# client alert | explanatory memorandum

November 2023

**CURRENCY:**

This issue of **Client Alert** takes into account developments up to and including 27 October 2023.

## Upcoming changes for pension and income support recipients

As a part of the government's strategy to get more people back into work to solve skills shortages being experienced by many industries, a permanent enhancement to the pensioner work bonus has been announced, along with a doubling of the employment income nil rate period to reduce barriers for income support recipients to take up work.

Under the Age Pension income tests, a single individual can earn up to $204 per fortnight and a couple up to $360 per fortnight before the amount of pension starts to reduce at a rate of 50 cents for every dollar over the respective thresholds. The work bonus for pensioners reduces the amount of eligible income that is included in the income test, meaning that pensioners can earn more before their pensions are reduced. It accrues at a rate of $300 per fortnight up to the maximum limit.

The maximum work bonus balance limit is $11,800 from the period 1 December 2022 to 31 December 2023. During this period, pensioners are also eligible for a one-off increase of $4,000 to their work bonus balance. The maximum work bonus balance limit was temporarily increased from the previous limit of $7,800 as a result of the Jobs and Skills Summit and was set to expire 1 January 2024 without the introduction of legislation to extend it.

**Example**

Grace is on the Age Pension and is on a short-term contract working in a part-time capacity. She earns $450 per fortnight and has accrued a $6,000 work bonus balance. Each fortnight, Services Australia will reduce the amount of Grace's income first by $300, which is how much is accrued each fortnight. It will then reduce the remaining $150 by the work bonus balance that she has. This means that until Grace's work bonus balance reaches zero, her pension will not be affected by her working this short-term contract.

To enable to continuation of the measure, the government has announced that, pending the passage of legislation, all new pension entrants over the Age Pension age and eligible veterans will have a starting work bonus income bank balance of $4,000. In addition, existing and new eligible recipients will retain the current elevated maximum work bonus limit of $11,800, all set to commence from 1 January 2024.

To complement the work bonus measure, the government has also announced the doubling of the employment income nil rate period to 12 fortnights and will expand access to those who enter full-time employment from 1 July 2024, pending the passage of legislation. Currently, if an income support recipient earns employment income over a certain amount, the income support payment is reduced to nil, and after six fortnights the support payment is cancelled if the employment income is still too high.

This has led many people to lose access to concession cards, child care subsidies and other supplementary payments as well as having to reapply and wait for income support again if their employment opportunity falls through. The government sees this as a disincentive to taking up work, particularly short-term, casual or gig economy work. Avoiding these types of opportunities may mean that jobseekers could miss out on opportunities and valuable skills which could be transferred later to a more permanent job.

According to the government the cost of making the work bonus permanent is set to cost $42.4 million through to 2026–2027, and to benefit around 195,000 individuals. The cost of doubling the employment income nil rate is projected to cost $42.8 million through to 2026–2027. Both of these measures were announced as a part of the release of the Employment White Paper commissioned by the government.

*Source: https://treasury.gov.au/employment-whitepaper/final-report*

## Sharing economy reporting regime for platform operators

Individuals participating in the sharing economy should be aware that transactions for supplying taxi travel/ride sourcing and short-term accommodation are now required to be reported under the sharing economy reporting regime (SERR). Generally, all operators of electronic distribution platforms (EDPs) must report transactions made through their platform. While the reporting requirements ostensibly apply to the

platforms, the regime is expected to heavily affect individual taxpayers who work in the sharing economy, with the information obtained through the program to be used in ATO data matching and compliance projects.

The SERR has now commenced for the 2023–2024 income year. Only transactions for supplying taxi travel/ride sourcing and short-term accommodation need to be reported under the regime. However, from 1 July 2024, the SERR will apply to all other reportable transactions of EDP operators, including hiring of assets (consisting of hire of personal assets, storage or business space), food delivery and professional performing tasks and activities will need to be reported.

Generally, all operators of EDPs must report transactions made through their platform. An EDP is defined as any service that allows sellers to make supplies available to buyers and is delivered via electronic communication (eg website, internet portal, gateway, application, online store, marketplace). It should be noted that platforms that solely provide carriage services that transmit electronic communications, access to payment systems or payment processing services, or advertising that makes customers aware of products and links to them to a merchant's website, are not considered to be EDPs.

