
TREASURY LAWS AMENDMENT (BLACK ECONOMY TASKFORCE
MEASURES NO. 2) 2018

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ABN	Australian business number
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
IT	information technology
TAA 1953	<i>Taxation Administration Act 1953</i>
TPRS	Taxable Payments Reporting System

Chapter 1

Third party reporting

Outline of chapter

1.1 Schedule # to this Bill amends Schedule 1 to the TAA 1953 to require entities with ABNs providing ‘road freight’, ‘IT’ or ‘security, investigation or surveillance’ services to report to the ATO information about transactions in which other entities are engaged to undertake those services on their behalf.

1.2 All legislative references in this Chapter are to Schedule 1 to the TAA 1953 unless otherwise stated.

Context of amendments

1.3 The black economy is a significant, complex and growing economic and social problem in Australia. The Black Economy Taskforce’s Final Report indicated that the size of the black economy had likely doubled since 2012 from 1.5 percent of GDP to 3 per cent of GDP, or around \$50 billion.

1.4 In response to this problem, the Government established the Black Economy Taskforce, chaired by Mr Michael Andrew AO.

1.5 In May 2017, the Government released the Black Economy Taskforce’s Interim Report, which contained a number of initial recommendations based on the experience of foreign jurisdictions, extensive consultation with stakeholders and anecdotal evidence the taskforce had received.

1.6 In the 2017-18 Budget, the Government announced that it would adopt the initial recommendations of the Taskforce. One of the initial recommendations was to extend the operation of the TPRS to entities engaging contractors in the courier and cleaning industries.

1.7 On 7 February 2018, the Government introduced the Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Bill 2018, which includes amendments to extend the operation of the TPRS to entities engaging contractors in the courier and cleaning industries.

1.8 As part of the 2018-19 Budget, the Government released the Black Economy Taskforce’s Final Report. The Final Report also recommended that the TPRS be extended to additional high-risk industries, including security, road freight and IT.

1.9 The Government responded with an announcement that it would further extend the operation of the TPRS to entities engaging contractors in the security, road freight, and IT industries.

1.10 The TPRS is a transparency measure that was first applied to the building and construction industry. It requires businesses to report payments they make to contractors for services to the ATO. Evidence suggests that this program has improved contractor tax compliance in the building and construction industry.

Summary of new law

1.11 Schedule # to this Bill makes amendments to require entities that provide ‘road freight’, ‘IT’ or ‘security, investigation or surveillance’ services to report to the ATO details of transactions that involve engaging other entities to undertake those services on their behalf.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Entities that provide ‘road freight’, ‘IT’, ‘security, investigation or surveillance’ services are required to report to the ATO details of transactions that involve engaging other entities to undertake those services for them.	No equivalent.

Detailed explanation of new law

Entity required to report

1.12 The amendments require entities that have an ABN and make supplies of ‘road freight’, ‘IT’ or ‘security, investigation or surveillance’ services to report information to the Commissioner about transactions with contractors providing such services on behalf of these entities.

[Schedule #, item 1, table items 12, 13 and 14 of section 396-55 to Schedule 1 to the TAA 1953]

Transactions that are required to be reported

1.13 An entity providing a ‘road freight’, ‘IT’ or ‘security, investigation or surveillance’ service is required to report information to the Commissioner about transactions where the entity has provided

consideration (within the meaning of the GST Act) to another entity wholly or partly to provide that service on its behalf.

1.14 Consideration (as defined in section 9-15 of the GST Act) includes any payment, or any act of forbearance, in connection with a supply of anything and any payment, or any act or forbearance, in response to or for the inducement of a supply of anything. Usually consideration will be a monetary payment, but it can also include other forms of non-cash benefits and constructive payments. *[Schedule #, item 1, table items 12, 13 and 14 of section 396-55 to Schedule 1 to the TAA 1953]*

1.15 Entities are required to report information in the approved form to the Commissioner either annually, or at such other times as the Commissioner determines by legislative instrument.

1.16 The general rules that apply to information that must be reported under Division 396 apply to this regime. This means that if an entity has given the Commissioner a report that they have become aware contains a material error, they must give the Commissioner an updated report within 28 days of becoming aware of the error. Similarly, if an entity has failed to give a report, or a corrected report, to the Commissioner by the time required, an administrative penalty applies (see subsection 286-75(1)). An administrative penalty also applies if a report includes any false or misleading statements (see subsection 284-75(1)).

1.17 Entities are not required to report in relation to transactions if they and the entities providing ‘road freight’, ‘IT’ or ‘security, investigation or surveillance’ services are members of the same consolidated group or Multiple Entry Consolidated group. Entities are also not required to report any payments to which Division 12 of Schedule 1 to the TAA 1953 (PAYG withholding payments) applies as those payments are subject to their own withholding and reporting regime. *[Schedule #, item 1, table items 12, 13 and 14 of section 396-55 to Schedule 1 to the TAA 1953]*

1.18 This is consistent with the exceptions that apply to transactions that are required to be reported by the building and construction, courier and cleaning industries.

