

Australia: Final guidance on applying STP to inbound employees on a shadow payroll

July 11, 2019

In brief

Australia introduced real time payroll reporting from July 1, 2018, similar to other jurisdictions around the world. Known as Single Touch Payroll (STP), each pay event must be reported to the Australian Taxation Office (ATO) on the day of payment, providing the ATO with real-time visibility over the accuracy and timeliness of organisations' payroll processes.

The ATO had announced an exemption from STP reporting for a certain class of globally mobile employees who are inbound to Australia until June 30, 2019. The ATO now has released its final position on how STP will apply to inbound assignees who are paid from a foreign payroll. From July 1, 2019, employers will be required to report such employees in an STP event report each pay period, with an automatic reporting deferral until the last day of the next calendar month after the foreign pay day. A finalization declaration is required at the end of the financial year to confirm the amounts paid to the employee for the full financial year (July to June.) An extension of time will be provided in respect of foreign employees for this declaration.

STP will not apply to employees with a temporary presence in Australia who have been granted a PAYG withholding variation to nil. In these situations, the reporting requirements stated in the variation to nil will continue to apply (i.e., a statement of earnings to each employee at the end of the financial year).

In detail

What are an employer's PAYG withholding requirements?

STP does not change an employer's obligation to withhold PAYG from remuneration or the way that the withholding is calculated.

For all inbound employees to Australia, an employer is

required to withhold PAYG unless one of the following exemptions apply:

1. The employee's income is exempt under a Dependent Personal Services treaty exemption.
2. The employer has applied for a PAYG withholding variation to nil. This variation requires several

criteria to be met (including payment from a foreign payroll with the employer being responsible for paying the Australian income tax and fringe benefits tax (FBT)). The variation must specifically cover each employee, and is valid for up to four years.

The ATO has confirmed that STP reporting will not be required for employees with a valid PAYG withholding variation to nil in place.

How will STP be applied to inbound employees to Australia on a shadow payroll?

For globally mobile employees, salaries may be paid through a foreign payroll (either in full or in part), and may require information to be collected from a foreign payroll. This coordination and data gathering can make the prospect of complying with PAYG withholding and superannuation requirements under STP difficult.

A number of concessions therefore have been introduced for inbound assignees who meet specific criteria. These criteria are that the employee is employed by an offshore entity, is seconded to Australia, has all or part of their salary paid by an offshore entity, and is maintained on a shadow payroll. No concessions apply to amounts paid through an Australian payroll.

Extended time to report: The ATO has confirmed that employers have until the last day of the next calendar month after the foreign payday to report inbound employee data through STP. This is an automatic exemption and does not require written confirmation with the ATO. It can take the form of a separate pay event for inbound assignees or through the same STP event covering local employees.

It is possible to request an extension to this concessional period through a specific approval process. Supporting data should be provided to explain the reason for the request. A request on the basis that the foreign data is not made available before the Australian pay cycle cut off dates is unlikely to be granted where the ATO considers

enough time still would be available to run another STP event.

Reasonable estimates: In certain situations it may be possible to include a reasonable estimate of an employees' wages in STP, which provides the employer with additional time to accurately calculate the actual amounts received from the foreign payroll and to classify new wage codes, where required. Estimated information will need to be corrected before the finalization declaration is submitted.

A finalization declaration is required at the end of the financial year to confirm the amounts paid to the employee for the full financial year (July to June.) An extension of time will be provided in respect of foreign employees for this declaration. While finalization reports are due for local employees on July 14, an extension for the year ended June 30, 2020 will be made available to September 14, 2020. Future years will have an extension to August 14.

It should be noted that finalization declarations should not be submitted before the final June payroll is reported through STP.

It is also important to understand if your payroll software requires the STP finalization reports to be lodged prior to commencing processing of the July payrolls. Where your software falls into this category you should discuss with your payroll provider the options available to you to process the additional June payroll prior to STP finalisation. For example, you may need to separate the inbound employees into a separate pay run group. Care should be taken where there are split payments.

Are there any implications for the payment of PAYG withholding?

The concessions announced by the ATO apply only to the STP reporting requirements for an employer. However, a separate obligation exists to deduct PAYG withholding from a relevant payment and pay it to the ATO within a certain period of time from the date the payment is made to the employee (depending on the size of the employer.) Where the STP deferral concessions are used, these payment dates will not be met. The ATO has confirmed that a one-off PAYG payment date variation request should be made for an employer to be provided with additional time to make payment of the PAYG withholding.

How will short-term business travelers be considered under STP?

Employers often need time to identify the presence of international short term business travelers and to determine whether a PAYG withholding obligation arises in respect of these employees. The ATO has not publicly released any commentary regarding business travelers. We recommend that business traveller income be reported through STP within 14 days of the employer identifying that a PAYG withholding obligation arises, or in the next available payroll cycle.

How do we report if the employee does not have a tax file number (TFN)?

Based on current practice, the following TFN exemption codes should be used where a TFN has not been issued to an employee:

- use 000 000 000 for employees who have not provided a TFN
- use 111 111 111 for employees who have not made a TFN declaration but where it has not yet

been 28 days since the start of employment.

What other STP issues should employers of globally mobile employees consider?

STP will provide the ATO with much greater transparency over payroll and superannuation compliance. In addition to the increased data matching with various government departments – notably the Department of Homeland Affairs (encompassing immigration) – employers of globally mobile employees should consider the broader implications that may arise, and take steps to ensure compliance. This includes:

- timely lodgment of tax file number declarations
- documentation of exemptions from the superannuation guarantee,

such as certificates of coverage and senior executive exemptions

- tracking and compliance for short-term business travelers
- analysis of foreign and Australian wage/pay codes to ensure they are correctly set up for PAYG withholding, STP reporting, superannuation, payroll tax, and workers' compensation
- use of the most appropriate PAYG withholding rates
- identification and classification of foreign-sourced employment income for outbound resident employees.

The takeaway

Employers of inbound employees who operate a shadow payroll should ensure that the current process meets

the requirements set out by the ATO, including:

- confirming that the current process allows them to report foreign pay amounts through an STP event by the last day of the calendar month following the foreign payday. If not, a further deferral should be requested or the employer could consider reporting estimated wages (with a correction in the future before the finalization declaration)
- ensuring a process is in place to defer the finalization declaration process for inbound employees until after the June STP reporting has been completed
- applying for a PAYG payment date variation if the STP deferral concession is being applied.

Let's talk

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