Australian Government
Australian Taxation Office

New legislation

- https://www.ato.gov.au/General/New-legislation/
- Last modified: 12 Mar 2020
- QC 43471

Guidance on tax and superannuation measures

When new tax and superannuation measures and legislation are introduced, we provide practical guidance for taxpayers deciding whether to follow the existing law or attempt to anticipate the proposed changes.

We also provide advice about our administrative approach to specific proposed law changes.

Our advice covers the options available to taxpayers and the consequences of choosing particular options. It also covers what action, if any, we'll take during the period until the final outcome of a proposed law change is known.

Use the links below for more information:

- The Australian Government's Economic Response to Coronavirus
- Latest news on tax law and policy
- How laws are made
- ATO and Treasury roles
- Administrative treatment of retrospective legislation
- Lodgment and payment obligations and related interest and penalties
- Law companion rulings

Note: The 'In detail' section in the left menu provides links to legislation and supporting documents for specific new measures and, where available, details of the ATO's proposed administrative approach in the lead up to implementation of the relevant legislation.

The Australian Government's economic response to coronavirus

- https://www.ato.gov.au/General/New-legislation/The-Australian-Government-s-Economic-Response-to-Coronavirus/
- Last modified: 24 Mar 2020
- QC 61758

On 12 and 22 March 2020, the government announced measures to help the economy withstand and recover from the economic impact of COVID-19 (coronavirus). The following measures will be administered by the ATO.

These measures are now law.

On this page:

Enhancing the instant asset write-off

The government is increasing the instant asset write-off (IAWO) threshold from $30,000 to $150,000 and expanding access to include businesses with aggregated annual turnover of less than $500 million (up from $50 million).

Timing

This proposal applies from 12 March 2020 until 30 June 2020, for new or second-hand assets first used, or installed ready for use in this timeframe.

Enhancing the IAWO will require legislative changes before it can take effect.

Backing business incentive

The government is introducing a time limited 15-month investment incentive to support business investment and economic growth over the short-term, by accelerating depreciation deductions.

A deduction of 50% of the cost of an eligible asset on installation will apply, with existing depreciation rules applying to the balance of the asset's cost.

Eligibility

Eligible businesses are businesses with aggregated turnover below $500 million.

Eligible assets are new assets that can be depreciated under Division 40 of the *Income Tax Assessment Act 1997* (that is, plant, equipment and specified intangible assets, such as patents). This does not apply to second-hand Division 40 assets, or buildings and other capital works depreciable under Division 43.

Timing

This applies to assets acquired after announcement and first used or installed by 30 June 2021.

Boosting cash flow for employers

As announced on 22 March, the government is providing up to $100,000 to eligible small and medium sized businesses and not-for-profits (including charities) that employ people, with a minimum payment of $20,000. These payments will help business and not-for-profit cash flow so they can keep operating, pay their bills and retain staff.

Small and medium sized business entities with aggregated annual turnover under $50 million and that employ workers are eligible. Not-for-profit entities (NFPs), including charities, with aggregated annual turnover under $50 million and that employ workers will now also be eligible. This will support employment activities at a time where NFPs are facing increasing demand for services.

Under the enhanced scheme, employers will receive a payment equal to 100% of their salary and wages withheld (up from 50%), with a:

- minimum payment of $10,000
- maximum payment of $50,000.

An additional payment is also being introduced in the July – October 2020 period. Eligible entities will receive an additional payment equal to the total of all the Boosting Cash Flow for Employers payments they have received. This means that eligible entities will receive at least $20,000, up to a total of $100,000 under both payments. This additional payment continues cash flow support over a longer period:

- increasing confidence
- helping employers to retain staff
- helping entities to keep operating.

The cash flow boost provides a tax-free payment to employers. We will automatically calculate it.

Eligibility for Boosting Cash Flow for Employers payments

Small and medium sized business entities and NFPs with aggregated annual turnover under $50 million and that employ workers will be eligible. Eligibility will generally be based on prior year turnover.

We will deliver the payment as an automatic credit in the activity statement system from 28 April 2020 upon employers lodging eligible upcoming activity statements.

Eligible employers that withhold tax to the ATO on their employees' salary and wages will receive a payment equal to 100% of the amount withheld, up to a maximum payment of $50,000.

