
Chapter 1

Monthly Pay As You Go Instalments

Outline of chapter

1.1 Schedule # to this Exposure Draft Bill amends Division 45 of Schedule 1 to the *Tax Administration Act 1953* (TAA 1953) to require certain large corporate tax entities to make Pay As You Go (PAYG) instalments monthly.

1.2 All legislative references in this chapter are to Schedule 1 to the TAA 1953, unless otherwise stated.

Context of amendments

1.3 The PAYG instalment system requires entities with business or investment income to pay instalments towards their income tax liability. It is designed to ensure the efficient collection of income tax, including the Medicare levy, Higher Education Loans Program (HELP) debts, and debts under the Student Financial Supplement Scheme and the Aboriginal Study Assistance Scheme (ABSTUDY).

1.4 Most entities must pay their instalments quarterly. If certain criteria are met, instalments may be made annually or biannually. An entity only becomes liable to make an instalment payment once the Commissioner has given the taxpayer an instalment rate by written notice.

1.5 In the 2012-13 Mid Year Economic Financial Outlook (MYEFO), the Government announced a three year process to reform the timing of instalment payments. The purpose of the reform is to allow PAYG instalments to be more responsive to the economic conditions faced by businesses, and to better align PAYG instalment payments with the Goods and Services Tax (GST) payments of most large corporate tax entities.

Summary of new law

1.6 This Schedule requires certain large corporate tax entities to make PAYG instalments monthly rather than quarterly or annually.

Corporate tax entities will be transitioned into the monthly PAYG instalment system over a three year period:

- From 1 January 2014, corporate tax entities with a base assessment instalment income (BAII) of \$1 billion or more will be required to make PAYG instalments monthly;
- From 1 January 2015, corporate tax entities with a BAI of \$100 million or more will be required make PAYG instalments monthly; and
- From 1 January 2016, corporate tax entities with a BAI of \$20 million or more will be required make PAYG instalments monthly.

1.7 However, corporate tax entities with a BAI of less than \$100 million will not be required to make monthly PAYG instalments if they are (or their GST representative is) a quarterly or annual GST reporter, and they are not a head company of a consolidated group or a provisional head company of a multiple entry consolidated group (MEC group). This exemption better aligns the reporting of GST and PAYG instalments for those corporate tax entities.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>A corporate tax entity whose BAI exceeds a certain threshold will be liable for monthly PAYG instalments.</p> <p>The threshold at:</p> <ul style="list-style-type: none">• 1 January 2014 is a BAI of \$1 billion or more;• 1 January 2015 is a BAI of \$100 million or more; and• 1 January 2016 is a BAI of \$20 million or more. <p>A corporate tax entity with a BAI of less than \$100 million, who is a quarterly or annual GST reporter (or their GST representative is), and is not a head company of a consolidated group or a provisional head company of a MEC group, will not be required to make monthly PAYG instalments.</p>	<p>Corporate tax entities are liable for PAYG instalments quarterly, unless they are eligible to become an annual or biannual payer.</p>

Detailed explanation of new law

1.8 This Schedule introduces the monthly PAYG instalment rules. Under these rules, certain large corporate tax entities will be liable for PAYG instalments on a monthly basis rather than quarterly or annually.

1.9 A corporate tax entity is an entity that is a company, corporate limited partnership, corporate unit trust or public trading trust (defined in section 960-115 of the *Income Tax Assessment Act 1997* (ITAA 1997)).

