Treasury Consultation Process – Introducing an Economy-Wide Cash Payment Limit

KPMG response 28 June 2018

Contact:	Grant Wardell-Johnson	+61 2 9335 7128
	Geoffrey Yiu	+61 2 9295 3874

Executive Summary

KPMG welcomes the invitation to comment on the Treasury consultation paper of 23 May 2018: *Introducing an Economy-Wide Cash Payment Limit* ("consultation paper").

The federal government has agreed to the recommendation to introduce an economy-wide cash payment limit of $10,000 ("cash payment limit"). This recommendation was made in the *Black Economy Taskforce Final Report* ("BE Taskforce Final Report") of October 2017.

As the consultation paper sets out, this consultation is concerned with the particulars of how this might be done, with respect to particular issues and solutions.

We support the introduction of the cash payment limit in principle.

This submission will set out that:

- KPMG generally favours a "low limit, high penalty" approach, where an uncomplicated, rigid, cash payment limit is supported by a robust, straightforward integrity and penalties regime.
- Further, we believe that a future cash payment limit of $5,000, or even $2,000 would be better suited to achieving the desired "crack down" on black economy dealings. Although we do acknowledge that such a limit would further restrict the scope for Australians to conduct legitimate transactions in cash as a matter of personal preference, we submit this would be justified in light of the rationale underlying the proposal and the considerable public benefit that could be achieved.
- A critical factor not raised in the current consultation is that of how in particular breaches of the limit will be penalised, and how these penalties will be enforced. An effective enforcement and penalties regime will be paramount to achieving the desired outcome, especially given the principal targets of the proposal are already deliberately avoiding the law.
- This submission does not argue for carve-outs and exemptions, however we expect that some appropriate cases for exemption may be identified throughout the consultation process.

Background to the proposal

Black Economy Taskforce ("BE Taskforce") recommendation[1]

> **Original proposal in brief:**
> Introduce an economy-wide cash payment limit of $10,000 for payments made to businesses. Payments above this amount would be required to be made through the banking system.

Government response[2]

The government has supported the recommended limit for payments made to businesses, stating the following in its response to the BE Taskforce Final Report:

> *The Government will introduce a cash payment limit of A$10,000 on payments made to businesses. This will not cover individual-to-individual transactions. The cash limit is aimed at reducing opportunities for criminals to launder the proceeds of crime into goods and services or for businesses to hide transactions to reduce their tax liabilities.*

Recommendations

Our specific answers to the consultation questions follow below.

More generally, we submit that a cash payment limit of $5,000, or even $2,000 would be better suited to achieving the desired "crack down" on black economy dealings.

Though this is currently not proposed by the government, we are hopeful that, if the proposed limit is successfully implemented, a lower limit can be effectively expedited. We encourage the government to consider setting a timeframe within which this could occur.

We make the following points in support of this position:

- According to the consultation paper, cash payments account for 37 per cent of all payments by volume, but only 18 per cent of all payments by value, reflecting a small number of large cash payments. These statistics suggest that a lower limit would not have an impact on the vast bulk of legitimate, everyday cash payments that Australians make.[3]
- We can expect the recent trend of declining cash payments to continue as financial habits change in line with technology. This means that cash transactions will increasingly become a refuge for black economy participants.
- A lower limit would also be in line with global standards for this kind of regime.

[1] *Black Economy Taskforce Final Report – October 2017,* p. 53, accessed 25 June 2018, https://static.treasury.gov.au/uploads/sites/1/2018/05/Black-Economy-Taskforce_Final-Report.pdf

[2] *Introducing an Economy-Wide Cash Payment Limit,* accessed 25 June 2018, https://static.treasury.gov.au/uploads/sites/1/2018/05/Cash-limit-consultation-paper-FINAL-1.pdf ;*Tackling the black economy: Government Response to the Black Economy Taskforce Final Report*, p. 8, accessed 25 June 2018, https://static.treasury.gov.au/uploads/sites/1/2018/05/Government-response-final.pdf

[3] *Introducing an Economy-Wide Cash Payment Limit*, page 5.

- As is widely acknowledged, black economy dealings take many forms, and are not limited to very large transactions. However, all black economy transactions – large and small – have a negative effect on Australian society and Australia's tax base.
- A lower limit would go further towards achieving the higher level of general deterrence that would be needed to achieve the broader change in behaviour intended by this proposal. This would be especially effective if the lower limit were coupled with strict liability for breaches of the limit, and moderate to substantial penalties based on whether an offence constituted a first time breach of the limit.

Enforcement

A critical factor in this discussion is that any limit would be intended to target businesses and individuals who are deliberately avoiding the law. This means that both enforcement, and penalties will be of particular importance to the success of any limit.

Given this reality, by attaching moderate and even substantial penalties to breaches of a lower limit (if one were introduced over time), the government would further deter those black economy participants who may be willing to work around or risk breaching a higher threshold.

