

PAYE Bulletin 4 - Group employer early remitter provisions An Employer's guide

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Number 4

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Valid from February 1997

About this bulletin

This bulletin explains which group employers are "early remitters" and discusses their obligations. These obligations are set out in section 221EC of the *Income Tax Assessment Act*.

Who is an early remitter

A group employer is an early remitter if any of the following conditions apply:

- (1) the total pay-as-you-earn (PAYE) remittances of the group employer for any previous financial year (1988/89 onwards) exceeded \$1 million;
- (2) at the end of any financial year (1988/89 onwards);
 - (a) the group employer was included in an eligible employer group; and
 - (b) the total PAYE remittances for the eligible employer group for that financial year exceeded \$1 million;
- (3) the Commissioner has served a notice on the group employer notifying that the employer is an early remitter.

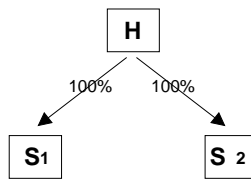
What is meant by the term "eligible employer group"

An eligible employer group consists of any collection of 2 or more companies, each of which is a group company in relation to each of the others.

A company is a group company where:

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

Example 1

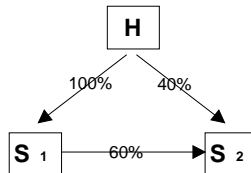


Each of the companies, H, S1 and S2 is in a group company relationship with each other. The group is an eligible employer group.

A company (**S1**) is said to be a subsidiary of another company (**H**) if **all the shares** of **S1** are beneficially owned by

- the holding company (**H**);
- one or more companies that are subsidiaries of the holding company (**H**); or
- the holding company (**H**) and one or more companies that are subsidiaries of (**H**).

Example 2

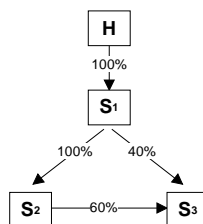


Both S1 and S2 are subsidiaries of H. The group is an eligible employer group.

Note: S2 is a subsidiary of H because it is wholly owned by H and S1 (S1 is a subsidiary of H).

If a company (**S1**) is a subsidiary of a company (**H**), any company which is a subsidiary of **S1** (e.g. **S2** or **S3**) is also a subsidiary of **H**.

Example 3



S1 is clearly a subsidiary of H.

S2 is a subsidiary of H because its shares are wholly owned by S1 (a subsidiary of H).

S3 is a subsidiary of H because its shares are wholly owned by S1 and S2 both of which are subsidiaries of H.

All three companies are in a group company relationship with each other and therefore the group is an eligible employer group.

What is meant by the term "PAYE remittances"

The definition of an early remitter on page 1 refers to the "PAYE remittances" of a group employer for a financial year. This term means the sum of the amounts that the group employer was *required* to pay to the Commissioner in respect of Tax Instalment Deductions (TIDs) made during the financial year. Amounts which are deducted in the relevant financial year and remitted to the Commissioner in the next financial year are included in the amount for the relevant year.

For an eligible employer group, the "total PAYE remittances" means the sum of the PAYE remittances of all the companies which were members of the group at the **end** of the financial year. This applies regardless of whether or not the companies were members of the group for the whole year. Even though a company may become part of a group during the year, its PAYE remittances for the whole financial year are taken into account in determining the PAYE remittances of the group.

Example 4

S2 is a company which became part of a group on 1 June 1996. The PAYE remittances of the companies for the year ended 30 June 1996 were as follows:

H \$600,000

S1 \$300,000

S2 \$200,000

Each company (H, S1, and S2) becomes an early remitter in the 1996/97 financial year.

Remittance obligations of an early remitter

Where TIDs are made during the first 14 days of a month, an early remitter is required to pay the amount deducted to the Commissioner no later than the 21st day of that month. Any tax instalments deducted during the rest of the month must be paid to the Commissioner no later than the 7th day after the end of that month.

Table 1

<i>Instalments deducted</i>	<i>Remittances due</i>
<i>First 14 days of month</i>	<i>21st day of that month</i>
<i>15th day of month to end</i>	<i>7th day of next month</i>

This means that if payments of salary or wages are made in both the first half (first 14 days of month) and the second half of the month (15th day to end of month), an early remitter is required to pay TIDs to the Commissioner on a twice-monthly basis.

Where an early remitter pays salary or wages either:

- on only one day in the month; or
- on several days in only one half of the month,

the due date for payment of the TIDs would depend on whether the TIDs were made in the first or the second half of the month.

Example 5

ABC Ltd is an early remitter that pays wages monthly to different workers on the 7th and 8th day of each month. The company is required to remit the TIDs each month on the 21st day of the month that the deductions are made.

Discretion to make an employer an early remitter

The Commissioner has the authority to require an employer to be an early remitter even though the employer might not otherwise meet the requirements. This authority would only be used to counter arrangements intended to avoid the application of the early remitter provisions. In any such case, the Commissioner is required to serve a written notice on the group employer to this effect.

Discretion to make an employer NOT an early remitter

The Commissioner also has the authority to determine that an employer is not an early remitter. This discretion will only be exercised in limited circumstances.

In deciding whether to exercise this discretion, some of the facts that the Commissioner will consider are:

- (1) the permanency of any change in the number of employees in respect of whom TIDs are deducted and/or in the amount of TIDs;
- (2) the location of the employer;
- (3) any undue costs that would be placed on the employer in complying with the law; and
- (4) where a group employer is acting on behalf of two or more employers, the remittance levels of those employers.

