



Australian Government

Australian Transaction Reports
and Analysis Centre

AUSTRAC supervisory levy FAQs

These frequently asked questions (FAQs) should be read with the **Cost Recovery Impact Statement (January 2012)**, available on the AUSTRAC website: http://www.austrac.gov.au/cost_recovery_info.html.

What is the AUSTRAC supervisory levy?

Commencing in the 2011–12 financial year, AUSTRAC will recover the costs of its supervisory activities from the businesses it regulates under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

The AUSTRAC supervisory levy is an annual charge on reporting entities to pay for the costs of AUSTRAC's regulation.

What is the legal basis for AUSTRAC's supervisory levy?

Legislation to enable AUSTRAC to recover the costs of its supervisory activities from the businesses it regulates received Royal Assent on 28 June 2011.

The legislation is set out in two Acts:

- *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act 2011* (an Act to impose a levy on persons regulated by AUSTRAC, and for related purposes)
- *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Act 2011* (an Act to provide for the collection of levies imposed on persons regulated by AUSTRAC, and for related purposes)

What is the calculation model for the levy?

The AUSTRAC supervisory levy is a single annual charge which is to be calculated with a formula comprising of three components:

1. a base component
2. a component for large entities
3. a component for transaction reporting activities.

The base component relates to the baseline expenses that AUSTRAC incurs in regulating all reporting entities. These expenses are uniform for all reporting entities.

The large entity component relates to additional expenses incurred by AUSTRAC in regulating larger entities.

The transaction reporting component relates to the additional direct expenses incurred by AUSTRAC in regulating reporting entities that lodge transaction reports.

Who is required to pay the levy? Who is exempt and why?

All reporting entities will be required to pay a levy other than:

- affiliates of remitter networks¹ (on the basis that AUSTRAC's primary regulatory relationship will be with remitter networks). Affiliates are businesses that provide remittance services to customers as part of a remittance network facilitated by a remittance network provider
- reporting entities which have been exempted from Part 7 of the AML/CTF Act (relating to AML/CTF programs), for example small gaming venues with a gaming machine entitlement of 15 gaming machines or less.

Also exempt from the **base component of the levy** are non-employing entities (sole proprietors and partnerships without employees) and micro-businesses (businesses employing less than five people), both as defined by the Australian Bureau of Statistics and that have annual earnings below \$100 million. In most cases, these entities will not pay a levy as small businesses are less likely to lodge transaction reports with AUSTRAC. Where they do lodge transaction reports, if the resultant levy would be less than \$100 they would not be billed.

How much is the base component of the levy and who does it apply to?

The base component is determined by dividing the amount of AUSTRAC's supervisory costs attributable to baseline supervisory activities by the number of leviable entities.

The entities subject to the base component of the levy are all reporting entities other than:

- affiliates of a registered remittance network (which are exempt from all elements of the levy)
- reporting entities which have been exempted from Part 7 of the AML/CTF Act (also exempt from all elements of the levy)
- non-employing entities (sole proprietors and partnerships without employees) and micro-businesses (businesses employing less than five people), as defined by the Australian Bureau of Statistics that have annual earnings below \$100 million.

The estimated amount of the base component for each financial year is set out in an annual Cost Recovery Impact Statement. The final amount of the base component for each financial year levy will be set out in a Ministerial Determination. The final amount of the base component may be adjusted from the amount estimated in the Cost Recovery Impact Statement depending on the number of leviable entities, micro businesses, large entities and the volume and value of leviable reports at the time the Ministerial Determination is made. From the 2012-13 levy period, the Ministerial Determination will be made prior to the commencement of the financial year.

The Census Date is the date at which liability for an entity to the levy will be determined. In 2011-12 the census date is 10 February 2012. In future years the census date will be 1 July.

The final amount of the base component for the 2011–12 financial year set out in the Ministerial Determination is \$300. The Ministerial Determination is available from the AUSTRAC website (http://www.austrac.gov.au/cost_recovery.html)

¹ Where that affiliate is not also an independent remitter or remittance network provider or where that affiliate does not provide any other designated services other than designated remittance services.

How much is the large entity component and who does it apply to?