Consultation questions

1. Should the limit apply to the price of the payment for the goods or services?

The limit would be better applied to the aggregate price paid for goods or services, rather than to the value of any instalment payment for those goods or services.

This approach could impact some legitimate consumer instalment payment transactions, but with the limit being $10,000 it is unlikely to impede arrangements for household goods. Without the limit applying to the aggregate transaction value, it would be too easy for black economy participants to circumvent the cash payment limit.

Black economy participants will in any case seek to circumvent the limit if they perceive it as adversely impacting them. So we can expect that such businesses and customers would contrive to break down transactions of greater than $10,000 into smaller transactions. For example a transaction for a complete piece of equipment would become a number of separate transactions for individual components.

Therefore consideration should be given to applying the limit on a per-supplier basis, over a specified timeframe. For example, cash payments to a particular supplier would not be able to exceed $10,000 in any rolling 60 day period. This is discussed further at Question 11.

2. What are the barriers to implementing a cash payment limit on 1 July 2019?

Implementing a sufficiently comprehensive education and awareness program is an important pre-requisite to ensuring that transactions that would otherwise be legitimate do not end up being the bulk of the ones penalised.

A wide range of communication and information channels should be explored for this purpose in order to maximise the ability to reach all sections of the community. At the same time, the rationale for the introduction of the limit, and how it is intended to benefit the community, should also be prominent.

Establishing a robust enforcement capability and penalty mechanism by 1 July 2019 may also be a challenge. In order for the measure to achieve its primary objective and obtain widespread deterrent value, it will be important that the community sees businesses and individuals being identified and penalised within the early months of the regime taking effect. Similarly, establishing any appropriate support framework needed to make non-cash payments as efficient as possible may be a barrier to implementation (see Question 5).

Some pre-existing contractual arrangements involving cash payments could be affected by the imposition of the limit. Rather than grandfathering such arrangements, we suggest that the government could legislate against the ability for the payee to sue for breach of contract if a payer wishes to make payment in non-cash form to avoid the limit applying.

3. *Are there any particular industries or transaction types that legitimately operate in large cash transactions and are unable to be made through the electronic payment system?*

We have considered this question and based on our direct experience do not have any specific examples to provide. However, we expect that some examples may emerge during the consultation process.

4. *Are there specific types of business to business transactions that the $10,000 cash limit shouldn't apply to?*

We have considered this question and do not have any specific examples to provide.

With the limit set at $10,000 it would be reasonable to expect that the majority of legitimate businesses would be able to reorganise their approach to transactions in order to stay within the legal limits on cash transactions.

5. *Do affected entities anticipate any increases in transaction costs (both cash and electronic banking) resulting from the cash limit?*

Depending on how the recipient business would have dealt with its cash receipts, businesses may experience an increase in transaction costs and delays in settlement cycles, impacting working capital as a consequence of migrating from cash to digital transactions.

This increase in transaction costs would result from an increased reliance on merchant services for accepting card payments. The extent of the increase would not become apparent until new customer purchasing patterns and methods are established following the limit's introduction.

Replacing cash transactions with standard Direct Entry and BPay payments would also result in delays in settlements and increased bad debts. This would place pressure on the working capital of smaller businesses especially.

It should also be noted that there may be a corresponding decrease in cash specific transactional costs as a result of the cash limit. We would expect that a decline in total cash receipts for business would lead to a decline in total fees charged by banks and cash-in-transit companies in relation to cash collection and handling. As above, the extent of this decrease would only become apparent after the introduction of the limit.

It would be highly congruent with the introduction of the cash transaction limit if the Government could increase its support for making the electronic payments system as efficient and low-cost as possible. Actions to achieve this could include:

- *Legislating for least-cost card transaction routing to be mandatory for domestic debit transactions*: This should lead to lower merchant transactional costs, and make payment card acceptance facilities cheaper to access and operate for smaller volume merchants (see the RBA's approach to least-cost routing).[4]
- *Ensuring all Australians have access to a low cost, near real-time payment alternative such as the New Payments Platform (NPP)*: Actions could include ensuring that NPP participation and account reach rates amongst Australian financial institutions are at a level that would enable the vast majority of the community to send and receive an NPP payment, and that would drive expedited delivery of proposed NPP overlay services that are beneficial to businesses, such as the Osko Request to Pay service, which would allow businesses to easily address requests and receive data rich payments in real time.

6. *Is the holding of an ABN an appropriate test for determining which entities are subject to the cash limit?*

We support the rationale underlying the proposal – that by applying the limit to payments made to businesses, the government would be effectively targeting those who seek to launder money through large cash payments and those businesses that do not report large cash payments as income.

Arguably, the test could be broadened to apply to all cash transactions (including consumer-to-consumer transactions). However this would be more complex, may result in enforceability issues, and would not be as tailored to the particular concerns the proposal seeks to address.

There would be significant public benefit, however, in expanding the scope to include transactions where a business is being carried on without the use of an ABN. Some businesses active in the black economy may not have an ABN at all, and the most egregious black economy participants, such as organised criminals and gangs, may frequently carry out businesses without using an ABN. As such, we see an expanded scope including all transactions where a business is being carried on as preferable.