This discretion will not be exercised merely because a group employer only pays salary or wages on a monthly basis. Nor will this discretion be exercised if requested on the basis that compliance with the obligations would create a cash flow problem for the employer.

(1) Permanent reduction in number of employees and the amount of TIDs

Where the number of employees and/or the amount of TIDs are going to be reduced on a permanent basis, such that the PAYE remittances of the group employer will fall below the \$1 million threshold, the Commissioner will generally exercise the discretion to determine that the group employer is no longer an early remitter.

Example 6

Company Z has operated under a long-term contract and has deducted over \$1 million in TIDs in previous financial years. In December most of the work in respect of that contract was completed and only a small number of staff will remain employed. It is expected that the total PAYE remittances for the current financial year will not reach \$1 million.

As the annual sum of TIDs is likely to be less than \$1 million on an ongoing basis, the Commissioner may exercise the discretion to determine that the group employer is no longer an early remitter.

(2) Location of the employer

Where a group employer can demonstrate to the Commissioner that it will incur **substantial** additional costs in complying with the early remitter obligations as a direct result of the employer having work sites in remote areas, the Commissioner may determine that the employer is not an early remitter.

(3) Undue imposition of costs

Group employers may request that the Commissioner exercise this discretion on the basis that complying with the early remitter provisions would place an undue cost on them. Group employers would need to establish that the cost of complying with these provisions would far exceed that which would be considered normal. What is considered normal will depend on the facts of each case, taking into account the size of the group employer, the type of business and the industry in which it is operating.

Example 7

A company which remits on a quarterly basis is taken over and becomes part of an eligible employer group. After the takeover, the company continues to administer its financial affairs separately. In order to comply with the early remitter requirements, the company needs to acquire a new accounting system or engage a book-keeper whereas at present, the books are kept manually. The discretion may be exercised in this case.

(4) Group employer acting on behalf of two or more employers

Where a group employer is acting on behalf of two or more employers and each of those employers would not otherwise satisfy the definition of an early remitter, then the Commissioner may determine that the person registered as a group employer will not be an early remitter.

It would need to be the case that each employer individually would not deduct tax instalments in excess of \$1 million or, if a member of an eligible employer group, the eligible employer group (of whom the employer is a member) would not deduct tax instalments in excess of \$1 million annually.

Where an employer on whose behalf the group employer is acting would, either individually or by reason of membership of an eligible employer group, satisfy the early remitter definition, the group employer would be an early remitter in respect of that employer.

When requesting the exercise of the discretion in these circumstances the group employer should provide name and address details of the employers for whom the group employer is acting.

Example 8

*RF is a group employer acting on behalf of 4 employers in respect of whom annual remittances are as follows: EST Ltd - \$1,200,000, AX - \$800,000, AV - \$200,000 and Y - \$10,000. Individually, EST Ltd would satisfy the early remitter definition, but AX, AV and Y would not individually satisfy the early remitter definition. The Commissioner may exercise the discretion so that RF is **not** an early remitter in respect of remittances for AX, AV and Y. However, RF would be an early remitter only in respect of remittances for EST Pty Ltd.*

Notification and duration of Commissioner's determination

Where the Commissioner makes a determination that a group employer either is or is not an early remitter, the group employer 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 those changes. It is the group employer's responsibility to notify the Commissioner of such changes.

Notice required from an early remitter group employer

On becoming an early remitter, a group employer must, on or before 14 August in that year, notify the Commissioner of that fact. This is the same date that the Reconciliation Statement is due.

The notice to the Commissioner must specify:

- the full name, any trading name and the postal address of the employer;
- each group registration number of the employer;
- name and telephone number of a contact person; and
- if the employer is a member of an eligible employer group, the name and registration number of each member of the group.

An early remitter for the first time would commence making remittances up to twice-monthly in respect of deductions made on and from 1 September of that year (see discussion of remittance obligations above). The early remitter status does not take effect until that time.

Example 9

The level of PAYE remittances for ABD Pty Ltd exceeded \$1 million for the first time in the year ended 30 June 1996. ABD Pty Ltd must notify the Commissioner by 14 August 1996 that it is an early remitter.

Deductions would be due on:

- * 7/8/96 for July 1996
- * 7/9/96 for August 1996 - then twice-monthly as follows
- * 21/9/96 for period from 1-14 September
- * 7/10/96 for period from 15-30 September
- * 21/10/96 for period from 1-14 October and so on.

Penalty Provisions

Where an employer, on becoming an early remitter, fails to give notice of that fact to the Commissioner on or before 14 August, the employer may have committed an offence. A maximum fine of \$50 may be imposed for each day commencing on 15 August of the relevant year until the day before the notice is given.

Review and Appeal Rights

The *Income Tax Assessment Act* does not include any provision for an employer to object or seek a review of the Commissioner's determination that the employer either is or is not an early remitter.

Review rights are however, available under the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR)) by application to the Federal Court of Australia. Where the reasons for an adverse decision have not been furnished, section 13 of the AD(JR) Act provides for a person to request from the Commissioner a statement of reasons for the decision so made.

Do you need more information?

If you have any questions or need more information about PAYE, please contact your local Tax Office.

- **by phone:** on our national enquiry number - 13 28 66. You can ring this number from anywhere in Australia for the cost of a local call.
- **in person** by visiting the enquiry counter at your nearest Tax Office. Tax Office addresses are listed in TaxPack, as well as in your White Pages telephone directory.¹

¹ Produced by the Withholding and Indirect Taxes Program of the Australian Taxation Office.