1.10 A corporate tax entity that meets the monthly payer requirement is a ‘monthly payer’ and liable for monthly PAYG instalments from the beginning of their next income year. Monthly payers continue to be liable for monthly PAYG instalments until they no longer meet the monthly payer requirement and give notice to the Commissioner that they no longer wish to pay their PAYG instalments monthly. *[Schedule #, items 3 to 6, sections 45-5 and 45-50]*

1.11 The amount of a monthly instalment is the applicable instalment rate multiplied by the instalment income of the monthly payer for that instalment month. *[Schedule #, items 7 and 8, section 45-65 and subsection 45-114(1)]*

1.12 The applicable instalment rate is the rate provided to the corporate tax entity by the Commissioner. Where the corporate tax entity has chosen to use a varied instalment rate, then that is the applicable instalment rate. Furthermore, similar rules to those that apply to quarterly PAYG instalment payers will also apply to monthly payers, including penalties where the varied instalment rate is too low. *[Schedule #, items 8 and 15 to 17, sections 45-200, 45-225 and subsection 45-114(2)]*

1.13 Instalment income for the instalment month is broadly equivalent to the entity’s ordinary income derived during the calendar month (section 45-120). Monthly instalment amounts are due to be paid on or before the 21st day of the next month. If a monthly payer is a deferred Business Activity Statement (BAS) payer, the monthly instalment amount is due on or before the 28th day of the next month. *[Schedule #, item 7, section 45-67]*

The general monthly PAYG instalment rules

Who is required to be a monthly PAYG instalment payer?

1.14 A corporate tax entity will generally be a monthly payer if its BAI1 is equal to or greater than \$20 million or an amount prescribed by regulation (note that the BAI1 threshold is different under the transitional rules, which are discussed at paragraph 1.27). This threshold broadly

aligns with the GST threshold for being a monthly GST reporter. *[Schedule #, item 14, subsection 45-136B(1)]*

1.15 However, if a taxpayer lodges a GST return on a quarterly or annual basis, they will only become a monthly payer if their BAI is equal to or exceeds \$100 million. This exemption better aligns the GST reporting and PAYG instalment obligations of corporate tax entities with a BAI of over \$20 million and under \$100 million. Where a corporate tax entity is part of a GST group, it is the GST group representative member's GST reporting obligation that is relevant for determining eligibility for the exemption. *[Schedule #, item 14, subsection 45-136B(2)]*

1.16 A head company of a consolidated group or a provisional head company of a MEC group will be a monthly payer if their BAI is equal to or greater than the \$20 million threshold, regardless of their GST reporting requirements. *[Schedule #, item 14, paragraph 45-136B(2)(b)]*

What is the BAI?

1.17 Broadly speaking, the BAI of a taxpayer is the amount of ordinary income less exempt and non-assessable non-exempt income (instalment income). This amount is determined by the Commissioner based on the entity's latest income tax return (section 45-320). The Commissioner uses the BAI to calculate the instalment rate for the taxpayer.

Monthly Payer Requirement Test Day

1.18 For the purposes of meeting the monthly payer requirement, the BAI and GST reporting status of the taxpayer are tested at the start of the corporate tax entity's monthly payer requirement test day (MPR test day). Retrospective changes in an entity's circumstances, such as retrospective backdating of a GST registration, will not be taken into account where the backdating occurs after the start of the MPR test day, but applies retrospectively to days including the MPR test day. *[Schedule #, item 14, subsection 45-136B(3)]*

MPR test day - Entities already paying PAYG instalments

1.19 The MPR test day, for an entity already in the PAYG instalment regime, is the first day at the start of the third last month of the previous income year. *[Schedule #, item 14, paragraph 45-136B(4)(b)]*

1.20 This means for a standard balancer (income year ending 30 June), the MPR test day for the 2017-18 income year will be 1 April 2017. For entities that are on substituted accounting periods, the MPR test day will depend on when their income year ends.

Example 1.1

In the year 2018, King Ltd. is a quarterly PAYG instalment payer and a standard (30 June) balancer. When testing whether King Ltd. is required to be a monthly payer for the 2018-19 income year, the MPR test day is 1 April 2018.

