

People & Standards Division

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1. Introduction

1.1 Scope

The aim of this policy is to formalise, standardise and streamline the prevailing practices concerning the reimbursement of monies overpaid as personal emoluments (salaries, bonuses, income supplements, National Insurance contributions, allowances and overtime). It provides guidance to Human Resources Branches and Salaries Sections, within ministries and government departments, in instances when overpayments in personal emoluments occur. These guidelines provide a detailed description of those measures that are to be taken when overpayments are detected and therefore need to be recouped. Officers who are assigned duties in Salaries Sections are expected to adhere to these guidelines in order to secure, as far as possible, the fiscal obligations of the Public Service, whilst concurrently ensuring that no employee is exposed to financial hardship.

1.2 Stakeholder Involvement

This policy was drawn up in collaboration with the Office of the Attorney General, the Contributions Section of the Ministry for the Family & Social Solidarity, the Inland Revenue Department and the Legal Department of the Ministry for Energy and Health. Their collective contributions were instrumental in formulating this document.

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2. The Policy

This policy is applicable to employees on the government payroll, as well as ex-employees, including expatriates, whose employment would have ceased (by way of retirement, resignation, termination, boarding out, dismissal, etc.) by the time that the overpayment is detected. Therefore, in the context of this policy, the term 'employee' refers to current and ex-employees.

Employees are to be notified by the relevant department of any overpayment in good time, and prior to any deductions being made to one's salary/earnings. Upon notification, employees are to be provided with a proper and detailed breakdown of the overpayment, the related refunds and the effective date from when deductions will commence. 10 working days are to be given, within which the employee either acknowledges the overpaid amount and refund/settlement arrangements or submits a formal objection in this respect. In the latter instance, a related meeting to discuss the matter and refund terms is to be set within the next 10 working days. If the employee fails to communicate within the indicated deadlines, legal action is to be instituted accordingly.

The guidelines below set clear parameters that regulate the reimbursement of overpayments:

- Where the total overpaid amount does not exceed 15% of the net salary, the overpaid amount is to be deducted, in full, in the next salary payment;
- Where the total overpaid amount exceeds 15% but does not exceed 20% of the net salary, the overpaid amount is to be deducted in the next 2 salary payments;
- Where the total overpaid amount exceeds 20% of the net salary, the overpaid amount is deducted in the following salary payments in amounts not exceeding 20 % of the officer's net salary.
- Where the total overpayment exceeds the net salary, the overpaid amount is either to be paid by instalments equal to the number of overpaid instances, or as specified in an agreement signed by the person who is to refund and a representative of the department concerned.

The term 'overpaid instances' means the number of payments over which this overpayment has been given, i.e. if a person was erroneously given a qualification allowance since 1st January, 2015, than the number of instances that this overpayment has been given (up to 9th September, 2015) would be 9.

In all parameters regulating the re-imbusement of overpayments, the amount to be deducted in each instance should not be less than €50.

In all the above instances, the minimum payable amount of €650 every four weeks, (or €698.81 (Lm 300) per month) as permitted by law, is to be invariably respected.

An employee may opt, out of his/her volition, to reimburse the full amount overpaid in one instalment. In such instances, the Refund Agreement Form attached to this document is to be completed and signed by the officer concerned.

The same declaration form should be used in instances where an employee opts to reimburse overpaid amounts in regular instalments. In the said declaration, the employee agrees with the refund amounts to be paid and the number of instalments required to fully settle the sum overpaid. This form should be signed by the employee who is refunding the overpayment, a

representative of the department's Salaries Section and a witness. The number of instalments and the exact amounts for each instalment are to be clearly indicated. A sample Refund Agreement Form is attached to this document.

The recouping of overpayments should preferably be concluded within the calendar year during which the overpayment has occurred, since such refunds are to be reflected in the relative FS3 form for that same year. Considering that tax rates have been reduced as a result of budgetary measures, it is even more important that refunds are settled within the same calendar year – as further accentuated by the Inland Revenue Department.

Line Ministries are to ensure that employees in the process of refunding an overpayment invariably receive a net amount of not less than €650 for each four-weekly pay cycle. This is a standard amount, irrespective whether one's employment status is on full time, part-time or reduced hours. It is the minimum amount, permitted by law and in line with the related provisions concerning the issuing of a warrant of seizure by a Court of Law. It is also considered as the minimum amount necessary to secure a decent living. In case of doubt, especially if the salary of a part-time employee is low, the department may consult Jobsplus (ex-ETC) with a view to determining whether the respective employee is registered as having employment elsewhere.

2.1 Pensioners

In instances where overpayments have been made in respect of individuals who have since become pensioners and are therefore no longer paid from the Government payroll, reimbursements will be deducted from one's Treasury or National Insurance (NI) pension entitlement, as the case may be. The necessary transfer of funds is to be actioned by the department receiving such payments, and the relative FS3 Form should eventually be amended to reflect these re-payments. The individual concerned may also opt to pay in cash or cheque at regular intervals. In both instances, the reimbursement terms stipulated above apply.

