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Mr Tim Rowe
Australian Taxation Office
GPO Box 9977
Melbourne VIC 3001



By e-mail: tim.rowe@ato.gov.au

Dear Tim

LCR 2018/D8: Expansion of the taxable payments reporting system to road freight, security, investigation or surveillance, and information technology services

Chartered Accountants Australia and New Zealand (CA ANZ) appreciates the opportunity to comment on LCR 2018/D8 (the draft).

The draft deals with an important development in the Taxable Payments Reporting System (TPRS) – the extension of the reporting regime to road freight, security, investigation or surveillance, and information technology services (relevant services). These industry sectors were identified by the Black Economy Taskforce as a concern.

CA ANZ has been a long-term supporter of the Black Economy project, with both Michael Croker and Susan Franks from the CA ANZ Tax Team heavily involved in consultations to date.

We support the extension of TPRS to these industry sectors for the reasons outlined in the Black Economy Taskforce Final Report. The challenge now is to implement well.

Introductory comments

Help, education and tolerance

The industries impacted by this extension of TPRS are large and diverse. They contain many small business operators operating under a range of models.

The road freight sector encompasses major players with sophisticated technology-based systems, through to self-employed truck owners with limited back-office support.

Similar comments apply to like circumstances in the information technology (IT) services sector.

This means that the ATO will need to invest heavily in a range of communication and education strategies to ensure maximum take-up of TPRS. As has occurred with previous implementation projects, a degree of patience and tolerance for initial taxpayer failings will be required from the tax regulator.

Tax advisers such as our members also need time to assist clients with implementation. This assistance often covers issues beyond TPRS, and extends to much broader, important topics such as business systems modernisation.

Voluntary disclosure campaign

CA ANZ believes that each new iteration of TPRS should be accompanied by an ATO-led voluntary disclosure campaign.

Whilst we do not condone tax evasion, TPRS provides a “clean slate” opportunity for those who wish to come forward and disclose tax underpaid in prior years. The standard ATO approach should apply, although the Commissioner may feel it appropriate to further remit penalties and interest for a limited period.

There is an ATO precedent for such further remission: Project DO IT.

CA ANZ has always found it curious that Project DO IT provided generous disclosure incentives to (typically) high wealth individuals who failed to disclose offshore income and assets, but has yet to extend a similar opportunity to “ordinary” Australians who have failed to comply with domestic tax obligations.

Contractor v employee distinction

There will be many providers of relevant services whose status as a contractor is questionable in the eyes of the ATO. Non-compliance with the personal services income (PSI) rules may be uncovered.

This is particularly true of the IT services sector. It will also be a growing issue in the context of the broader ‘gig economy’, which is being rapidly enabled by digital technology innovations.

As part of a holistic approach to tax administration, the ATO should consider running a companion program to TPRS which offers certainty of tax status for those who come forward seeking a determination by the Commissioner. This could be provided by way of a binding private ruling or a Commissioner’s determination under the personal services income measures.

Who is a supplier of a relevant service? Road freight scenarios

Paragraphs 12 to 25 of the draft require more clear principles and examples which illustrate who is making the supply.

This is no easy task but we anticipate this question will arise often, and affected taxpayers may exhibit behavioural change which seeks to move TPRS obligations to others involved in the supply chain.

For example, Merchant’s business model operates on a goods sold and delivered basis. Depending on the nature and size of the goods sold, the delivery destination, transport availability and other factors, Merchant arranges delivery using either:

- Australia Post¹
- Private courier
- Freight broker

¹ Australia Post offers “tailored shipping solutions” but we assume policy-makers did not intend for day-to-day business dealings with it to be subject to TPRS (but rather, Australia Post’s dealings with its contracted road freight carriers).

- Freight forwarder (typically used for international customers), or
- Direct arrangement with a freight carrier.

Merchant may have no interest in, or knowledge of, how the goods will be delivered.

In some cases, the transport of the goods may be effected using a range of service providers and carriage may not always be by road (e.g. air freight followed by road carriage to ultimate destination).

In industry parlance, Merchant may be referred to as the “shipper” (i.e. the business that supplies the product to the customer). Given the extent to which transport functions are outsourced these days, we expect shippers will be most keen to move TPRS obligations to those actually engaged in transporting goods.

Paragraphs 9 to 11 of the draft use the word “provides” the services, rather than “supplies”. In a GST context, the “provides” versus “supply” distinction is an important one in tripartite arrangements and ‘chain of supply’ scenarios. In the TPRS context, we anticipate that “provides” is intended to convey that it is only those who are engaged in transporting goods who would have the TPRS obligations, i.e. not the Merchant ‘shipper’ who is on-supplying the freight service. If this is the case, the ATO’s guidance should make this explicit, with a clear statement of this principle, and an example.

Example 3, paragraph 24 is left up in the air. Yes, there is a supply of road freight services, but is it the masonry manufacturer or the bulk delivery company who has the TPRS obligation?

The current examples in the draft address some but not all of the many issues which arise.