MPR test day - Entities not currently paying PAYG instalments

1.21 For entities entering the PAYG instalment regime (those given an instalment rate by the Commissioner for the first time), the MPR test day is the last day of the month in which the Commissioner has given them an instalment rate. [*Schedule #, item 14, paragraph 45-136B(4)(a)*]

Example 1.2

Lalvey Ltd. is given an instalment rate by the Commissioner on 10 February 2018. The MPR test day for Lalvey Ltd. is 28 February 2018.

When you become a monthly PAYG instalment payer

1.22 An entity that satisfies the monthly payer requirement on a MPR test day and already makes PAYG instalments, becomes a monthly payer from the commencement of its next income year (the last day of the starting instalment month) - that is, the income year commencing immediately after the MPR test day. [*Schedule #, item 14, paragraph 45-136A(2)(b) and subsection 45-136A(3)*]

Example 1.3.

From Example 1.1, if King satisfies the monthly payer requirement on 1 April 2018, then it will become a monthly payer from 31 July 2018 (the last day of the starting instalment month in its next income year).

1.23 Entities not currently paying PAYG instalments, that satisfy the monthly payer requirement, will become monthly payers from the last day of the next month (the starting instalment month) after the month in which the Commissioner gives the entity their first instalment rate. This is, the next month commencing immediately after the MPR test day. [*Schedule #, item 14, paragraph 45-136A(2)(a)*]

Example 1.4

From Example 1.2, if Lalvey Ltd. satisfies the monthly payer requirement on 28 February 2018, then it will become a monthly payer from 31 March 2018.

1.24 Once you are a monthly payer, you automatically continue to be a monthly payer until such a time that you are able to issue the Commissioner with a valid MP stop notice in the approved form. *[Schedule #, item 14, subparagraph 45-136A(1)(b)(ii)]*

How and when you stop being a monthly PAYG instalment payer

1.25 Where a monthly payer no longer meets the monthly payer requirement on a MPR test day, it may elect to stop paying monthly PAYG instalments. This election is made by notifying the Commissioner. *[Schedule #, item 14, subsection 45-136A(4)]*

1.26 This notification (the MP stop notice) must be provided to the Commissioner prior to the commencement of the next income year. Where an MP stop notice is not provided to the Commissioner, or is not provided prior to the commencement of the income year, the entity will remain a monthly payer.

Example 1.5

Catleap Enterprises is a corporate tax entity that is on a substituted accounting period ending 30 July and is a monthly payer. At 1 May 2018 (the MPR test day), Catleap Enterprises has a BAI of \$18 million and therefore does not meet the monthly payer requirement. Catleap Enterprises notifies the Commissioner that it no longer wishes to be a monthly payer on 18 May 2018 and subsequently becomes a quarterly payer from 31 August 2018 (the last day of the starting instalment month for quarterly payers in the next income year).

If Catleap Enterprises had not notified the Commissioner it would remain a monthly payer.

If Catleap Enterprises notifies the Commissioner after 1 August 2018 it would continue to be a monthly payer for the 2018-19 income year.

The transitional rules

Who is required to be a monthly PAYG instalment payer during the transitional period

1.27 As announced by the Government in the 2012-13 MYEFO, the measure will be phased in over three years (the transitional period).

- From 1 January 2014, corporate tax entities with a BAI equal to or over \$1 billion will be required to be monthly payers.

- From 1 January 2015, corporate tax entities with a BAI equal to or over \$100 million will be required to be monthly payers.
- From 1 January 2016, corporate tax entities with a BAI equal to or over \$20 million will be required to be monthly payers. An exemption applies to a corporate tax entity that is not a head company of a consolidated group or provisional head company of a MEC group, with a BAI of less than \$100 million and pay GST quarterly or annually.

[Schedule #, item 26 and subitem 27(1)]

1.28 During the transitional period, corporate tax entities that meet the monthly payer requirement may become monthly payers via two different MPR test days:

- *a MPR test day under the general monthly PAYG instalment rules* – the start of the third last month of the income year, or the last day of the month in which the Commissioner gives the entity its first instalment rate; or
- *an additional 1 October MPR test day* – which tests whether a corporate tax entity is required to become a monthly payer, from 1 January.

