
TREASURY LAWS AMENDMENT (NO #) BILL 2024

EXPOSURE EXPLANATORY MATERIALS

DRAFT

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
Bill	<i>Treasury Laws Amendment (No #) Bill 2024</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
Medicare levy Act	<i>Medicare Levy Act 1986</i>

Chapter 1: Medicare levy exemption

Outline of chapter

- 1.1 Schedule # to the Bill amends the Medicare Levy Act to make changes to how certain eligible lump sum payments in arrears are assessed for the purposes of the Medicare levy.
- 1.2 The changes ensure low-income taxpayers are not denied concessional Medicare levy treatment solely as a result of receiving an eligible lump sum payment, for example as compensation for underpaid wages. This amendment seeks to put eligible recipients of lump sum payments in arrears back into a similar position had they been paid correctly.

Context of amendments

Medicare levy and reductions and exemptions

- 1.3 The Medicare levy is a levy that is payable by resident taxpayers and is used to help fund some of the cost of Australia's health care system. A resident taxpayer's liability for the Medicare levy is assessed against their taxable income each income year and is payable if the individual's income exceeds the relevant Medicare levy threshold amount.
- 1.4 To determine if no Medicare levy is payable or a reduction applies an individual's income is assessed against the Medicare levy individual or family low-income threshold, or individual income phase-in threshold in the *Medicare Levy Act 1986*. The Medicare levy phases in at a rate of ten cents in the dollar where the taxable income or combined family taxable income exceeds the stated threshold amounts.
- 1.5 Prescribed persons receive a full or partial exemption from the Medicare levy. To determine if an individual is considered a prescribed person for the purposes of the Medicare levy for all or part of an income year, they must meet one or more of the criteria in existing section 251U of the ITAA 1936. Prescribed persons include persons such as certain defence force members, blind pensioners and sickness allowance recipients, foreign residents and certain veterans and military rehabilitation and compensation recipients.
- 1.6 There are two tax offsets for lump sum payments which can reduce the liability for income tax and the Medicare levy surcharge:
 - the lump sum payment in arrears tax rebate, and

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- the Medicare levy surcharge lump sum payments in arrears tax offset.
- 1.7 The lump sum payments in arrears tax rebate in section 159ZR of the ITAA 1936 provides a tax offset to limit the tax payable by an individual on eligible lump sum payments. The tax payable (excluding Medicare levy) is limited to an amount comparable to the amount that would have been payable, had the income been received in the year in which it was accrued, provided certain criteria are met.
 - 1.8 The Medicare levy surcharge lump sum payments in arrears tax offset in Subdivision 61-L of the ITAA 1997 provides for a tax offset for the Medicare Levy surcharge (but not the ordinary amount of Medicare levy) when a substantial lump sum is paid to a person in the current year, the lump sum was accrued in whole or in part in a previous year.
 - 1.9 These two tax concessions apply to reduce the recipient's liability for the Medicare levy surcharge, or limit the tax payable, when the recipient has received an eligible lump sum in arrears. However, neither of these two tax offsets reduce the ordinary amount of Medicare levy payable if a recipient receives a lump sum payment in arrears that was accrued in the previous year or years that increases the individual's current year Medicare levy liability as a result of the Medicare levy threshold being exceeded.
 - 1.10 The Senate Economics Committee's Inquiry into unlawful underpayment of employees' remuneration released in March 2022, highlighted that receipt of lump sum in arrears adversely affect these individuals by increasing their liability for the Medicare levy.
 - 1.11 This amendment is intended to address this and compensate taxpayers by calculating the Medicare levy as if the eligible lump sum in arrears had not been paid.

Summary of new law

- 1.12 Schedule # to the Bill amends the Medicare levy Act to exclude eligible lump sum payments in arrears when working out a resident taxpayer's liability for the Medicare levy.
- 1.13 A taxpayer receiving a lump sum payment in arrears is eligible for the exemption from the Medicare levy if specific criteria are met.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
Lump sum payments in arrears received by individuals that comprise certain income are excluded from the calculation of the Medicare levy, provided certain conditions are met.	Lump sum payments in arrears are included in an individual's taxable income in the year of receipt for the calculation of their liability for the Medicare levy.

Detailed explanation of new law

Lump sum payments in arrears

- 1.14 Schedule # to the Bill makes changes to how eligible lump sum payments in arrears are taken into account in working out an individual's liability for the Medicare levy.

[Schedule #, item 1, section 9A of the Medicare Levy Act 1986]

Eligible income

- 1.15 Schedule # to the Bill provides that to qualify for the exemption of a lump sum payment in arrears for the Medicare levy, an individual's assessable income for the year must include one or more eligible lump sum payments in arrears in addition to satisfying other criteria.

