

## ***Single touch payroll — new and current requirements compared***

### **STP requirements from 1 July 2018**

#### **Reporting amounts paid and withheld**

Substantial entities (20 or more employees) are required to report the following information to the ATO:

- withholding amounts and associated withholding payments, on or before the day by which the amount is required to be withheld
- salary or wages and ordinary time earnings information on or before the day on which the amount is paid, and
- superannuation contribution information on or before the day on which the contribution is paid.

Employers that report these obligations (including those that voluntarily report) will not need to comply with a number of other reporting obligations under the existing law.

For the first 12 months, reporting entities will not be subject to administrative penalties, unless first notified by the ATO.

#### **Choice of fund**

An employee may make a valid choice of superannuation fund by providing the relevant information to the ATO.

In this situation, the ATO may disclose an employee's TFN and protected information to their employer.

### **Current law**

#### **Reporting amounts paid and withheld**

Employers generally are required to withhold amounts from an employee's salary at the time they pay the salary. At a later date, they are required to notify the ATO of the amount withheld, remit these amounts to the ATO, provide each employee with an annual payment summary and provide an annual report to the ATO.

Employers generally have an obligation under SISA Pt 3B and the SIS Regulations to report, consistently with certain data standards, superannuation contribution information to superannuation funds on the same day as the employer makes a contribution to the fund. Employers do not generally have an equivalent reporting obligation to provide employee-level superannuation contribution information to the ATO.

Employers must lodge SG statements with the ATO if they have an SG shortfall for a quarter or if required to do so by the ATO under the SGAA.

#### **Choice of fund**

In order to make a valid choice of superannuation fund, an employee must provide their employer with written notice of that choice.

## ***Single touch payroll reporting***

Single touch payroll (STP) is a reporting framework for “substantial employers” to provide payroll and superannuation information to the Commissioner at a time earlier than that which applies under the ordinary provisions. Entities that are not substantial employers can voluntarily apply STP and the government proposes to expand STP to non-substantial employers from 1 July 2019. Entities that report to the Commissioner using STP will not have to comply with some other reporting obligations. STP relies on the use by employers of SBR enabled software. The main STP reporting provisions are contained in TAA Div 389.

### ***Substantial employer***

Subject to the exemptions below, an entity is a substantial employer at a given point in time if, on the most recent 1 April occurring before that time, the entity had 20 or more employees or was a member of a wholly-owned group that had 20 or more employees (s [389-5\(6\)](#)).

According to the explanatory memorandum, the number of employees is calculated on a head count basis (rather than full-time equivalency) and the ordinary definition of employee is to be used, so contractors are not included in the head count.

Entities that are not substantial employers may choose to apply STP reporting (s [389-15](#)).

### ***Application***

Despite being a substantial employer at a particular time, a substantial employer is only required to notify the Commissioner using STP reporting if the requirement to notify occurs on or after the later of the following (item 22(1) of Schedule 23 to the Omnibus Act):

- a) The “application day” as determined by the Commissioner under a legislative instrument (such day must be later than 1 July 2018). At the time of writing, no such instrument had been made, or
- b) Where no application day has been determined:
  - i. 1 July 2018 if the entity was a substantial employer before that time, otherwise
  - ii. The first 1 July that occurs after the entity becomes a substantial employer.

Once an entity has become a substantial employer, the employer must continue to use STP reporting, even if the number of employees falls below 20, unless the Commissioner grants the employer an exemption.

### ***Exemptions***

By legislative instrument, the Commissioner can grant exemptions from STP reporting on a class basis. This exemption can be limited to the extent specified in the instrument.

The Commissioner can also exempt individual entities by written notice to the entity. The exemption can be limited to the extent specified in the notice. The exemption can be as a result of an application by the entity or on the Commissioner’s own volition. Where the entity has applied for an exemption, the Commissioner must notify the entity if the application is refused and there is a deemed refusal if the Commissioner does not notify the entity within 60 days of the application being made. The entity can object in the usual way against a refused application or the Commissioner’s decision to limit the exemption.

According to the explanatory memorandum, the exemption powers can be used by the Commissioner to manage the migration to STP reporting and allow the Commissioner to consider a wide range of circumstances.

## ***Withholding payments covered***

The withholding payments (including nil amounts) covered by STP are:

- A payment that constitutes an employee's ordinary time earnings or salary or wages (within the meaning of the SGAA) — this excludes contractors, and
- The following payments:
  - under the Seasonal Labour Mobility Program
  - for work and services, with the exception of payments under voluntary agreements, labour hire arrangements, and those prescribed by regulations
  - for termination of employment
  - for unused leave
  - for parental leave pay, and
  - for dad and partner pay.

The Commissioner may determine additional withholding payments by legislative instrument.

Reportable employer superannuation contribution (RESC) and reportable fringe benefit (RFB) amounts are not required to be reported using STP reporting. However, an entity may nonetheless choose to report these amounts to the Commissioner using STP reporting by 14 July (s [389-15\(3\)](#)).

## ***Timing of reporting***

Payments that constitute an employee's ordinary time earnings or salary or wages must be notified to the Commissioner on or before the day on which the amount is paid. All other amounts must be notified to the Commissioner on or before the day by which the PAYG withholding amount is required to be withheld from the payment (regardless of whether the withholding has been made by that time).

## ***Method of reporting***

Under STP reporting, substantial employers must report information to the Commissioner in the approved form (s [389-5\(2\)](#)); it is expected that the approved form will be produced by SBR-enabled software.

The approved form can only cover the withholding payments covered by STP reporting. Failure to use the approved form would render the employer liable to a failure to lodge penalty under TAA Div 286.

## ***Transitional arrangements***

A substantial employer is not subject to a penalty under TAA Div 286 if:

- the employer has not voluntarily chosen to apply STP reporting
- the entity does not use STP reporting to notify the Commissioner of the withholding payments (other than any additional payments that the Commissioner has specified by legislative instrument)
- the failure to use STP reporting occurs in the first 12 months after the entity's application day, and
- during that 12-month period, the Commissioner has not notified the entity in writing that:
  - related to an earlier failure by the entity to use STP reporting, and
  - advised the entity that a subsequent failure to use STP reporting may result in an administrative penalty.

The Commissioner can also allow entities with an ongoing grace period for correcting false or misleading statements made in STP reports without penalty. This could, for example, allow errors made in one STP report to be corrected in a subsequent STP report. However, such correction need to be made within 14 days after the end of the financial year to which they relate.