Eligible employers that pay salary and wages will receive a minimum payment of $10,000, even if they are not required to withhold tax.

The payments will only be available to active eligible employers established before 12 March 2020. However, charities that are registered with the Australian Charities and Not-for-profits Commission will be eligible regardless of when they were registered, subject to meeting other eligibility requirements. This recognises that new charities may be established in response to COVID-19.

Eligibility for additional payment

To qualify for the additional payment, the entity must continue to be active.

Monthly activity statement lodgers

For monthly activity statement lodgers, the additional payments will be delivered as an automatic credit in the activity statement system. This will be equal to a quarter of their total initial Boosting Cash Flow for Employers payment following the lodgment of their June 2020, July 2020, August 2020 and September 2020 activity statements (up to a total of $50,000).

Quarterly activity statement lodgers

For quarterly activity statement lodgers the additional payments will be delivered as an automatic credit in the activity statement system. This will be equal to half of their total initial Boosting Cash Flow for Employers payment following the lodgment of their June 2020 and September 2020 activity statements (up to a total of $50,000).

Timing of Boosting Cash Flow for Employers payments

The Boosting Cash Flow for Employers payment will be applied to a limited number of activity statement lodgments. We will deliver the payment as a credit to the entity upon lodgment of their activity statements. If this places the entity in a refund position, we will deliver the refund within 14 days.

Quarterly lodgers

Eligible period	Lodgment due date
Quarter 3 (January, February and March 2020)	28 April 2020
Quarter 4 (April, May and June 2020)	28 July 2020
March 2020	21 April 2020
April 2020	21 May 2020
May 2020	22 June 2020
June 2020	21 July 2020

Monthly lodgers

Eligible period	Lodgment due date
March 2020	21 April 2020
April 2020	21 May 2020
May 2020	22 June 2020
June 2020	21 July 2020

Quarterly lodgers will be eligible to receive the first payments for the quarters ending March 2020 and June 2020.

Monthly lodgers will be eligible to receive the first payments for the March 2020, April 2020, May 2020 and June 2020 lodgments. To provide a similar treatment to quarterly lodgers, the payment for monthly lodgers will be calculated at three times the rate (300%) in the March 2020 activity statement.

The minimum payment will be applied to the entities' first lodgment.

Timing of additional payment

The additional payment will be applied to a limited number of activity statement lodgments. We will deliver the payment as a credit to the entity upon lodgment of their activity statements. If this places the entity in a refund position, we will deliver the refund within 14 days.

Quarterly lodgers

Eligible period	Lodgment due date
Quarter 4 (April, May and June 2020)	28 July 2020
Quarter 1 July, August and September 2020)	28 October 2020

Monthly lodgers

Eligible period	Lodgment due date
June 2020	21 July 2020
July 2020	21 August 2020

August 2020	21 September 2020
September 2020	21 October 2020

Quarterly lodgers will be eligible to receive the additional payment for the quarters ending June 2020 and September 2020. Each additional payment will be equal to half of their total initial Boosting Cash Flow for Employers payment (up to a total of $50,000).

Monthly lodgers will be eligible to receive the additional payment for the June 2020, July 2020, August 2020 and September 2020 lodgments. Each additional payment will be equal to a quarter of their total initial Boosting Cash Flow for Employers payment (up to a total of $50,000).

Temporary early release of superannuation

The government is allowing individuals affected by the coronavirus to access up to $10,000 of their superannuation in 2019–20 and a further $10,000 in 2020–21. Individuals will not need to pay tax on amounts released and the money they withdraw will not affect Centrelink or Veterans' Affairs payments.

From mid-April 2020, eligible individuals will be able to apply online through myGov to access up to $10,000 of their superannuation before 1 July 2020. They will also be able to access up to a further $10,000 from 1 July 2020 for approximately three months.

Eligibility

To apply for early release, you must satisfy any one or more of the following requirements:

- You are unemployed.
- You are eligible to receive a job seeker payment, youth allowance for jobseekers, parenting payment (which includes the single and partnered payments), special benefit or farm household allowance.
- On or after 1 January 2020, either
  - you were made redundant
  - your working hours were reduced by 20% or more
  - if you are a sole trader, your business was suspended or there was a reduction in your turnover of 20% or more.