Additional 1 October MPR test day

1.29 To ensure that, during the transitional period, an entity that meets the monthly payer requirement will become a monthly payer after 1 January, rather than the commencement of the next income year, there is an additional MPR test day on 1 October. These additional 1 October MPR test days are aligned with the phase in of the measure and occur on:

- 1 October 2013;
- 1 October 2014; and
- 1 October 2015.

[Schedule #, subitems 28(1) and (2)]

1.30 The phase in of the BAI threshold applies at the additional 1 October MPR test days as follows:

- 1 October 2013 – corporate tax entities with a BAI equal to or exceeding \$1 billion will be required to be monthly payers from 1 January 2014;
- 1 October 2014 – corporate tax entities with a BAI equal to or exceeding \$100 million will be required to be monthly payers from 1 January 2015; and
- 1 October 2015 – corporate tax entities with a BAI equal to or exceeding \$20 million will be required to be monthly payers from 1 January 2016. An exemption applies to a corporate tax entity that is not a head company of a consolidated group or provisional head company of a MEC group, with a BAI of less than \$100 million and pay GST quarterly or annually.

[Schedule #, items 26 and 28, and subitem 27(1)]

1.31 Where a MPR test day (under the general monthly PAYG instalment rules) occurs between these additional 1 October MPR test days, the greater BAI threshold applies. This rule ensures that during the transitional period, corporate tax entities commence being monthly payers at the appropriate time.

1.32 For instance, the minimum BAI to become a monthly payer for a MPR test day on 1 August 2014 is \$1 billion, as the \$100 million threshold is yet to apply. Similarly, the minimum BAI to become a monthly payer for a MPR test day on 1 April 2015 is \$100 million, as the \$20 million threshold is yet to apply.

How and when you become a monthly PAYG instalment payer during the transitional period

1.33 Where an entity satisfies the monthly payer requirement on a MPR test day, it will commence being a monthly payer in accordance with the general monthly PAYG instalment rules.

1.34 If an entity is not already a monthly payer and it satisfies the monthly payer requirement on an additional 1 October MPR test day (and is not already a monthly payer), it will start being a monthly payer from the last day of its first instalment month commencing on or after 1 January. However, entities required to become monthly payers will not be required to start monthly instalments partway through an instalment quarter.

- For standard 30 June balancers, this means that they will be liable for monthly instalments for January and subsequent months.
- Entities with substituted accounting periods, with an instalment quarter that falls across two calendar years (i.e. an instalment quarter of 1 November to 31 January), will begin paying monthly PAYG instalments once their quarter has ended.
- For annual payers, they will commence being a monthly payer from the start of their next income year.

[Schedule #, subitems 28(3) and (4)]

Example 1.6 – Standard 30 June balancer

Wishart Co. is a corporate tax entity, a quarterly PAYG instalment payer and a standard 30 June balancer. On 1 October 2013, Wishart Co. has a BAI of \$1.2 billion. As Wishart Co.'s BAI exceeds \$1 billion and its PAYG instalment quarter ends 31 December 2013 (and the next commences 1 January 2014), it will be a monthly payer from 31 January 2014 (January being its starting instalment month).

Example 1.7 - Substituted accounting period balancer

Assume Wishart Co. in example 1.6 is on a substituted accounting period with an income year ending 30 August. As Wishart Co.'s instalment quarter falls across two calendar years and ends 28 February 2014, it will become a monthly payer from 1 March 2014.

Example 1.8 – Annual payer

Assume Wishart Co. in example 1.6 is an annual PAYG instalment payer. On 1 October 2013, Wishart Co. has a BAI of \$1.2 billion. As Wishart Co.'s BAI exceeds \$1 billion and is an annual PAYG instalment payer, it will be a monthly payer from 1 July 2014.