1.19 In addition, under the existing law, a government related entity (within the meaning of the GST Act) may be required to report information about when they provide consideration to an entity for a supply of relevant services. This includes a ‘road freight’, ‘IT’ or ‘security, investigation or surveillance’ service (section 396-55, table item 2).

Definition of road freight, IT or security, investigation or surveillance service

1.20 The terms ‘road freight’, ‘IT’ and ‘security, investigation or surveillance’ are not defined and are intended to take their ordinary meaning.

Road freight

1.21 A 'road freight' service has been added to the third party reporting table item that covers courier services. This ensures that there is a single reporting obligation for entities that make a supply of a courier service or a road freight service. If an entity supplies either service, they are required to report to the Commissioner, unless otherwise provided.

1.22 The use of the phrase 'road freight' in addition to 'courier' is intended to ensure that any service where goods are transported over road is covered by the reporting obligation. The use of the phrase 'road freight' refers to the transport of goods by freight over road, which is not included in the meaning of a 'courier' service. Typically, goods will be sent by road freight where the goods are transported in bulk using large vehicles. This includes services such as road freight transport, log haulage, road freight forwarding, taxi trucks, furniture removal and road vehicle towing.

1.23 The use of the word road in relation to freight limits the requirement to only those freight services that relate to road transport, and excludes other modes of freight transportation, such as by boat or aeroplane. However, this qualification is not intended to apply to courier services, which may involve the transportation of goods other than on road, such as by bike or train.

IT services

1.24 An 'IT' service refers to services that are provided in relation to computer hardware or software, or that are provided remotely through the internet. This includes services that support or modify the operation of hardware or software.

1.25 An IT service does not include the purchase or lease of hardware or software. However, if the seller or lessor of the hardware or software modifies it for the purchaser or lessee, or develops specific software for them, then those services will be an IT service.

1.26 If computer software is used by the entity to provide a service other than an IT service, the mere use of software in these circumstances does not make the service an IT service. For example the use of software to provide an accounting, project management, or word processing service is not an IT service.

1.27 Some examples of IT services performed in relation to a computer include:

- technical support;
- computer facilities management;
- internet and web design consulting;
- computer hardware consulting;

- software development;
- computer network systems design and integration;
- software installation;
- computer programming;
- software simulation and testing;
- computer software consulting; and
- systems analysis.

Security, investigation and surveillance services

1.28 Security refers to protection from, or measures taken against, injury, damage, espionage, theft, infiltration, sabotage or the like. The use of this term is intended to include services such as locksmithing, burglary protection, body guards, security guards, armoured cars and any other services which can be provided to protect individuals or property.

1.29 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. However, it does not refer to any service which may be used to gather information, such as online search engines. Generally, investigation services involve a person making specific investigations into persons or matters.

1.30 A surveillance service refers to a general watch or observation maintained over an area or location, by one or more persons or by using devices such as motion detector alarms, cameras or recorders. This includes watchmen services, alarm monitoring and services that involve the use of closed circuit television cameras for the purpose of surveillance or maintaining security.

Application and transitional provisions

1.31 The amendments in Schedule # commence on the first 1 January, 1 March, 1 July or 1 October after the amendments receive Royal Assent.

1.32 These amendments apply to consideration that is provided on or after 1 July 2019, whether under an existing ongoing arrangement or otherwise, and regardless of the time the supply occurred or the service is provided. However, it does not apply where the entity is merely liable to provide consideration prior to 1 July 2019, if no consideration is provided on or after 1 July 2019. *[Schedule #, item 2]*

Transitional provision: Commissioner is taken to have made a determination in relation to road freight services

1.33 Subitem 3(1) of the Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Bill 2018 provides that the Commissioner is taken to have made a determination that excludes a class of reporting entities from reporting courier or cleaner contractor payments. This provision is amended by Schedule # with effect from 1 July 2019, or an alternate reporting period that begins after 1 July 2019. *[Schedule #, subitems 2(1), 2(3) and 2(4)]*

1.34 As a result of the amendments, the determination exempts entities that make a supply of a courier or ‘road freight’ service from the requirement to prepare and give a report to the Commissioner on payments made to other entities for courier or ‘road freight’ services. The exemption applies if:

- the total payments a reporting entity receives for both courier services and ‘road freight’ services are less than 10 per cent of the reporting entity’s relevant GST turnover (the turnover-threshold test);
- the reporting entity is not required to report details of the transaction under a separate reporting obligation in section 396-55 of Schedule 1 to TAA 1953; and
- the entity has not chosen to prepare and give the report.

[Schedule #, subitems 2(1), 2(3) and 2(4)]

1.35 The modification of the determination reflects that there is a single reporting obligation for courier and ‘road freight’ services, and that supplies of either of those services should be used to determine whether an entity exceeds the turnover-threshold test. This recognises that many businesses offer both courier and road freight services.

1.36 It is expected that the Commissioner will release a draft determination with the same effect as subitem 3(1) of the Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Bill 2018 for ‘IT’ services and ‘security, investigation and surveillance’ services as part of this public consultation.