How to apply

If you are eligible for this new ground of early release, you can apply directly to the ATO through the myGov website: my.gov.au. You will need to certify that you meet the eligibility criteria.

After we have has processed your application, we will issue you with a determination. We will also provide a copy of this determination to your superannuation fund, which will advise them to release your superannuation payment. Your fund will then make the payment to you, without you needing to apply to them directly. However, to ensure you receive your payment as soon as possible, you should contact your fund to check that they have your correct details, including your current bank account details and proof of identity documents.

Separate arrangements will apply if you are a member of a self-managed superannuation fund (SMSF). Further guidance will be available on our website.

Timing

You will be able to apply for early release of your superannuation from mid-April 2020.

Temporarily reducing superannuation minimum drawdown rates

The government is temporarily reducing superannuation minimum drawdown requirements for account-based pensions and similar products by 50% for 2019–20 and 2020–21. This measure will benefit retirees holding these products by reducing the need to sell investment assets to fund minimum drawdown requirements.

The government is also reducing both the upper and lower social security deeming rates by a further 0.25 percentage points in addition to the 0.5 percentage point reduction to both rates announced on 12 March 2020.

Superannuation changes

Age	Default minimum drawdown rates (%)	Reduced rates by 50% for the 2019–20 and 2020–21 income years (%)
Under 65	4	2
65 to 74	5	2.5
75 to 79	6	3
80 to 84	7	3.5
85 to 89	9	4.5
90 to 94	11	5.5

95 or more	14	7

More information

For more information on the Australian Government's economic response to coronavirus, visit treasury.gov.au/coronavirus.

Businesses can visit business.gov.au to find out more about how the economic response complements the range of support available to small and medium businesses.

Latest news on tax law and policy

- https://www.ato.gov.au/General/New-legislation/Latest-news-on-tax-law-and-policy/
- Last modified: 11 Mar 2020
- QC 43473

On this page:

- MYEFO 2019–20
- Budget 2019–20

MYEFO 2019–20

The government handed down the 2019–20 Mid-Year Economic and Fiscal Outlook (MYEFO) on 16 December 2019, with several proposed changes to tax and superannuation laws. You can access the MYEFO papers on budget.gov.au.

Measure name	Proposed start date	Developments
Whole-of-Government Digital Initiatives This builds on the 2019–20 Budget measure Continued Funding for GovPass – Trusted Digital Identity.	TBA	TBA
New Deregulation Agenda (Modernising	3 February 2020	TBA

Business Registers and Director Identification Numbers)		
Combatting Illegal Phoenixing – reducing the impact of illegal phoenixing on businesses, employees and government	TBA	TBA
Black Economy – assisting business to meet their record keeping obligations	3 months post royal assent	TBA
Black Economy – introducing a sharing economy reporting regime The reporting regime will apply to: • Ride-sourcing and short term accommodation platforms from 1 July 2022. • Asset sharing, food delivery, task-based platforms, and other platforms (except for marketplaces) from 1 July 2023.	The reporting regime will apply to: • Ride-sourcing and short term accommodation platforms from 1 July 2022. • Asset sharing, food delivery, task-based platforms, and other platforms (except for marketplaces) from 1 July 2023.	TBA
Superannuation Guarantee Amnesty – extension of the amnesty period	24 May 2018	Treasury Laws Amendment (Recovering Unpaid Superannuation) Act no 21 2019 Royal assent on 6 March 2020
Superannuation – facilitating closure	From royal assent for voluntary transfers, requirement to transfer	TBA

of eligible rollover funds transfer	accounts: all accounts below $6,000 to the ATO by 30 June 2020, and all remaining accounts to the ATO by 30 June 2021	
National Tax Clinic Program	Extension to existing program	TBA
VET FEE-HELP Redress Measures Extension	1 July 2019	Higher Education Support Amendment (VET FEE-HELP Student Protection) Act No.160, 2018 Royal assent on 10 December 2018
Capital Gains Tax – main residence exemption for foreign tax residents – amendments	9 May 2017 with grandfathering extension to 30 June 2020	Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Act No.129, 2019 and Foreign Acquisitions and Takeovers Fees Imposition Amendment (Near-new Dwelling Interests) Act No. 126, 2019 Royal assent on 12 December 2019
Tax Integrity – deny deductions for vacant land – amendments	1 July 2019	Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act No. 95, 2019 Royal assent on 28 October 2019
Corporate Taxation – removing the tax on refunds of large-scale generation certificate shortfall charges	Royal assent	TBA