The large entity component applies to a leviable entity or group of related leviable entities (as defined by section 50 of the Corporations Act 2001) if the total earnings (different from an entity's revenue) in the most recent annual financial statements of that entity or group of entities is greater than \$100 million.

Where a leviable entity is incorporated outside of Australia or is a subsidiary of a foreign company:

- if the earnings relating to that entity's Australian business is greater than or equal to \$100 million, the large entity component will apply to this entity based on the earnings of its Australian operations
- if the earnings relating to that entity's Australian business are less than \$100 million but the earnings for that entity and any related entities in aggregate globally is greater than or equal to \$100 million, then the entity will be subject to the minimum large entity component.

For authorised deposit taking institutions, banks, building societies, credit unions and Registered Financial Corporations as defined under the *Financial Sector (Collection of Data) Act*, the applicable earnings measure is profit before income tax expense, depreciation and amortisation.

For all other entities, the applicable earnings measure is 'earnings before income tax expense, net financing costs, depreciation and amortisation' (EBITDA).

For more information on calculating earnings, reporting entities should refer to the Calculating Earnings Fact Sheet available on the AUSTRAC website: www.austrac.gov.au.

The estimated amounts of the large entity levy payable by a leviable entity or group of leviable entities for each financial year is set out in an annual Cost Recovery Impact Statement. The final amounts of the large entity component for each financial year levy will be set out in a Ministerial Determination. The final amount of the large entity component may be adjusted from the amount estimated in the Cost Recovery Impact Statement depending on the number of leviable entities, micro businesses, large entities and the volume and value of leviable reports at that time. From the 2012-13 levy period, the Ministerial Determination will be made prior to the commencement of the financial year.

The Census Date is the date at which liability for an entity to the levy will be determined. In 2011-12 the census date is 10 February 2012. In future years the census date will be 1 July.

The final amounts of the large entity component for the 2011-12 financial year set out in the Ministerial Determination ranges between \$20,000 and \$2,300,000 based on the earnings of entity on the census day. The Ministerial Determination is available from the AUSTRAC website (http://www.austrac.gov.au/cost_recovery.html)

How much is the transaction reporting component and who does it apply to?

The transaction reporting component applies to all leviable entities which lodge transaction reports (that is, threshold transaction reports (TTRs) and international funds transfer instruction reports (IFTIs) with AUSTRAC.

The transaction reporting component is made up of two elements:

- the volume of reports lodged with AUSTRAC; and
- the value of reports lodged.

The transaction reporting component will be calculated based on transaction reports lodged in the calendar year immediately prior to the commencement of the financial year to which the levy applies. Reports that relate to transactions that occurred prior to 1 January 2010 will not be levied. Suspicious matter reports (SMRs) are not subject to a levy.

The estimated amounts of the transaction reporting component for each financial year is set out in the Cost Recovery Impact Statement. The final amounts of the transaction reporting component for each financial year levy will be set out in a Ministerial Determination. The amount of the transaction reporting component may be adjusted from the estimated amount in the Cost Recovery Impact Statement depending on the number of leviable entities, micro businesses, large entities and the volume and value of leviable reports at that time.

The Census Date is the date at which liability for an entity to the levy will be determined. In 2011-12 the census date is 10 February 2012. In future years the census date will be 1 July.

The final amounts of the transaction reporting component for the 2011–12 financial year set out in the Ministerial Determination is \$0.01 per transaction report lodged and 0.0005991 per cent (or \$0.000005991 per dollar) of the value of transaction reports lodged with AUSTRAC during the 2010 calendar year. The Ministerial Determination is available from the AUSTRAC website (http://www.austrac.gov.au/cost_recovery.html)

When will the levy commence?

The levy commences this financial year (2011–12) onwards. It is anticipated that levy invoices will be sent out in late February or early March 2012.

How will the levy amounts payable be set?

The Minister for Justice will set the amounts through a Determination. A copy of the determination will be published on the AUSTRAC website (http://www.austrac.gov.au/cost_recovery.html).

When will AUSTRAC determine a reporting entity is liable to pay the levy?

The Census Date is the date at which liability for an entity to the levy will be determined. In 2011-12 the census date is 10 February 2012. In future years the census date will be 1 July.

When will reporting entities be billed in the 2011–12 financial year?

AUSTRAC will send out invoices to leviable entities from late February or early March 2012.