For example, consider a platform that merely provides a connection between a seller and an end-user, say for services, but transactions are not accepted through the website, and the entity is required to contact the end-user themselves (eg platforms where individuals requiring trades can input the details of work they're looking to have done and tradespeople can bid for a jobs by directly contacting end-users with offers). These platforms are not considered to be EDPs, and no data will be required to be reported under the SERR.

However, if a platform provides a connection between a seller – whether it be individual or a business – and an end-user and the transactions between the two are processed through the platform, then these transactions are captured under the SERR and the operators will need to report:

- all transactions when an entity uses the EDP platform to make a supply that relates to Australia (including its external territories); and
- all transactions that are available to end-users and receive payment or other consideration for the supply.

It should be noted that EDP operators are not required to report transactions which relate to the sale of goods or real property (ie where ownership changes), for financial supplies, where the EDP and the seller are members of the same income tax consolidated group or multiple entry consolidated (MEC) group, or transactions where tax is required to be withheld from payment under the PAYG withholding regime.

Information that will be reported by the EDP platforms on the seller include names, dates of birth, ABNs, registered business names, trading names, tax identification numbers, addresses, contact numbers, email addresses, bank account names, BSBs, bank account numbers (or international equivalents), total amounts of payments to the seller for the reporting period including GST, fees and commissions, and total GST payable on all sales. In addition, sellers of short-term accommodation will have the property address of the short-term accommodation and number of nights booked included in reports to the ATO.

According to the ATO, compliance profiles of individuals participating in the sharing economy will be created using the SERR data to generally improve ATO intelligence. In addition, the data will be used to improve tax compliance, both voluntarily through education programs and/or through enforcement measures.

*Source: www.ato.gov.au/Business/Small-business-newsroom/General/New-reporting-regime-for-sharing-economy-platforms/*

## ATO shifting to firmer debt collection activity

The ATO has flagged a return to firmer debt collection actions after seeing a trend of profitable businesses that have the capacity to pay their tax debts but are actively choosing not to do so. It warns business taxpayers not to treat tax liabilities like a free loan, and reiterates that businesses are only temporary custodians of GST, PAYG withholding and super guarantee amounts. In addition to its ability to apply general interest charge (GIC) to unpaid debts, the ATO has stronger enforcement actions in its arsenal, including issuing garnishee notices and legal action.

With less than six months left in his tenure as the Commissioner of Taxation, in a recent speech Chris Jordan has unapologetically flagged the ATO's shift to firmer debt collection actions where appropriate. This coincides with reactivation of debts that the ATO previously put on hold during the 2020 COVID-19 pandemic.

The Commissioner noted that most collectable debts with the ATO are self-assessed and include not only income tax debt, but also unremitted GST and unpaid PAYG withholding, as well as super guarantee charges related to businesses. In addition, he noted that small businesses continue to be over-represented

in the ATO's debt book, owing over $33 billion of the $50.2 billion of collectable debt, with $23 billion of that being unpaid business activity statement debt.

According to the ATO, it is seeing a trend of profitable businesses that have the capacity to pay their tax debts but are actively choosing not to do so. It is concerned that businesses appear to be deprioritising payment of tax and super and in some cases treating ATO liabilities like a free loan. The ATO reiterates that businesses that don't pay or engage with the ATO will be subject to a range of actions.

In general, if taxpayers do not pay their tax by the due date or engage with the ATO by the due date to work out a payment plan, GIC will be applied to any unpaid amounts. GIC is automatically calculated on a daily compounding basis on the amount outstanding and added to taxpayers' accounts periodically. The rate of GIC is revised every quarter and is calculated using the 90-day Bank Accepted Bill rate and an uplift factor of 7%. The GIC annual rate for the October to December 2023 quarter is 11.15%.