1.35 The following examples show how the amendments apply during the transitional period.

Example 1.9 - Standard 30 June balancer

TBlack is a corporate tax entity that is the head company of a consolidated group. TBlack pays PAYG instalments quarterly and is a standard 30 June balancer. At 1 January 2013 TBlack's BAI is \$18 million.

TBlack has an additional 1 October MPR test day on 1 October 2013. As TBlack's BAI is under \$1 billion it is not a monthly payer from 1 January 2014.

On 20 January 2014, TBlack is given a BAI from the Commissioner of \$21 million.

On 1 April 2014, TBlack has a MPR test day to test whether it is required to be a monthly payer for the next income year (2014-2015). As TBlack's BAI is under \$1 billion, it is not required to be a monthly payer from the commencement of the 2014-15 income year.

TBlack has an additional 1 October MPR test day on 1 October 2014. As TBlack's BAI is under \$100 million it is not a monthly payer from 1 January 2015.

On 25 January 2015, TBlack is given a BAI from the Commissioner of \$18 million.

On 1 April 2015, TBlack has a MPR test day to test whether it is required to be a monthly payer for the next income year (2015-2016). As TBlack's BAI is under \$100 million, it is not required to be a monthly payer from the commencement of the 2015-16 income year.

TBlack has an additional 1 October MPR test day on 1 October 2015. As TBlack's BAI is under \$20 million it is not a monthly payer from 1 January 2016.

On 25 January 2016, TBlack is given a BAI from the Commissioner of \$21 million.

On 1 April 2016, TBlack has a MPR test day to test whether it is required to be a monthly payer for the next income year (2016-2017). As TBlack's BAI is over \$20 million and it is the head company of a consolidated group, it is not eligible for the exemption. Therefore TBlack is required to be a monthly payer from the commencement of the 2016-17 income year.

TBlack's starting instalment month is July 2016. TBlack will be liable for its first monthly instalment payment (for the month of July 2016) on 21 August 2016 or 28 August 2016 if it is a deferred BAS payer.

Example 1.10 - Substituted accounting period balancer

Adam Co. is a corporate tax entity, pays PAYG instalments quarterly, is not part of a consolidated group, and pays GST monthly. Adam Co. is on a substituted accounting period and its income year ends 30 April. At 1 January 2013 Adam's BAI is \$25 million.

Adam Co. has an additional 1 October MPR test day on 1 October 2013. As Adam's BAI is under \$1 billion it is not a monthly payer from 1 January 2014.

On 20 November 2013, Adam Co. is given a BAI from the Commissioner of \$21 million.

On 1 February 2014, Adam Co. has a MPR test day to test whether it is required to be a monthly payer for the next income year (2014-2015). As Adam Co.'s BAI is under \$1 billion, it is not required to be a monthly payer from the commencement of the 2014-15 income year.

Adam Co. has an additional 1 October MPR test day on 1 October 2014. As Adam Co.'s BAI is under \$100 million it is not a monthly payer from 1 January 2015.

On 19 November 2014, Adam Co. is given a BAI from the Commissioner of \$28 million.

On 1 February 2015, Adam Co. has a MPR test day to test whether it is required to be a monthly payer for the next income year (2015-2016). As Adam Co.'s BAI is under \$100 million, it is not required to be a monthly payer from the commencement of the 2015-16 income year.

Adam Co. has an additional 1 October MPR test day on 1 October 2015. As Adam Co.'s is a monthly GST payer, it is not eligible for the exemption. Therefore, because Adam Co.'s BAI is over \$20 million it will become a monthly payer after 1 January 2016.

Adam Co.'s starting instalment month is February 2016. This is because Adam Co.'s last instalment quarter finishes after 1 January 2016 (the quarter runs from 1 November to 31 January).

Adam Co. will be liable for its first monthly instalment payment (for the month of February 2016) on 21 March 2016, or the 28 March 2016 if it is a deferred BAS payer.