When will reporting entities be billed in future financial years?

In later years, billing will occur soon after the census date i.e. soon after 1 July. For the 2012-13 financial year, it is expected that reporting entities will be invoiced from September/October 2012.

What will the levy paid by industry be used for?

The total amount that AUSTRAC will collect through the AUSTRAC supervisory levy is equal to the cost of AUSTRAC's work as Australia's AMT/CTF regulator. This includes four elements:

- the business-as-usual cost of AUSTRAC's regulatory activities (including support services and costs associated with capital projects necessary to support regulation)
- a component to support better AML/CTF compliance outcomes among small business. Some small businesses captured by the AML/CTF Act have had trouble in implementing compliant AML/CTF programs. This proposed component would include the development of simplified guidance materials and redevelopment of AUSTRAC's website to enhance its usability for small business
- an amount to meet the specific legal costs associated with significant enforcement activities undertaken by AUSTRAC. Enforcement activity is a necessary and significant deterrent to non-compliance in any effective regulatory regime
- the establishment and ongoing costs associated with implementing and administering cost recovery.

Can reporting entities pass on the cost of the levies to their customers?

It is a decision for reporting entities whether or not to pass on these charges to customers.

Can reporting entities reduce the number of reports they submit to reduce the transaction fees?

Non-compliance with reporting obligations has consequences that are potentially far greater than the cost of the proposed transaction fee. Failure to report may trigger civil penalty proceedings in the Federal Court resulting in civil penalty orders up to \$11 million.

In addition, conducting transactions so as to avoid submitting threshold transaction reports to AUSTRAC is a criminal offence punishable by five years imprisonment, a \$33,000 fine, or both (subsection 142(1) of the AML/CTF Act).

A range of other enforcement actions including remedial directions, enforceable undertakings, and the appointment of external auditors are also available to AUSTRAC.

Is the levy tax deductible?

Everyone's taxation situation is different. AUSTRAC recommends reporting entities seek their own advice from taxation professionals.

How long will reporting entities have to pay their levy invoice?

All reporting entities will have 30 days to pay from the date of the invoice.

What payment options will there be?

Reporting entities will be able to pay by BPay, credit card or cheque.

What will happen if reporting entities are late paying the levy?

Overdue payments will be subject to a late payment penalty that will accrue on a monthly basis and is payable at the end of the month.

What will happen if reporting entities don't pay the levy or late payment penalty?

The levy and late payment penalty are debts to the Commonwealth and can be recovered by the AUSTRAC CEO. The AUSTRAC CEO may engage another entity (for example commercial debt collection agency) or take court proceedings to recover the debt.

Can AUSTRAC waive levies?

The AUSTRAC CEO has the power to waive part or whole of the levy or late payment penalty.

The circumstances in which the AUSTRAC CEO may consider it appropriate to waive the debt include where recovery would be inequitable or cause ongoing hardship.

The AUSTRAC CEO may exercise this waiver power of his or her own volition or on written application.

A waiver decision by the AUSTRAC CEO is reviewable.

Further information about waivers, making a waiver application and review rights will be made available by AUSTRAC in due course.

What happens if a reporting entity does not agree with the levy amount invoiced?

AUSTRAC will invoice reporting entities based on the information it holds on the Census Date.

Information to determine whether an entity is leviable and whether they are required to pay the base component or the large entity component will be sourced from the reporting entity roll. It is the responsibility of reporting entities to ensure that their enrolment information is kept up-to-date.

Further information about invoicing disputes and procedures will be made available by AUSTRAC in due course.

Is more information available?

More information is available on the AUSTRAC website: www.austrac.gov.au.

Information is also available by contacting the AUSTRAC Help Desk. The Help Desk operates from 8.30am to 5.00pm, Monday to Friday, Australian Eastern Standard Time.

- telephone: 1300 021 037 (a local call within Australia)
- email: help_desk@austrac.gov.au

Translating and interpreting assistance:

- To access a free translation service, call the Translating and Interpreting Service on 131 450 and ask them to call AUSTRAC on 1300 021 037.

National Relay Service:

- TTY/voice: 133 677 and ask for 1300 021 037
- Speak and listen (SSR): 1300 555 727 and ask for 1300 021 037.