



Explanatory Statement

Taxation Administration (Additional Method for Working Out the Amount of Monthly Instalment Liabilities) Determination 2024

General outline of instrument

1. This instrument is made under section 45-114 in Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. This instrument outlines an additional method for working out pay as you go (PAYG) instalments for monthly payers, and the circumstances in which monthly payers can choose to use the additional method.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Effect of this instrument

6. This instrument provides an additional method that monthly payers can use in certain circumstances when working out their monthly instalment. Subject to the conditions set out in the instrument, the additional method can be used instead of the method specified in subsection 45-114(1) in Schedule 1 to the Act (the statutory method).
7. Section 6 specifies the circumstances in which an entity can choose to use the additional method. The circumstances include that:
 - (a) the entity must be a monthly payer at the end of the first instalment month of an instalment quarter to be eligible to choose to use the additional method for that month;
 - (b) a monthly payer that decides to use the additional method for the first month of an instalment quarter must use the same method for each of the remaining months of that instalment quarter; and
 - (c) a monthly payer that decides not to use the additional method for the first month of an instalment quarter cannot use that method for any month in that instalment quarter, and must use the statutory method instead.
8. Section 7 outlines the additional method, which is that:
 - (a) to work out their monthly instalment for the first and second instalment months of an instalment quarter, the monthly payer must multiply a reasonable estimate of their

instalment income for the relevant month by the applicable instalment rate (which is defined in subsection 45-114(2) in Schedule 1 to the Act);

- (b) to work out their monthly instalment for the third instalment month of the instalment quarter, a monthly payer must calculate their actual instalment income for the quarter, subtract the estimated instalment income used in calculating their instalments for the first and second months of that quarter, and then multiply the result by the applicable instalment rate; and
- (c) if the amount of the instalment that is worked out for the third instalment month of the instalment quarter is less than zero, the instalment income for that month is taken to be zero; in these circumstances the monthly payer can revise their instalment income for the previous instalment months of that instalment quarter in the approved form, starting with the second instalment month.

9. Monthly payers cannot apply for a refund if, when calculating their monthly instalment for the third instalment month of an instalment quarter, they determine that they have overstated 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 a monthly payer to revise their instalment income.

11. Section 8 allows the Commissioner to prevent a monthly payer from using the additional method. The Commissioner can notify a monthly payer in writing that they have not used the additional method in accordance with the instrument (for example, because the Commissioner considers that they have not made a reasonable estimate of their instalment income). In this case, the monthly payer must use the statutory method to work out their monthly instalments for either the period specified in the Commissioner's notice, or (if no period is specified in the notice) until the Commissioner provides them with another notice that says they can use the additional method.

Example 1

Company ABC has been advised of the requirement to make PAYG instalments on a monthly basis. The first month they are a monthly payer is January 2025, the first instalment month of their instalment quarter. The company has decided to use the additional method for working out their monthly instalment in January 2025, and so must also use the additional method for the remaining months of that quarter. Company ABC's instalment rate is 14.00%, calculated from their most recently lodged income tax return.

For January 2025, the company has estimated that their instalment income will be \$100,000,000. The company's PAYG instalment liability for January will be \$14,000,000, which is calculated by multiplying \$100,000,000 by the instalment rate of 14.00%.

The company has estimated that their instalment income for February 2025 will also be \$100,000,000. As the instalment rate for the company has not changed, their monthly instalment liability for February will also be \$14,000,000.

The monthly instalment amount for March 2025 under the additional method is worked out to be \$9,800,000. It is worked out using the actual instalment income for the quarter (\$270,000,000) less the total estimated instalment income for the previous 2 months (\$200,000,000) giving an amount of \$70,000,000, which is then multiplied by the instalment rate of 14.00% to give \$9,800,000.

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 overstated 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, by completing a revised activity statement, to reflect an instalment income of \$70,000,000.

Example 3

In the instalment quarter following the one used in example 1, company ABC decides to calculate their actual instalment income for the first instalment month of that instalment quarter. As a result of this decision, they are required to calculate their actual instalment income for the remaining months of that quarter.

Compliance cost assessment

12. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature (the Office of Impact Assessment reference: OIA23-05948).

Background

13. Since the *Tax Laws Amendment (2013 Measures No.2) Act 2013* commenced operation on 29 June 2013, certain large entities have been required to pay PAYG instalments monthly.

14. Subsequent consultation identified concerns that impacted entities could incur significant costs in complying with the requirement to calculate and pay PAYG instalments each month.

15. In recognition of this, an instrument was drafted and registered in 2013 to provide those entities that pay PAYG instalments monthly with a simpler alternative method for working out the amount of their monthly instalment.

16. This instrument is an update of the 2013 instrument, which is due to sunset on 1 April 2024. The instrument will continue to provide monthly payers with a simpler alternative method for working out the amount of their monthly instalment. The instrument will reduce compliance costs for eligible taxpayers by allowing them to use reasonable estimates of their instalment income in the first two months of an instalment quarter, rather than their actual instalment income for those months, to work out the amount of their monthly instalment.

Consultation

17. Broad public consultation was undertaken for a period of 4 weeks from 1 November to 29 November 2023.

18. As part of the consultation process, the draft instrument and draft explanatory statement were published to the ATO Legal database on the 'What's new' page. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.

19. No comments or submissions were received during consultation.

Legislative references

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Income Tax Assessment Act 1997

Legislation Act 2003

Taxation Administration Act 1953

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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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 of the legislative instrument

This legislative instrument provides pay as you go (PAYG) monthly instalment payers with a simpler alternative method for working out their monthly instalment. The instrument also outlines the circumstances in which a monthly payer can choose to use the additional method.

It is designed to reduce compliance costs associated with the requirement to calculate monthly PAYG instalments.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. The instrument reduces compliance costs for those taxpayers who are eligible to use the additional method to work out their monthly instalment liabilities.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.