Guidance will likely be required to:

- Help Merchants identify whether or when it is the supplier in the various scenarios, and when it is considered to have “passed on” supplier status to another entity who is the “supplier” and “provider”.
- Identify how multiple supplies can arise by different parties in the delivery chain²
- Explain how Merchant (and others in our scenario) differentiates a courier from a road freight service provider – simple tests or (preferably) ATO / industry agreed criteria are required³
- Discuss what contractual terms shipper (and others in our scenario) could implement – or look for in shipping contracts – to determine whether reporting obligations apply and for which party⁴
- Address the scenario where Merchant is a non-resident (with or without an ABN), relying on Australian businesses for delivery of goods its wants delivered to Australian customers.

² This is reminiscent of the difficulties encountered in implementing TPRS in the building and construction industry where Builder pays lump sum \$X to Head Contractor who then divvies up \$X amongst multiple Sub-contractors, leaving whatever remains for the Head Contractor.

³ Is it possible for the ATO / Industry to agree on a classification mechanism which enables courier companies to state with confidence to customers that “TPRS reporting obligations do not apply to our services”? Whilst such an approach would be useful from a tax perspective, obvious competition issues then arise and tax may drive decision-making on such matters as the size of commercial vehicles to be purchased.

⁴ CA ANZ would expect freight handling contracts and other documentation will be amended over time to address responsibility for TPRS obligations. It would be useful for the ATO TPRS Implementation Team to publish how it is engaging with industry players on this and other practical implementation issues.

Whilst the cement truck delivery in Example 3 is useful, it would be good for the ATO to list other common examples where GST colleagues/rulings have concluded there has been a composite supply. For example, does the road transport of frozen or refrigerated goods raise similar composite supply issues? Many other examples come to mind, showing the uncertainty and complexity to be grappled with by affected businesses:

- Would a portable toilet hire business that delivers and removes portable toilets (and their waste fortnightly) to/from building sites include a separate road freight service?
- Would a crane hire be a composite supply of the crane with no road freight element?
- Is this the same for a green-waste mulching vehicle or a garbage truck?
- What about gas bottle deliveries/change overs?
- Would a vending machine placement and maintenance service include a road freight service?
- What about a mobile library – is this the provision of road transport of goods?

CA ANZ believes composite supply issues potentially affect all or at least more the categories of supply that are subject to the TPRS rules.

The draft only contemplates and deals with composite supplies in the context of road freight services. We believe this issue should be dealt with more comprehensively to provide enough principles for all affected industries to consider and determine their obligations with sufficient certainty.

As accountants we do not profess expertise in transport / logistics. Other guidance topics and scenarios are likely to emerge in ATO discussions with industry insiders and we understand such discussions are taking place.

Examples of security, investigation or surveillance services

The lists at paragraphs 30 and 31 seem quite comprehensive. They also highlight the wide range of businesses which the ATO and tax advisers will need to deal with during implementation.

Several of the services mentioned clearly raise contractor v employee issues (i.e. the recipient of the payment may well be an employee, for whom PAYG withholding applies).

Cash payments may occur in some cases (e.g. security services for hotels and nightclubs) and certain payers may need to adapt to online payment, let alone online TPRS.

As with other TPRS-affected industries:

- “Bundling” and apportionment issues should be addressed (e.g. where a single property maintenance fee or rental includes security services)
- The security industry in particular has a system of “Master” licence-holders who are authorised to hire licensed security operators. The flow-through of TPRS through this chain is akin to the issue discussed earlier in a road freight and building and construction context.

Industry definitions – security, investigation and surveillance

The law does not contain any definitions regarding the affected industries. The [Explanatory Memorandum](#) (EM) to the original Bill notes that these words take on their ordinary meaning (see paragraph 2.21). A limited description of items that are security, investigation and surveillance services is then provided.

Paragraphs 2.30 – 2.31 of the EM state that:

“...an investigation refers to a searching inquiry in order to ascertain facts. This would typically be conducted by a detective or an enquiry agency, and may be about matters that are not necessarily related to security. For example, it could refer to investigations conducted or enquiries made to assess the veracity of insurance claims. Generally, investigation services involve a person making specific investigations into persons or matters.”

However, it does not refer to any service which may be used to gather information such as online search engines.

Paragraph 27 of the draft guidance notes that investigation service could have a very broad application. The paragraph then notes that potential reach of this term should be read in context and “be understood by reference to the terms “security” and “surveillance”. Paragraph 31 of the draft guidance then provides a list of some examples of what is not included in security, investigation and surveillance services.

Accountants often undertake general financial investigations, forensic accounting work or to launch investigations into individuals/entities as part of liquidation processes. Some accountants also undertake cyber security work and assist with whistle blower investigations. Clarification as to whether or not these types of activities are meant to be captured by the legislation would be appreciated.