[Schedule #, item 1, paragraph 9A(1)(a) of the Medicare Levy Act 1986]

- 1.16 Eligible lump sum is defined by reference to the term in existing subsection 159ZR(1) of the ITAA 1936 as:
- salary or wages that accrued during a period of more than 12 months before they were paid;
 - salary and wages paid to a person after re-instatement to duty following a period of suspension to the extent the payment accrued during the suspension period;
 - a payment covered by section 12-80 or 12-120 in Schedule 1 to the *Taxation Administration Act 1953* (superannuation income streams, annuities, compensation, sickness and accident payments);
 - a Commonwealth education or training payment;

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- a payment that is covered by Divisions 52, 53, or 55 of the ITAA 1997 (exempt pensions, benefits, allowances and settlement amounts); or
 - payments under a law of a foreign country of exempt pensions, benefits, allowances and settlement amounts.

[Schedule #, item 1, definition of eligible lump sum in paragraph 9A(1)(a) of the Medicare Levy Act 1986]

Other criteria

- 1.17 Schedule # provides that for Medicare levy relief to apply, the amount of the total arrears amount must be ten per cent or more of the individual's normal taxable income after the deduction of the total arrears amount.

[Schedule #, item 1, paragraph 9A(1)(b) of the Medicare Levy Act 1986]

- 1.18 Total arrears amount is defined by reference to its definition in subsection 159R(1) of the ITAA 1936. It is defined as the total of the eligible lump sums included in the assessable income of a taxpayer that accrued in an earlier year or years of income.

- 1.19 Normal taxable income is defined in existing subsection 159ZR(1) broadly as taxable income excluding certain:

- employment termination payment, unused leave payments and superannuation benefits and net capital gains;
- net capital gains included in assessable income; and
- above-average special professional income.

[Schedule #, item 1, definition of normal taxable income and total arrears amount in subsection 9A(4) of the Medicare Levy Act 1986]

- 1.20 In addition, to qualify for concessional treatment at least one of the following must apply to the individual for each relevant accrual year:

- their taxable income, adjusted by the amount of the lump sum accrued (but not received in that year), was below the relevant Medicare levy threshold for which no levy is payable or the Medicare levy shade in rate applies; or
- they were a prescribed person for a least one day.

[Schedule #, item 1, paragraph 9A(1)(c) of the Medicare Levy Act 1986]

- 1.21 The term relevant accrual years is defined as:

- if there are two or more accrual years for the total arrears amount then the most recent two years; and
- otherwise the accrual year for the total arrears amount.

- 1.22 The definition of relevant accrual year means that the two most recent accrual years are taken into account to determine if concessional Medicare levy

treatment applied in past years. This will reduce compliance costs and ensure that taxpayers are more likely to have all available records if there is more than one accrual year.

- 1.23 Accrual year takes its meaning from the definition of the term in subsection 159ZR(1) of the ITAA 1936. It is defined as any year/s of income in which any part of the eligible lump sum that has been received was accrued.
- 1.24 The term annual arrears amount takes its meaning from the definition of the term in subsection 159ZR(1) of the ITAA 1936. It is defined as the part of the total arrears amount that was accrued in the accrual year.

[Schedule #, item 1, definition of accrual year, relevant accrual years and annual arrears amount in subsection 9A(4) of the Medicare Levy Act 1986]

Adjustment of taxable income for lump sum payments in arrears

- 1.25 Under Schedule # to the Bill an individual that meets the eligibility requirements has their individual taxable income for Medicare levy liability purposes adjusted. Under the adjustment the total arrears amount is excluded for the income year in which they have been received for the purposes of the Medicare levy. This adjustment has the effect of ensuring that no or a lower rate of Medicare levy potentially applies in respect of the other income of the individual and no Medicare levy applies to the eligible lump sum.

[Schedule #, item 1, subsections 9A(2) and (3) of the Medicare Levy Act 1986]

- 1.26 A note to Schedule # clarifies that the adjustment of the total arrears amount for the income year in which it was received by the individual, is only adjusted for the individual and has no effect on the family income assessment that also considers the taxable income of the individual's spouse.

[Schedule #, item 1, note to subsection 9A(3) of the Medicare Levy Act 1986]

Commencement, application, and transitional provisions

- 1.27 Schedule # to the Bill provides that the amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after the date the Bill receives Royal Assent.

[Clause 2]

- 1.28 The amendments apply to:
- assessments for the 2024-25 income year and later income years; and

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- accrual years that begin before, at or after the commencement of Schedule # to the Bill.

[Schedule #, item 2]

- 1.29 Although the amendments can apply to accrual years than begin before commencement of Schedule # to the Bill, the amendments affect assessments prospectively and are wholly beneficial to affected taxpayers as they allow past accrued lump sums to qualify for concessional treatment for eligible lump sums received for the 2024-25 income years and later income year.