In addition to GIC being applied to unpaid debts, the ATO is also legally required by law to use any credits or refunds taxpayers become entitled to, to pay off any debt that is owed (including any debts that are "on hold") by way of offsetting. This includes any refund that individuals may receive in relation to income tax, and any GST refunds that businesses may receive. The ATO notes there are very limited circumstances in which it has the discretion not to offset a debt, such as where there is serious financial hardship.

The ATO states that the following taxpayers will generally be subject to stronger enforcement action:

- those deemed "unwilling" to work on addressing their debt;
- those that repeatedly default on agreed payment plans;
- those that don't have the capacity to pay the debt but also do not take any steps to resolve the situation;
- those that have been subject to an audit where deliberate avoidance is detected and payment avoidance continues; and
- those that appear to be engaging in phoenix activities.

Some of the stronger enforcement actions that the ATO may use include:

- issuing garnishee notices to a person or business that holds money now or in the future for the taxpayer;
- issuing director penalty notices for unpaid amounts; disclosure of business tax debt to credit reporting agencies; and
- legal action (ie claim or summons, bankruptcy notice, creditor's petition, statutory demand and wind-up action).

The ATO has previously referred debts to external debt collection agencies, although it no longer does so. However, it has not ruled out doing so for future debts.

While the recent speech by the Commissioner highlighted the fact that small businesses were overrepresented in terms of collectable debt, he specifically noted that it does not mean that the ATO is solely targeting debt collection in the small business space. In reality, it is very focused on every group in the tax system, from individuals to large businesses.

*Source: www.ato.gov.au/Media-centre/Speeches/Commissioner/Commissioner-s-opening-statement---Senate-Economics-Legislation-Committee-25-October-2023/*
*www.ato.gov.au/Media-centre/Media-releases/ATO-reminds-businesses-to-pay-before-they-disclose-their-debts/*

## Tax exempt organisations required to lodge returns with the ATO: a reminder

In case you might have forgotten, following an announcement in the 2021 Federal Budget, organisations that used to have the option of self-assessing their income tax exemption status will soon be required to submit an annual self-review report (a return) to the ATO.

Impacted organisations will include non-charitable entities – those not endorsed by the Australian Charities and Not-for-profits Commission (ACNC) – that fall into the following eight categories:

- community services;
- sporting;
- cultural;
- educational;
- health;
- employment;

- scientific; and
- resource development (eg agricultural, horticultural, industrial, manufacturing, etc).

### What are the new rules?

The new rules were announced in the May 2021 Federal Budget and come into effect from the 2023–2024 income year. For June year-ends, the first year affected is therefore the year ending 30 June 2024. The requirement for self-assessing income tax exempt entities with an ABN to lodge a return will be established by the annual instrument made by the Commissioner of Taxation setting out the general requirement to lodge tax and other returns.

Typically, organisations with December year-ends are "early balancers" and therefore will first need to lodge a return for the year ending 31 December 2023. The return forms will become available from 1 July 2024 and will need to be lodged by 31 October 2024.

There is no change for not-for-profits that are subject to income tax, such as some membership organisations that mainly provide benefits to members, and are already required to lodge income tax returns.

Lodgment will be via an online form that can be completed by either the entity themselves, or their tax agent. The organisation will then receive a summary notification confirming its receipt. Once an organisation has lodged its first return, the ATO will produce a pre-populated form for future years. In future, organisations will need to either simply lodge their pre-filled annual confirmation or update the return with any new information before lodging.

Where entities don't lodge the required form, they face possible consequences, including being ineligible for income tax exemption, as well as financial penalties.

The ATO has indicated that the questions included in the return form are designed to guide organisations in the consideration of their purpose and activities. These questions are expected to resemble the ones currently found in their self-review worksheets available on the ATO website, including separate worksheets tailored for sporting clubs and other organisations. We note that the questions on the current self-review worksheets are very high level, with the main one being simply whether the organisation meets all the requirements for exemption, and the form then provides a link to further information.

