Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2013/SB/IT/0039

Additional method of working out the amount of monthly instalment liabilities in accordance with the Taxation Administration Act 1953

Explanatory Statement

General Outline of Instrument

1. This instrument is made under subsection 45-114(3) of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument specifies the additional method of working out a Pay As You Go monthly instalment for a monthly payer and the circumstances in which a monthly payer can choose to use the additional method.
3. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
4. From the day after this instrument is registered, it revokes the *Additional method of working out the amount of monthly instalment liabilities in accordance with the Taxation Administration Act 1953* instrument (F2013L01906), registered on 7 November 2013. The original instrument and explanatory statement contained an incorrect reference to instalment quarter and the commencement date did not align with the effective date of the principle legislation.

Date of effect

5. The instrument commences on 1 January 2014.

What this instrument is about

6. The purpose of this instrument is to provide certain monthly Pay As You Go instalment payers with a simplified method of working out their monthly instalment.

How this instrument operates

7. This instrument provides the additional method that certain monthly payers can use when working out their monthly instalment.

- To work out their monthly instalment for the first and second month of the current quarter they can determine their instalment income by using a reasonable estimate.

- To work out their monthly instalment for the third month of that quarter, they are required to calculate their actual instalment income for the quarter and subtract the instalment income used in calculating the monthly instalments for the first and second month of that quarter. The amount that results from this calculation can not be less than zero.

Example 1

Company ABC has been advised of the requirement to make Pay As You Go instalments on a monthly basis. The first month they will be a monthly payer is January 2014. The company has decided to use the additional method of working out their monthly instalment. Company ABC's instalment rate is 14.00%.

For January, the company has estimated that their instalment income will be $100,000,000. The PAYG instalment liability will be $100,000,000 times the instalment rate of 14.00% which is $14,000,000.

They have estimated that February's instalment income will also be $100,000,000. As the instalment rate has not changed the instalment liability will also be $14,000,000.

The instalment amount for March will be worked out using the actual instalment income for the quarter which is $270,000,000 less the amounts accounted for in the previous 2 months ($200,000,000) giving a figure of $70,000,000, to which the instalment rate of 14.00% is applied.

8. If a monthly payer chooses to use the additional method they must do so for each month in a quarter.

9. Monthly payers can not apply for a refund if when calculating their instalment for the third month of a quarter, they determine that they have over stated their instalment income in the first or second month of that quarter using the additional method. Instead they will need to revise their instalment income on a 'last-in first-out' basis to reduce their instalment for the applicable month.

10. For the purposes of this instrument a revised activity statement is the approved form for revising a monthly payer's instalment income.

Example 2

In Example 1, assume company ABC's actual instalment income for the quarter is $170,000,000. Using the amounts accounted for in the previous 2 months ($200,000,000) the company has over stated its instalment income by $30,000,000 for the quarter. Therefore company ABC's instalment income for March will be zero and the company can revise their February activity statement to reflect an instalment income of $70,000,000.

11. This instrument provides the circumstances in which a monthly payer can use the additional method and what constitutes a valid application of the method:

- Generally a monthly payer can use the additional method if they choose to do so for the first month of an income year.

- Generally, if a monthly payer decides to use the additional method for the first month of the income year then they must do so for every month in that income year.

- Conversely, if a monthly payer decides not to use the additional method for the first month of the income year then they can not use the method for any month in that income year.

- For the first two quarters that an entity becomes a monthly payer, they will be able to choose to use the method in the first month of the first or second quarter and the method they choose for the first month of the second quarter will need to be used for the remainder of the income year.

- When a monthly payer applies the additional method they must use a reasonable estimate of their instalment income.

Example 3

Company XYZ has been advised of the requirement to make Pay As You Go instalments on a monthly basis. They decide to calculate their actual instalment income for each month of the first quarter that they are a monthly payer. In the first month of the following quarter they decide to use the additional method. As a result of this decision they are required to use the additional method for the remaining months of that income year.