Some comments on the ATO list of what’s in and what’s out:

- Private sector operated prisons and detention centres are not mentioned.
- The growing IT security sector is not mentioned, although presumably this falls within the IT services category (in which case the demarcation should be stated). It is conceivable however that a person may provide advice about online cyber security issues without actually accessing IT systems (e.g. by training workers about cyber security in the workplace).
- Many of the occupations listed require training and a licence. Does the TPRS apply to payments made to a business which trains and accredits security guards for example? In NSW at least, those providing security training services must themselves be licenced by NSW Police along with the actual security service providers.
- Some services (e.g. monitoring) may be provided by offshore suppliers. The application of TPRS in this context is not discussed.
- It is unclear why “surveillance of country borders” is excluded (para 31). We understand that the government has on occasion hired private sector providers of aerial surveillance services to monitor Australia’s north west coastline.

- Is security akin to safety? For example, there are many and varied types of personal safety specialists (for example, a school may contract to hire professional lifeguards for a swimming carnival or professional abseiling instructors as part of an outdoor skills program). Are these covered?
- Is security akin to soundness? For example, would payments to engineers currently working at Opal Tower (Sydney Olympic Park) to determine the cause of building cracks be covered?
- Security storage services should be clarified (e.g. safe deposit box services, furniture or wine storage facilities).
- Personal security delivery services are presumably covered (i.e. a courier who personally carries sensitive documents to a destination).
- Guard dog handling services are not mentioned, but presumably are included.
- Drone monitoring services seem to be an emerging sector following recent events at Gatwick Airport.
- The treatment of privacy protection services should be clarified (i.e. where the service provider's role is to ensure that the client is *not* subject to unwanted surveillance). This is akin to bodyguard services but may not actually involve close personal protection of the client (e.g. the service may involve sweeping a room to ensure it is not bugged).

Linking TPRS with road freight and security / surveillance operating licences

Road freight and security, surveillance etc are highly regulated industries. Most operators require licences.

There would seem to be an opportunity here for the ATO to link TPRS with licencing data, using the Commissioner's information gathering powers. TPRS education materials could also be disseminated through licencing processes.

Information technology services – Offshore service providers

More than any other sector impacted by TPRS, IT services are often provided by offshore service providers.

As indicated by the decision in *Tech Mahindra Limited v Commissioner of Taxation* [2016] FCAFC 130, royalty issues may arise where a payment is made to a non-resident for IT technical services. In such cases the TPRS may support ATO efforts to extract royalty withholding tax. The potential value to the ATO of TPRS data in this context should be made clear when informing taxpayers of the use made of TPRS data.

Examples of IT services

The paragraph 37 list of IT services seems comprehensive, as does the paragraph 38 list of exclusions. There are many types of services provided in the IT industry, with many descriptions (sometimes a service has multiple descriptions).

As one of Australia's largest buyers of IT services, the ATO is well-placed to develop these lists.

The bundling, apportionment issue referred to earlier may also arise regularly (e.g. a payment which partly relate to both computer facilities management and data storage).

Unlike other parts of the draft, the application of TPRS where payments flow through a chain of contractors is mentioned in Example 7, paragraph 49.

Some comments on the ATO list of what's in and what's out:

- IT system monitoring services and performance reporting are not mentioned.
- IT security services should be listed (refer above comments).
- Some items listed should be expanded with the assistance of industry experts (e.g. we assume that a "computer hardware consulting service" would encompass procurement services).
- Technical support and service desk IT services should be categorized (we assume this is included).
- Data centre services should be listed (the services provided may extend beyond data storage).
- For completeness, paragraph 38 should specifically refer to:
 - cloud hosting and storage services;
 - the sale of computers (added to "leasing or hiring computers" etc).

"Payments to contractors to provide this service on your behalf"

It is unclear what the second sentence in paragraph 44 is designed to communicate: "Contractors you engage to provide other services are not within the scope of this reporting requirement".

The "other services" referred to are not specified and could be subject to TPRS for other types of industries (e.g. building and construction services for building a data centre with bespoke cooling processes, fire suppression features etc).

Digitalisation - reducing regulatory compliance and providing real time data

The TPRS requires reporting of information in a report which may be lodged by either paper or on-line by using either the business portal or standard business reporting. The paper-based report requires payers to report the annual amounts paid to relevant contractors regarding "total tax

withheld where ABN was not quoted”, “total GST” and “gross amount paid (including GST plus any tax withheld)”.

The ATO has taken significant steps to increase real time reporting and analysis of tax information. These steps have been taken to align tax obligations with natural accounting systems, and thus reduce compliance costs, and to help the ATO assist taxpayers with their tax obligation in a timely manner. Having an annual reporting requirement is inconsistent with this trend. When resources become available, we reiterate our recommendation that consideration should be given to integrating TPRS reporting with other natural tax and business systems so that TPRS information can be regularly transmitted and used.

If you wish to discuss our comments, please contact me on (02) 9290 5609 or via email at michael.croker@charteredaccountantsanz.com

Yours sincerely



Michael Croker
Tax Leader Australia
Chartered Accountants Australia and New Zealand

Appendix A

Chartered Accountants Australia and New Zealand

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