The following typical requirements must be fulfilled (although it's important to acknowledge that these vary slightly depending on which category is relevant):

- the entity must be not-for-profit – this should be evidenced in its constituent documents;
- the entity must pass one of three tests, being:
  - the physical presence in Australia test, which requires the entity to pursue its objectives and incur its expenditure principally in Australia;
  - the deductible gift recipient (DGR) test, which requires endorsement as a DGR with the ATO, or being specifically listed as a DGR in the income tax legislation; or
  - the prescribed by law test, which requires being specifically named in the income tax legislation as income tax exempt; and
- the entity must comply with the substantive requirements in its own governing rules; and
- the entity must apply its income and assets solely for the purpose for which the organisation was established.

For many organisations, these requirements will be a minor extension of their regular self-review procedure, which they may already be conducting. For others, this may be very new, and perhaps an escalation in terms of the organisation's governance practices.

*Source: www.ato.gov.au/Non-profit/Newsroom/General/Straight-from-the-source---July-2023/*

## Proposed mechanisms for payday super

In an effort to reduce wage theft and prevent losses in retirement income for many Australians, the government is seeking to legislate its payday super measure, as first proposed in the 2023–2024 Federal Budget. As the first step, a consultation paper has been released which proposes two models that could be used to implement the measure. Based on the outcomes of the consultation, the government will redesign the super compliance framework to incorporate payday super, which is proposed to commence from 1 July 2026 subject to the passage of legislation.

Unpaid superannuation is equivalent to wage theft and is detrimental to the retirement income of many Australians. That's why in the 2023–2024 Federal Budget, the government proposed measures to reduce the structural drivers of unpaid super guarantee (SG), including increasing the payment frequency of SG to

occur at the same time as when salary and wages are paid (payday super), and increasing the ATO's data matching capabilities to target SG compliance.

A consultation paper has now been released by the government on two proposed models that could be used to implement the payday super measure: the employer payment model and the due date model. Under both models, the SG charge, which is currently designed for quarterly payments, will need to be updated to align with a more frequent payment schedule. Essentially, the SG charge is a penalty that applies if an employer does not pay an employee's SG amount in full, on time and to the right fund.

Currently, the due date for the payment SG charge is one month after the SG due date. For example, for the quarter 1 July to 30 September the SG payment is due on 28 October, and the SG charge and statement is due on 28 November. Changes proposed to the SG charge to fit in with payday super could include amendments to the rate of nominal interest (currently 10% per annum) and the size of the administration fee (currently $20 per employee, per quarter).

However, to reduce instances where employers are inadvertently penalised for circumstances outside their control or for small administrative errors, it is suggested by the consultation paper that the Commissioner of Taxation could be granted flexibility to remit or reduce the SG charge or extend the due date under certain circumstances (which would be limited and specified in legislation). The paper emphasises that this will not be a general discretion for the Commissioner to remit or reduce the charge or extend the due date for payment.

Under the employer payment model, it is proposed that the SG charge would be based on a requirement that the employer make the payment of an SG contribution on payday, and where a payment is not made, the employer would become liable to pay the SG charge from that date (ie nominal interest would be calculated from this date). The ATO will be required to make reconciliations between the STP (Single Touch Payroll) and Member Account Transaction Service (MATS) data to ensure that the correct amount of super has been received by an employee's super fund.

For the due date model, the current model of the SG charge will possibly be retained, in that an employer becomes liable to pay the SG charge if their employee's super contribution is not with their fund by a specified due date. Contributions will need to be received by a super fund within a certain number of days following an employee's payday. According to initial consultation conducted by Treasury and the ATO, a reasonable due date for super contributions to reach the fund would be between eight and 13 days after payday.

Regardless of the model used to implement payday super, the ATO will use enhanced reporting by employers and funds to ensure that super payments have been paid on payday or received by the funds by the due date. It will then initiate SG charge assessment through compliance activities more frequently, with lower reliance on and need for cases to be raised through employee notifications.

Based on the outcomes of the consultation, the government will redesign the super compliance framework to incorporate payday super, which is proposed to commence from 1 July 2026 subject to the passage of legislation. Transitional arrangements may also be available to ensure concessional contributions caps are not exceeded by inadvertent timing issues.

*Source: www.ato.gov.au/Tax-professionals/Newsroom/Superannuation/Consultations-are-underway-on-the-design-of-payday-super/*
*https://treasury.gov.au/consultation/c2023-436950*

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