Example 4

In the income year following the income year in example three, company XYZ decide to calculate their actual instalment income for the first month of that income year. As a result of this decision they are required to calculate their actual instalment income for the remaining months of that income year.

12. This instrument gives the Commissioner the right to refuse a monthly payer the ability to use the additional method if he determines that they have not complied with the rules of this instrument, for example the Commissioner determines that a monthly payer has not made a reasonable estimate of their instalment income.

What is the effect of this instrument

13. Low impact - minor or machinery in nature. This instrument has been assessed to have an overall low impact on affected businesses; overall, this low impact is likely to involve a small decrease in compliance costs.

    Of the relatively small number of large businesses affected by this instrument, there may be a smaller number that would experience difficulties reconfiguring their systems and processes. For this smaller group, there is potential for the decrease to be larger and offer a medium reduction in compliance costs.

Background

14. Tax Laws Amendment (2013 Measures No. 2) Act 2013 received the Royal Assent on 29 June 2013 and requires certain large entities to pay Pay As You Go instalments monthly.

15. Concerns were raised through consultation that impacted entities will incur significant costs in complying with the requirement to calculate and pay Pay As You Go instalments each month.

16. This instrument provides those entities with a simplified method of working out the amount of their monthly instalment to reduce the costs of compliance.

Consultation:

17. The Government announced the PAYGI monthly measure in the Mid-Year Economic and Fiscal Outlook 2012-13 on 22 October 2012. In February and March 2013 a discussion paper and draft legislation were issued respectively. In both phases of consultation submissions were received suggesting that due to difficulties in calculating instalment income monthly, a simpler method should be developed. Most submissions suggested that an amount be paid in each of the first two months based on one third of the previous quarter's liability or instalment income with a wash-up payment in the third month.

18. The additional method specified in this instrument was developed in consideration of the recommendations made in the submissions to Government and early iterations largely reflected the preferred method.

19. From August to October 2013, the Australian Taxation Office (ATO) discussed the method with the Large Business Advisory Group, the Minerals Council of Australia (MCA), the Australian Bankers Association (ABA) and the Financial Services Council of Australia (FSC). The consultation involved stakeholders participating in meetings with direct access to ATO staff. Stakeholders were given opportunities to provide advice, seek clarification and respond to proposals.

20. Additional concerns were raised through ATO consultation that the eligibility rules were inflexible and did not allow entities to re-use the method in the event of a business restructure that significantly increased the complexity of their instalment calculation. As a result the rules allow an entity to set their calculation method at the beginning of each income year with the addition of a one quarter grace period when an entity first becomes a monthly payer. This is consistent with the current intent of Pay As You Go Instalments system, which sets obligations at the start of each income year i.e. quarterly, annual and now monthly.

21. The ATO met with the Financial Services Council (FSC) on 23 October 2013. The FSC raised concerns that the method disadvantages entities that have large investments in trusts by resulting in artificial spikes in their instalment amounts for certain months. They suggested a special rule be added to the method that would allow these entities to quarantine the income received from those investments in those months where the spikes occurred. The ATO agreed that the method does not operate consistently in all circumstances and in the interest of the method remaining simple and flexible the ATO subsequently altered the method to allow entities to make a reasonable estimate of their instalment income.

22. On 30 October, the ATO met with Treasury who agreed with the operation of the final method and that it is consistent with the policy intent of the principle legislation. The FSC and MCA were contacted by phone subsequent to that meeting and are satisfied that the final method addresses their concerns.

Stephen Vesperman
Deputy Commissioner of Taxation
Dated: 12 November 2013

Legislative references:

Taxation Administration Act 1953

Statement of compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Additional method of working out the amount of monthly instalment liabilities in accordance with the Taxation Administration Act 1953

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

This instrument specifies the additional method of working out a Pay As You Go monthly instalment for a monthly payer and the circumstances in which a monthly payer can choose to use the additional method.

The purpose of this instrument is to provide certain monthly Pay As You Go monthly instalment payers with a simplified method of working out their monthly instalment.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as it simply provides certain monthly Pay As You Go monthly instalment payers with a simplified method of working out their monthly instalment.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.