Corporate Taxation – Implementing the Timor-Leste Maritime Boundary Treaty	30 August 2019	Treasury Laws Amendment (Timor Sea Maritime Boundaries Treaty) Act No. 59, 2019 Royal assent on 7 August 2019
Tax integrity – improving the operation of the hybrid mismatch rules	1 January 2019	Consultation on this measure is available on the Treasury website .
Better Targeting the Research and Development Tax Incentive – refinements	1 July 2019	Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019 Introduced 5 December 2019
Philanthropy – updates to the list of specifically listed deductible gift recipients to include: • Friends of Myall Creek Memorial Inc. • Neighbourhood Watch Australasia Limited • Greek Orthodox Community of New South Wales Ltd • The Samuel Griffith Society • Toy Libraries Australia Incorporated.	1 July 2019	TBA
Superannuation Guarantee – salary	1 January 2020	Treasury Laws Amendment (2019

sacrifice integrity measures – change in start date		Tax Integrity and Other Measures No. 1) Act No. 95, 2019 Royal assent on 28 October 2019
Protecting Your Super Package – putting members' interests first – amendments	1 April 2020	Treasury Laws Amendment (Putting Members' Interests First) Act No. 46 2019 Royal assent on 2 October 2019

Budget 2019–20

The government handed down the 2019–20 Budget on 2 April 2019, with several proposed changes to tax and superannuation laws (see budget.gov.au).

Budget 2019–20 measures

Measure name	Proposed start date	Developments
Tax Integrity – extension and expansion of the ATO Tax Avoidance Taskforce on Large Corporates, Multinationals and High Wealth Individuals	1 July 2019	TBA
Tax Integrity – increasing engagement and on-time payment of tax and superannuation liabilities	1 July 2019	TBA
Black Economy – strengthening the Australian Business Number system	1 July 2021	TBA
Tax Integrity – clarifying the operation of the hybrid mismatch rules	2 April 2019 (integrity rule) 1 January 2019 (other elements)	Consultation on this measure is available on the Treasury website.
Tax Integrity – further consultation on amendments to Division 7A	Deferred from 1 July 2019 to 1 July 2020	TBA

Single Touch Payroll – Expansion	1 July 2020	TBA
Continued Funding for GovPass – Trusted Digital Identity	1 July 2018	TBA
Electronic Invoicing Adoption	1 July 2020	Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act No. 95, 2019 Royal assent on 28 October 2019
Increasing Analytical Capabilities	No formal start date	TBA
Reducing costs for the super industry by including superannuation release authorities in electronic SuperStream Rollover standard	31 March 2021	TBA
Superannuation – improving flexibility for older Australians	1 July 2020	TBA
Superannuation – reducing red tape for superannuation funds	1 July 2020	TBA
Superannuation – permanent tax relief for merging superannuation funds	1 July 2020	TBA
Protecting Your Super Package – putting members' interests first	1 October 2019	Treasury Laws Amendment (Putting Members' Interests First) Act No. 79, 2019 Royal assent on 2 October 2019
Protecting Your Super Package – amendment	1 July 2019	TBA
Lower taxes for hard-working Australians: Building on the Personal Income Tax Plan	1 July 2018 (Low and Middle Income Tax Offset) 1 July 2022 (Low	Treasury Laws Amendment (Tax Relief so working Australians keep more of their money) Act No.52, 2019 Royal assent on 5 July 2019

