be required to remit according to the medium remitter provisions. Similarly, the agent will also have a separate remitter status of its own if, acting on its own account, it makes deductions PAYE, PPS and RPS.

Example

RF is a group employer acting on behalf of 4 employers in respect of whom annual deductions are as follows: EST Ltd - \$1,200,000, AX - \$800,000, AV - \$200,000 and Y - \$10,000. Individually, EST Ltd would satisfy the large remitter status, AX and AV would each satisfy the medium remitter status and Y would not satisfy the requirements for large or medium remitter status and would therefore be a small remitter. RF would therefore be required to make payments to the Commissioner as:

- *a large remitter in respect of payments on behalf of EST Pty Ltd;*
- *a medium remitter in respect of payments on behalf of AX and AV; and*
- *a small remitter in respect of payments on behalf of Y.*

When must payments be made?

Payments must be sent in sufficient time for them to be received by the Commissioner, in the ordinary course of events, on or before the payment day specified in the table below.

| Day amounts deducted | Payment day |
|----------------------|------------------------------------|
| Saturday or Sunday | The second Monday after that day |
| Monday or Tuesday | The first Monday after that day |
| Wednesday | The second Thursday after that day |
| Thursday or Friday | The first Thursday after that day |

This means that if deductions are made on Saturday, Sunday, Monday or Tuesday then the payment is to be paid by the following Monday. Similarly if deductions are made on Wednesday, Thursday or Friday, then the payment is to be paid by the following Thursday.

How are payments to be made?

If you are a large remitter you must make payments to the Commissioner by a means of EFT approved in writing by the Commissioner. The Commissioner accepts the Direct Debit and Direct Credit methods of EFT.

Non-electronic payment penalty (NEPP)

A large remitter, excluding a government body, that pays an amount other than by EFT is liable to pay the General Interest Charge (GIC) on the amount for each day in the period that:

- started at the beginning of the day by which the payment was due to be paid; and
- finishes at the end of the 6th day after that day.

If the amount of the general interest charge is less than \$500, the large remitter is instead liable to pay a penalty of \$500.

Example

A large remitter pays deductions of \$1.5 million by cheque to the Commissioner by the relevant due date.

NEPP is the greater of:

(a) \$500; or

(b) \$3,689.35

Assuming the Treasury Note yield rate for the quarter is 4.80%, then the daily general interest charge rate that will accrue on this outstanding amount can be worked out as follows:

$$(4.80\% + 8\%) / 365 = .0351\%$$

where:

- *4.80% equals the Treasury Note yield rate for the quarter;*
- *8% represents the 8 percentage point uplift factor required under new s.8AAD(1) of the TAA; and*
- *365 represents the number of days in the calendar year.*

The following table illustrates how the GIC accrues:

| <i>Date</i> | <i>Balance</i> | <i>GIC rate</i> | <i>Daily GIC</i> | <i>Final Balance</i> |
|-----------------------|-----------------------|-----------------|--------------------------|-----------------------|
| <i>20 August 1999</i> | <i>\$1,500,000.00</i> | <i>x .0351%</i> | <i>= \$526.50</i> | <i>\$1,500,526.50</i> |
| <i>21 August 1999</i> | <i>\$1,500,526.50</i> | <i>x .0351%</i> | <i>= \$526.68</i> | <i>\$1,501,053.18</i> |
| <i>22 August 1999</i> | <i>\$1,501,053.18</i> | <i>x .0351%</i> | <i>= \$526.87</i> | <i>\$1,501,580.05</i> |
| <i>23 August 1999</i> | <i>\$1,501,580.05</i> | <i>x .0351%</i> | <i>= \$527.05</i> | <i>\$1,502,107.10</i> |
| <i>24 August 1999</i> | <i>\$1,502,107.10</i> | <i>x .0351%</i> | <i>= \$527.23</i> | <i>\$1,502,634.33</i> |
| <i>25 August 1999</i> | <i>\$1,502,634.33</i> | <i>x .0351%</i> | <i>= \$527.42</i> | <i>\$1,503,161.75</i> |
| <i>26 August 1999</i> | <i>\$1,503,161.75</i> | <i>x .0351%</i> | <i>= <u>\$527.60</u></i> | <i>\$1,503,689.35</i> |
| | | | <i>\$3689.35</i> | |

Remission of NEPP

The Commissioner may remit the whole or any part of a NEPP, if satisfied that:

- the circumstances that contributed to the non-electronic payment **were not** caused directly or indirectly by an act or omission of the payer, and the payer has taken reasonable action to lessen, or lessen the effects, of those circumstances;
- the circumstances that contributed to the non-electronic payment **were** caused directly or indirectly by an act or omission of the payer, and the payer has taken reasonable action to lessen, or lessen the effects, of those circumstances and in the circumstances it is fair and reasonable to remit all or part of the penalty; or
- there are special circumstances which make it fair and reasonable to remit all or part of the penalty.

Review and appeal rights

If you are dissatisfied with any of the following decisions, you may object against the decision in the manner set out in Part IVC of the Taxation Administration Act 1953:

- a refusal to determine that a person is not a large remitter;
- a decision to revoke or vary a determination that a person is not a large remitter; or
- a determination that a person is a large remitter.

Do you need more information?

If you have any questions or need more information about the obligations of large remitters please contact your local Large Client Team.

The contact numbers for each Large Client Team are listed below. The number for your team can also be found on the inside cover of your PAYE or PPS Payment Book.

Large Client Team telephone and facsimile numbers

New South Wales region

| Team | Telephone | Facsimile |
|--------------|--------------|--------------|
| Sydney | 02 9374 2506 | 02 9374 2430 |
| Sydney North | 02 9374 2388 | 02 9374 2387 |
| Hurstville | 02 9374 1212 | 02 9374 1468 |
| Parramatta | 02 9354 6480 | 02 9354 3889 |

Victorian region

| Team | Telephone | Facsimile |
|--------------|--------------|--------------|
| Box Hill | 03 9275 2494 | 03 9275 2915 |
| Dandenong | 03 9212 1970 | 03 9215 3440 |
| Moonee Ponds | 03 9275 5330 | 03 9275 4989 |

Other States

| Team | Telephone | Facsimile |
|------------------------|--------------|--------------|
| Brisbane (Queensland) | 07 3213 6577 | 07 3213 6522 |
| Cannington (Perth WA) | 08 9268 0006 | 08 9268 6401 |
| Weymouth (Adelaide SA) | 08 8208 3014 | 08 8208 3918 |

Produced by the Small Business Line of the Australian Taxation Office
NAT2740-7.99