Example 1.11 – Annual payer

Assume Adam Co. in example 1.10 is an annual PAYG instalment payer.

Adam Co. has an additional 1 October MPR test day on 1 October 2015. As Adam Co.'s BAI is over \$20 million and a monthly GST payer and therefore not eligible for the exemption, Adam Co. will become a monthly payer after 1 January 2016.

As a consequence of this, because Adam Co. is an annual PAYG instalment payer, its starting instalment month is May 2016 (which is the commencement of its next income year).

Adam Co. will be liable for its first monthly instalment payment (for the month of May 2016) on 21 June 2016 or the 28th of June 2016 if it is a deferred BAS payer.

How and when you stop being a monthly PAYG instalment payer – additional 1 October MPR

1.36 Corporate tax entities that are monthly payers will only be able to issue the Commissioner with an MP stop notice because they did not satisfy the monthly payer requirement on a MPR test day under the general monthly PAYG instalment rules (a MPR test day under paragraph 46-136B(3)(b)). Corporate tax entities will not be able to issue the Commissioner with an MP stop notice as a result of an additional 1 October MPR test day. *[Schedule #, subitem 27(2)]*

1.37 Also entities seeking to issue the Commissioner with an MP stop notice must not meet monthly payer requirement under general monthly PAYG instalment rules, regardless of the transitional BAI thresholds. This means entities will only be able to give the Commissioner an MP stop notice where their BAI falls below \$20 million, or if the entity becomes a quarterly (or annual) GST payer and has a BAI under \$100 million. *[Schedule #, subitem 27(2)]*

Example 1.12

Kemp Consulting is a corporate tax entity, a PAYG quarterly payer and also pays GST monthly. Kemp Consulting's income year commences 1 July (a standard balancer). On 1 October 2014 (the additional MPR test day), Kemp Consulting has a BAI of \$105 million. Therefore, Kemp Consulting is required to be a monthly payer from 1 January 2015 (because it is a 30 June balancer, its quarterly tax period ended on 31 December 2014).

On 25 January 2015, Kemp Consulting is given a BAI from the Commissioner of \$98 million.

On 1 April 2015 (the MPR test day), as Kemp Consulting's BAI is not under \$20 million (and because Kemp Consulting is a monthly GST payer), Kemp Consulting will remain a monthly payer for the next income year.

If Kemp Consulting, at 1 April 2015, was a quarterly GST payer, then it could issue the Commissioner with an MP stop notice (prior to the commencement of the next income year) and no longer be a monthly payer from the commencement of the next income year (1 July 2015).

1.38 This rule is to stop entities changing from monthly to quarterly PAYG instalments because they no longer meet the monthly payer

requirements, because of the transitional BAIL, only to be required to become a monthly payer again when the \$20 million BAIL is applied.

Application and transitional provisions

1.39 The amendments apply to instalment months starting on or after 1 January 2014. *[Schedule #, subitem 26]*

Consequential amendments

- 1.40 Consequential amendments are made to:
- update the relevant guide provisions in Division 45;
 - update the definitions in the ITAA 1997;
 - modify the current provisions to ensure monthly PAYG payers cannot also be quarterly or annual PAYG payers; and
 - update the PAYG instalment provisions to give the same effect as they would a quarterly payer in relation to a quarter, for a monthly payer in relation to a month for:
 - variation of instalment rates (Subdivision 45-F);
 - the application of the general interest charge to instalment shortfalls (Subdivision 45-G);
 - the anti-avoidance rules (Subdivision 45-P);
 - the general and special consolidations rules (Subdivisions 45- and 45-R); and
 - the MEC group rules (Subdivision 45-S).

[Schedule #, items 1 to 2, 9 to 13, 18 to 25, sections 45-1, 45-125, 45-130, 45-225, 45-597, 45-703, subsections 45-132(4), 45-200(c), 45-705(2), 45-915(2) of Schedule 1 to the TAA 1953 and section 995-1 of the ITAA 1997]