---

[4] *Least-cost Routing of Debit Card Transactions,* Reserve Bank of Australia, accessed 28 June 2018, https://www.rba.gov.au/payments-and-infrastructure/debit-cards/least-cost-routing.html

7. Are there types of ABN holders that the limit should not apply to and why?

We have considered this question and do not have any specific examples to provide.

There is strength in the relative simplicity of this proposal, and an abundance of carve-outs would erode its substantive impact, and could risk reducing the clarity with which people view the proposal.

8. Are there reasons why consumer to consumer transactions should be excluded from the $10,000 cash payment cap?

Given the broader rationale of limiting black economy transactions generally, there may be particular arguments that support cutting down on consumer to consumer cash transactions as a means of limiting black economy activity. For instance it seems just as likely that a criminal might seek to launder the proceeds of crime through consumer-to-consumer transactions (e.g. through online marketplace platforms for consumer to consumer transactions) as they might through consumer-to-business or business-to-business transactions.

That being said, we do acknowledge that broadening the application of the limit would further restrict the scope for Australians to conduct legitimate transactions in cash as a matter of personal preference. Further, enforcing a broader limit will be more costly and challenging compared to the limit as it is currently proposed.

9. Should there be any additional reporting requirements for businesses to report transactions above or close to the cash payment limit?

The objective of the legislation is to deter cash transactions above the limit. Requiring a business to report transactions that it has been involved in and which exceed the limit would send a mixed message to the community.

The possible benefit to law enforcement of requiring transactions just below the threshold to be reported should be balanced against the additional burden on business that would arise. There is a concern that only the transactions with no black economy component would get reported, and that the information would therefore be of little value to the law enforcement agencies.

10. Is it appropriate for both parties to a transaction exceeding the cash payment limit be liable for a penalty?

KPMG agrees that this is the best way to penalise breaches of the cash payment limit, as it acknowledges that the black economy is perpetuated by both buyers and sellers.

As mentioned, we believe that strong penalties are a critical element of any cash payment limit.

11. What integrity measures are needed to support the cash payment limit?

We support an integrity rule establishing that if the aggregate price for an applicable transaction is above the limit, no part of the payment can be in cash. This would mean, for instance, that cash instalment payments or partial cash payments made as part of a transaction with a sale price of more than $10,000 would constitute a breach of the limit.

In order to avoid any confusion about borderline cases on what constitutes an individual transaction, we support a further integrity measure whereby if a business receives more than $10,000 aggregate cash payments within 60 days from the same purchaser, then this would also be deemed to be a breach of the cash payment limit, regardless of whether or not the individual payments constituted consideration for the same transaction of product. This would have the further benefit of prohibiting purchasers from exploiting the same business for money laundering by deliberately paying amounts lower than the payment limit.

We also acknowledge that given that Australian law currently requires bank transfers of $10,000 or more, in addition to any suspicious transactions, to be reported to AUSTRAC, Australia already benefits from a degree of in-built integrity in the system as it is currently designed, and the proposed additional integrity measures would support this.

We would also support a measure that would make any contract that would necessarily require a breach of the limit unenforceable.

12. What restrictions should be put in place to ensure cash transactions cannot be structured to take place over a period of time in amounts below the payment limit as a way of subverting the policy?

See Question 11.

13. Are there integrity measures that support a cash payment limit, including those in use overseas that warrant consideration in Australia?

See Question 11.

14. Are there any specific groups that should be exempt and why?

We have considered this question and do not have any specific examples to provide.

We acknowledge that particular groups, including the elderly and those living in remote regions may be more reliant on cash, and may have less access to technology. However we think given the relatively limited number of transactions that exceed $10,000, it is reasonable to expect purchasers to pay by cheque, or another method, in light of the potential public benefit of the proposed limit.

15. Are there examples of current large cash payments made by people living in remote areas or by senior Australians that cannot easily be made through electronic payment systems?

See question 14.

16. Is there a need for different rules for foreign tourists? Would the administrative burden on business in administering a higher cash limit specifically for tourists, justify retaining the $10,000 cash limit for all, including tourists?

Some of the EU countries that have a cash payment limit apply a much higher concessional limit for tourists.

Given that the limit as currently proposed is relatively high by international standards, this means there is less reason to grant a concessional limit to tourists in Australia.

Further, it may often be very difficult for businesses to determine whether or not purchasers are foreign tourists. Most tourist visas are electronic, and vendors could not be expected to assess the bona fides of documents purporting to provide evidence of tourist status. After all, proving that you are a tourist is really about proving that you are not a local resident, and proving the negative is very difficult.

The BE Taskforce Final Report made the point that honest businesses often may suspect that purchasers are laundering money but find it difficult to decline large cash payments. Similar circumstances may arise where potential money launderers making large cash payments claim to be tourists to benefit from a higher limit.