	Income Tax Offset)	
Personal income tax – increasing the Medicare levy low-income thresholds	1 July 2019	Treasury Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Act No.29, 2019 Royal assent on 5 April 2019
Closing the Gap refresh – Indigenous Youth Education Package	14 February 2019	TBA
Helping Small Business Grow – supporting small businesses with tax disputes	1 March 2019	TBA
Increasing and expanding access to the instant asset write-off	2 April 2019	Treasury Laws Amendment (Increasing and Extending the Instant Asset Write-Off) Act No. 51, 2019 Royal assent on 6 April 2019 For more information see What's new for small business
North Queensland Flood Recovery Package – tax treatment of qualifying grants	25 January to 28 February	Treasury Laws Amendment (North Queensland Flood Recovery) Act No. 30, 2019 Royal assent on 5 April 2019
Queensland storms – tax treatment of payments to primary producers	October 2018	Treasury Laws Amendment (North Queensland Flood Recovery) Act 2019 Royal assent on 5 April 2019
Luxury Car Tax – increased refunds for eligible primary producers and tourism operators	1 July 2019	Treasury Laws Amendment (2019 Measures No. 2) Act No. 94, 2019 Royal assent on

		28 October 2019
Indirect Tax Concession Scheme – diplomatic, consular and international organisation concessions	As specified by the Minister for Foreign Affairs	TBA
International Tax – signing the Australia-Israel Tax Treaty	After ratification by both countries	Treasury Laws Amendment (International Tax Agreements) Act No. 107, 2019 Royal assent on 28 November 2019
International Tax – updating the list of information exchange countries	1 January 2020	TBA
Philanthropy – updates to the list of specifically listed deductible gift recipients	1 July 2020	TBA
Philanthropy – extending deductible gift recipient status to Men's Sheds and Women's Sheds	1 July 2020	TBA

How laws are made

- https://www.ato.gov.au/General/New-legislation/How-laws-are-made/
- Last modified: 10 Dec 2015
- QC 43476

The legislation administered by us is created by parliament.

A proposed law, or amendment to an existing law, is introduced into parliament in the form of a Bill. A Bill must be passed in identical form by both houses of the parliament and then presented to the Governor-General for royal assent.

If no date is specified, the law is enacted 28 days after the Bill receives royal assent.

Legislative instruments are made under the authority of an Act. An Act may delegate or give power to make laws in the form of regulations, orders, by-laws or other instruments to a particular person, or body of people.

See also:

- For details of legislation currently before parliament, visit the Australian Parliament website.

ATO and Treasury roles

- https://www.ato.gov.au/General/New-legislation/ATO-and-Treasury-roles/
- Last modified: 16 Mar 2017
- QC 43474

The Treasury and the ATO are joint stewards of Australia's tax system and aspects of Australia's superannuation system.

The ATO's role is to effectively manage and shape the tax and superannuation systems to support and fund services for Australians.

In this role, we administer the tax law and key elements of the superannuation law, and provide advice to Treasury to support the development of tax legislative measures.

The Treasury is responsible for the design of the tax system and its components, and retirement income policy, in relation to economic efficiency, equity, income distribution, budgetary requirements and economic feasibility.

ATO and Treasury working arrangements

Our working arrangements with Treasury are governed by a Tax and Superannuation Protocol, which encourages collaboration and early engagement, assurance on the quality of new tax and superannuation law, and the earliest possible identification and communication of issues.

See also:

- ATO–Treasury protocol

Administrative treatment of retrospective legislation

- https://www.ato.gov.au/General/New-legislation/Administrative-treatment-of-

retrospective-legislation/
- Last modified: 10 Dec 2015
- QC 43477

Retrospective tax law changes have effect for a period before the date of enactment once the legislation is passed.

The announcement of proposed retrospective legislation poses a dilemma for affected taxpayers. Should they follow the existing law or anticipate the proposed change?

We provide practical guidance for taxpayers faced with this question, stating our administrative approach to particular retrospective law change proposals. Our advice covers the options available to taxpayers and the consequences of choosing particular options. It also covers how we will administer the law during the period until the final outcome of a proposed law change is known.

In determining what you should do when faced with proposed retrospective legislation, you will need to consider whether the proposed law may:

- increase your liabilities
- reduce your liabilities
- require you to take certain action.

Changes that increase taxpayers' liabilities

If a proposed law change would increase your liabilities, we have no authority to collect the new, or higher, liabilities until the relevant law is enacted or the legislative instrument is made.

You can self-assess your tax liability under the existing law, but if the law is ultimately changed retrospectively, you'll need to seek an amendment and pay the increased liability. So you may choose to make provision for these expected liabilities in the interim.

Our advice must always be that taxpayers can self-assess under the existing law. But, in these circumstances, we'll also point out the consequences if the law is ultimately changed retrospectively and taxpayers have previously self-assessed under the existing law.

