

Payslips and apportionment of employment income - general instructions

1. These instructions apply to debts caused by employment income arising from an **employer/employee relationship** and apply to debt raising processes and debts currently subject to internal and external review, where the debt period falls before 7 December 2020. These instructions do not apply where income arises through a contract for services. In the first instance, consideration should be given to determine what the relationship is (i.e. employer/employee or contract for services).
2. It is not expected that administrative reviews of historical debt decisions will be initiated by the Secretary.
3. Former and current recipients are entitled to appeal any debt decision they do not agree with and if they do, these instructions should be applied and the debts recalculated, if necessary.
4. For debts under internal or external review, any debts previously calculated using apportionment between instalment periods, with employment income based on payslips, should be recalculated.
5. In calculating debts, the best available evidence of employment income should be used.

s47E(d)

Services Australia should adopt the following general approach to debt calculations:

- a. Where available, daily income information should be relied upon in the first instance to calculate overpayments and debts, by calculating the total income earned in each instalment period on a **daily earnings basis** (the daily earnings method of calculation). For example, where timesheets or payslip evidence is available to show the amounts earned from employment income on any given day, then the income should be assessed on each day it was earned and attributed to the respective days in the instalment period in which it was earned. This may mean that one employment income period may span more than one instalment period and each day's earnings should be attributed to its respective day in the instalment period it falls into.
- b. If the available payslip evidence does not support the daily earnings method of calculation, Services Australia should consider whether any of the pay periods to which the payslips relate fall entirely within a single instalment period. If so, the income for that pay period should be attributed solely to that instalment period.
- c. s47E(d)

Where a pay period overlaps multiple instalment periods, income is not to be apportioned between instalment periods.

6. It is not lawful to raise or calculate employment income debts solely using Australian Taxation Office (ATO) averaged annual income data. Refer to point 5 above for instructions.
7. If the potential debt being raised or recalculated arises from:
 - a. overpayment of an allowance (e.g. Newstart Allowance, Youth Allowance or widow allowance);
and
 - b. the relevant employment pay periods are greater than a fortnight; and
 - c. s47E(d)
 - d. s47E(d)s47E(d)
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11. s47E(d)

s47E(d)

12. If a person has multiple employers, or multiple debt periods, Services Australia should use the best information available for each employer and debt period. It is acceptable to use a mix of methodologies to calculate a debt, but Services Australia should take care not to double count the same income.
13. Services Australia should ensure it meets obligations under the social security law to seek information that may affect an individual's rate of payment or entitlement. s47E(d)
 - a. Under section 535 of the *Fair Work Act 2009* and Division 3 of Part 3.6 of the Fair Work Regulations 2009, employers are not required to hold information such as pay records for more than seven years, s47E(d)
14. These instructions relate to debt raising decisions and debt calculations under internal and external reviews. There should be a consistent approach to the way in which debts involving serious non-compliance and fraud actions and referrals are calculated using the best evidence available. These instructions do not cover how prosecutions for fraud, etc. are managed by Services Australia.

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4. For debts under internal or external review, any debts previously calculated using apportionment between instalment periods, with employment income based on payslips, should be recalculated.
5. In calculating debts, the best available **probative evidence** of employment income should be used. That is, a finding of fact in relation to an amount of employment income earned, derived, or received must be based on evidence which logically shows the existence of that fact. **s47E(d)**

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