2.2 Ex-Employees who have ceased to be employed with the Public Service

In instances where the overpaid individual has since ceased to be an employee of the Public Service but is not yet in receipt of a pension, the line department should officially, through registered mail, notify the individual concerned and reach a settlement agreement on the same terms established in this document. A prescription of two years, starting from the date when the department becomes aware of the overpayment, is established by law. Payments are to be made by cheque, addressed to the respective Ministry's Permanent Secretary. A proper receipt should always be issued.

In instances where the individual fails to reply by the indicated timeframe, fails to agree on a settlement agreement and/or fails to honour one's refund obligations, legal action is to be instituted.

2.3 Ex-Employees who have ceased to be employed with the Public Service

In instances where the overpaid individual has since ceased to be an employee of the Public Service and is now deceased, the line department should try to establish the identity of his/her heir/s, and also establish who will assume responsibility for repayment. The responsible heir should be notified of the exact sum to be re-paid through registered mail, and eventually try to reach a settlement agreement on the same terms established in this document. A prescription of two years, starting from the date when the department becomes aware of the overpayment, is established by law. Payments are to be made by cheque, addressed to the respective Ministry's Permanent Secretary. A proper receipt should be issued.

In instances where the heir/s fail to reply by the indicated timeframe, fail to agree on a settlement agreement and/or fail to honour their refund obligations, legal action is to be instituted.

2.4 Expatriates who have ceased to be employed with the Public Service and left the country

There are a number of instances where the respective department continues to issue the salary on the premise that the incumbent is on sick/vacation leave, when in actual fact, s/he would have left the country. In such cases the department concerned should firstly attempt to contact the individual on an e-mail/address registered with the department. It is essential for departments to have records of the employee's home address outside Malta, as this would facilitate the reimbursement of funds. If contact is established, the same agreement terms listed above apply

In instances where the individual concerned is a European Union (EU) resident, legal action is to be immediately instituted for failure to contact the department by the indicated timeframe. The individual is to be notified on the home address held by the respective department at the point of employment. A judicial case will then be opened in the Maltese Courts of Law, and a judgement will be obtained for the issuing of a garnishee order on any monies held in any bank operating in Malta.

In case of individuals living outside of the European Union who have to refund and who do not respond to departments when they are contacted, no mechanism presently applies to recoup outstanding payments. Departments can, as a last resort, contact the respective Maltese embassy of this country to try and ascertain if the address and/or contact details available at the departments are correct

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3 Responsibilities of employees in line departments and at the Central Salaries Section (CSS) in Gozo

All employees working within HR, Salaries Sections and the CSS (MGOZ) are to be fully conversant with payroll procedures, with a view to minimising instances leading to overpayments.

The responsibility and accountability of payroll and HR officers in line departments is being further accentuated through this policy. The timely inclusion of adjustments to employees' details and statuses, particularly cessation of employment, is imperative to minimise the incidence of overpayments, since the latter may be the consequence of delayed action on the line departments' part. . Additionally, two-way and clear communication between the responsible officers in line departments and the CSS (MGOZ) is to be secured at all times, to ensure that the necessary adjustments are immediately affected and reflected in the particular pay period. Line departments are also to notify the Payroll Section at the People and Standards Division (P&SD) of any terminations of employment falling between the period when the payroll has been closed for amendments and the SEPA file generation (usually around three days prior to payday). This will enable P&SD to issue an immediate 'stop payment' for that particular pay period, thus avoiding overpayment, and concurrently securing the pro-rata payment due, via supplementary payment.

Since they are directly responsible for terminating employee records from the payroll system, staff at the CSS (MGOZ) are to ensure that action is taken without delay so that amendments received from line departments on the Salaries Amendment Form (Form 'A'), are immediately reflected in the live payroll system.

From receipt of their respective payroll, line Departments are allowed 3 working days within which they are obliged to check the correctness of details and ensure that no over/underpayments have been affected. In instances where errors are identified, line departments are to immediately contact P&SD's Payroll Section for the rectification of errors, prior to the running of the final payroll. Line Departments are to ensure the proper checking of the 'provisional' payroll with a view to securing the elimination of errors.

Henceforth, cases of over/underpayment are to be investigated by the Director Corporate Services/Director Financial Management of the respective line ministry and the DG – Operations (MGOZ), as the case may be. In the eventuality of negligence and non-compliance with the above instructions, particularly those instances where employees would have been subjected to unnecessary financial hardship, disciplinary proceedings are to be initiated against the responsible officer/s. A return of over/underpayments, notification/outcome of investigation, as well as notification of disciplinary action is to be submitted to the Research and Personnel Systems Directorate, within P&SD, by not later than 15 working days after the previous pay date. Non-compliance with these instructions may also lead to other disciplinary action against those responsible of submitting this return.

It is of utmost importance that line departments follow each refund procedure meticulously and ensure that the full amount has been settled prior to the conclusion of each case.

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4. P&SD's monitoring role

In line with P&SD's monitoring role, such overpayments and re-payments will be subjected to random checks to ensure that the department concerned has followed the established policy and procedures, and also to confirm that all money due to Government has been fully recouped within the agreed timeframes.

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5. Conclusion

These new guidelines are meant to assist Directors (Financial Management) and Directors (Corporate Services) to recoup overpaid funds in an efficient, effective and fair manner which concurrently safeguards the interests of respective employees without causing undue financial hardship.

The necessary amendments are being made to the Public Service Management Code.



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