We won't advise taxpayers to self-assess by anticipating the announced change will become law, but if taxpayers choose to do so, we won't apply our resources to checking whether these self-assessments are correct (in accordance with the existing law). This would be an inefficient use of resources.

Our advice will also deal with the interest and penalty consequences for taxpayers who have to amend or vary liabilities following a retrospective law change.

Changes that reduce taxpayers' liabilities

If a proposed law change would reduce your liabilities, you should self-assess under the existing law. If you choose to self-assess by anticipating an announced law change, we may not enforce compliance with the existing law. However, we will act to prevent incorrect refunds.

We advise taxpayers faced with self-assessing a liability that may eventually be affected by an announced, retrospective, law change to apply the existing law when self-assessing. This is because we can't tell people to ignore the existing law. However, the tax laws generally allow us to accept taxpayers' self-assessments.

We have the power to decide whether or not it would be an efficient, effective and ethical use of the ATO's resources to enforce compliance with the existing law where a taxpayer chooses to self-assess by anticipating an announced law change.

The one exception to this general rule applies if both the following conditions are met:

- Allowing taxpayers to anticipate an announced law change would be likely, in some cases at least, to result in a refund of tax.
- The Commissioner can, before a payment is made, reasonably identify particular taxpayers to whom a payment would be made who have applied the law incorrectly.

In these circumstances we are required to do whatever is reasonably possible to stop payment of the incorrect refunds.

Identifying taxpayers who have applied the law incorrectly

The most obvious cases where taxpayers can be identified as having potentially applied the law incorrectly is where a tax return or activity statement has a specific label for a new deduction that will become available when an announced law change is enacted.

We have other ways of identifying affected taxpayers, especially if the class of affected taxpayers is small (tens or hundreds rather than thousands), or data matching can be done with third party information.

In considering action to prevent incorrect refunds from being made in such circumstances, we take into account whether:

- there are likely to be long delays in passing the relevant legislation, which, for instance, might mean that if the legislation is ultimately not passed it would become difficult to recover any incorrect refunds that are made
- there is known opposition to the proposal in the Parliament, especially if the makeup of the Senate could allow the proposal to be defeated
- the announced change is not clear, which may lead to incorrect assessments that need to be amended
- current taxpayer behaviour is consistent with the proposed change
- delays in assessments could have adverse effects on business activities, including cash flow.

If we can't reasonably identify affected taxpayers even with significant effort, the Commissioner will not apply resources to enforce the existing law.

If we can identify affected taxpayers, we take whatever steps are reasonable to ensure that their assessments comply with the existing law, including:

- asking taxpayers to defer lodgment of affected returns or activity statements in some cases
- holding up returns or statements that have been lodged pending passage of the proposed law change
- stopping self-assessments and adjusting them before they are issued.

The actual steps taken will depend on the particular circumstances of the case.

Changes requiring taxpayers to act

If a proposed law change requires taxpayers to do something that they don't have to do under the existing law, we will publicly advise of what action they might need to take.

For instance, a proposed concession may require taxpayers to keep certain records, such as receipts, for expenditure that will attract the concession. Under the existing law, taxpayers may not keep such records, or be indifferent to whether they do. Or taxpayers may have to do something, like enter into a formal agreement, to either benefit from a proposed concession or avoid a potential liability under an announced change.

In cases like these, we publicly advise that the government has announced a proposed change to the law and inform taxpayers of any action they might need to take to ensure they will be able to meet any obligations or claim any entitlements that will retrospectively arise if the proposal is enacted.

For instance, we might explain that receipts for particular expenditure will need to be kept in order to claim a proposed new deduction or rebate.

Example

A law change was announced that had the effect of treating certain loans by companies to their shareholders as dividends if they weren't properly documented, including the terms for repayment, before the end of the financial year in which the loan was made. The proposed law change was to apply to the current income year, even though the legislation to give effect to the change was not likely to be enacted before the end of the income year.

We published advice on our website to the effect that companies and relevant shareholders should consider documenting any loans made in the current income year even though there was no legal requirement to do so, so that such loans were not retrospectively treated as dividends when the law change was eventually enacted.

See also:

- Lodgment and payment obligations and related interest and penalties

Lodgment and payment obligations and related interest and penalties

- https://www.ato.gov.au/General/New-legislation/Lodgment-and-payment-obligations-and-related-interest-and-penalties/
- Last modified: 10 Dec 2015
- QC 43478

This section sets out our administrative approach to lodgment and payment obligations and related charging of interest and penalties where taxpayers may be affected by the introduction of a new tax measure.

In this section:

- Lodgment deferral
- Payment deferral
- Failure to lodge (FTL) penalties
- If you lodge and self-assess in line with the existing law
- If you self-assess by anticipating an announced law change
- If the announced law change is not enacted

Lodgment deferral

We apply a risk-based approach on a measure-by-measure basis to determine whether to allow specific taxpayers to defer lodgment of tax returns due to special circumstances arising from the introduction of a new measure.

Payment deferral

Generally, our debt management policy, as set out in PS LA 2011/14 General Debt collection powers and principles, applies in relation to new measures. In most cases, we will not defer the due date for payment merely because the new measure imposes new payment obligations. However, we will consider arrangements to pay by instalments, depending on the measure or the taxpayer's circumstances.

Failure to lodge (FTL) penalties

We seldom remit FTL penalties based solely on taxpayers failing to lodge because they expect their lodgment obligations to change as a consequence of new legislation. We will only consider doing this on a case-by-case basis after taking the taxpayer's circumstances into account.

Further, the question of FTL penalties would only arise in cases where the question of deferral of the lodgment due date had not been considered at an earlier point.

If you lodge and self-assess in line with the existing law

If you lodge a return or activity statement in accordance with the existing law and later amendments or revisions are required because of the effect of a retrospective law change and the amendments or revisions:

- reduce your liability, we will pay appropriate interest on any overpayment
- increase your liability
  - no tax shortfall penalties will apply
  - any interest attributable to the shortfall will be remitted to nil up to the date of enactment of the law change
  - any interest accruing after the date of enactment will be remitted if you actively sought to amend your assessments or revise your activity statements within a reasonable time after the enactment of the law change (a reasonable time to be determined on a case-by-case basis).

If you self-assess by anticipating an announced law change

If you lodge a return or activity statement, anticipating an announced law change and the retrospective law changes:

- are as anticipated, your self assessment will not be affected
- are not as anticipated (for instance, because amendments were made to the relevant legislation during the parliamentary process), you'll need to make an amendment or revision.

If you make an amendment or revision and it:

- reduces your liability, we will pay appropriate interest on any overpayment
- increases your liability
  - no tax shortfall penalties will apply, on the basis that it is reasonable for a taxpayer to follow an announced government proposal to change the law and that the existence of such an announcement represents special circumstances
  - any interest accrued will be remitted to the base interest rate up to the date of enactment of the relevant law change
  - any interest in excess of the base rate accruing after the date of enactment will be remitted if you actively seek to amend assessments or revise activity statements within a reasonable time after enactment of the law change ('a reasonable time' to be determined on a case-by-case basis).

If the announced law change is not enacted

On rare occasions an announced law change may not be enacted – for example, because it is rejected altogether by the parliament. Some taxpayers may have lodged returns or activity statements anticipating the announced law change. Other taxpayers may have lodged and self-assessed under the existing law but delayed payment of a liability in anticipation that it would be removed by the announced law change.

In these cases we will publicly advise taxpayers that the law has not been enacted, explaining the relevant circumstances and the need for affected taxpayers to seek amendments to their assessments or lodge revised activity statements as necessary and make any consequent tax payments.

If you need to make an amendment or revision, the interest and penalty consequences will be as outlined above, depending on whether you self-assessed by anticipating the announced change or not. The interest consequences for delayed payments will be similar, although we won't apply penalties.

Find out more:

- Practice Statement Law Administration (PSLA) 2007/3: Remission of penalty for failure to comply with obligations in relation to tax invoices, adjustment notes or third party adjustment notes
- Practice Statement Law Administration (PSLA) 2007/4: Remission of penalty for failure to comply with GST registration obligations
- Practice Statement Law Administration (PSLA) 2007/11: Administrative treatment of taxpayers affected by announced but unenacted legislative measures, which will apply retrospectively when enacted

Next steps:

- Latest news on tax law and policy
- How laws are made

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.