

10 November 2017

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Extending the Taxable Payment Reporting System Exposure Draft Legislation

The Property Council welcomes the opportunity to provide comments on the *Extending the Taxable Payment Reporting System to the cleaning and courier industries* exposure draft (ED) and draft ATO guidance.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent, owners, fund managers, superannuation trusts developers and investors across all four quadrants of property investments: debt, equity, public and private.

The Property Council supports the Government's commitment to reinforcing the rule of law as it pertains to the black economy, thereby protecting competitive neutrality in the property sector and the wider economy. However, the introduction of any new measure should be targeted towards those participants engaged in black economy activity rather than a 'top down' approach that places onerous and costly compliance on businesses that are already meeting their tax obligations.

The property industry is concerned that the proposed provisions will impose unnecessary reporting obligations on building owners who are not operating cleaning or courier businesses. Consistent with the Taxable Payments Reporting System (TPRS), the measure should be limited to reporting of intra industry transactions within the cleaning and courier industries.

Drafting observations

In relation to proposed new Items 11 and 12 to s.396-55 of Schedule 1 to the Taxation Administration Act (TAA) the drafting does not appear to be consistent with the outcomes in the examples contained in the draft ATO guidance. We have addressed this point in more detail in the Attachment with some suggested drafting corrections that would be required to create alignment with these examples. In our comments below, we have assumed that the drafting and associated commentary in the explanatory memorandum will be corrected to support the outcomes in those examples.

2017-18 Federal Budget Announcement

In line with Recommendation 3 of the Black Economy Taskforce made in the March 2017 Interim Report of the Black Economy Taskforce, Government announced in the 2017-18 Federal Budget the extension of the TPRS to contractors in the cleaning and courier industries. Importantly, the Budget notes that “Businesses in these industries [our emphasis] will need to ensure that they collect information from 1 July 2018”. That is, businesses in the cleaning and courier industries will be subject to the TPRS reporting requirement.

TPRS is limited to reporting of intra-industry transactions

The TPRS is a transparency measure which currently operates in the building and construction industry, with the relevant provisions contained in s. 405-5 of Schedule 1 to the TAA and Regulation 70 of the Taxation Administration Regulations. The TPRS requires reporting of transactions by a purchaser of building and construction services only if the purchaser is carrying on a business in the building and construction industry (which is itself defined in paragraph (4) to broadly mean at least 50% of its business). That is, the TPRS only requires reporting of intra-industry payments, typically where a head contractor makes payment to a sub-contractor for building and construction services. The relevant provisions are extracted below, with our emphasis added:

70 Transaction reporting by purchasers

- (1) For the purposes of section 405-5 in Schedule 1 to the Act, a supply by a supplier to a purchaser is specified if all of the following circumstances apply:
- (a) the purchaser is carrying on a business that is primarily in the building and construction industry;
 - (b) the purchaser has an ABN;
 - (c) the supplier supplies to the purchaser:
 - (i) building and construction services; or
 - (ii) a combination of goods and building and construction services, unless the supply of services is incidental to the supply of the goods.
- (4) A purchaser is taken to be carrying on a business that is primarily in the building and construction industry only if:
- (a) in the current financial year, 50% or more of the purchaser's business activity relates to building and construction services; or
 - (b) in the current financial year, 50% or more of the purchaser's business income is derived from providing building and construction services; or
 - (c) in the financial year immediately preceding the current financial year, 50% or more of the purchaser's business income was derived from providing building and construction services.

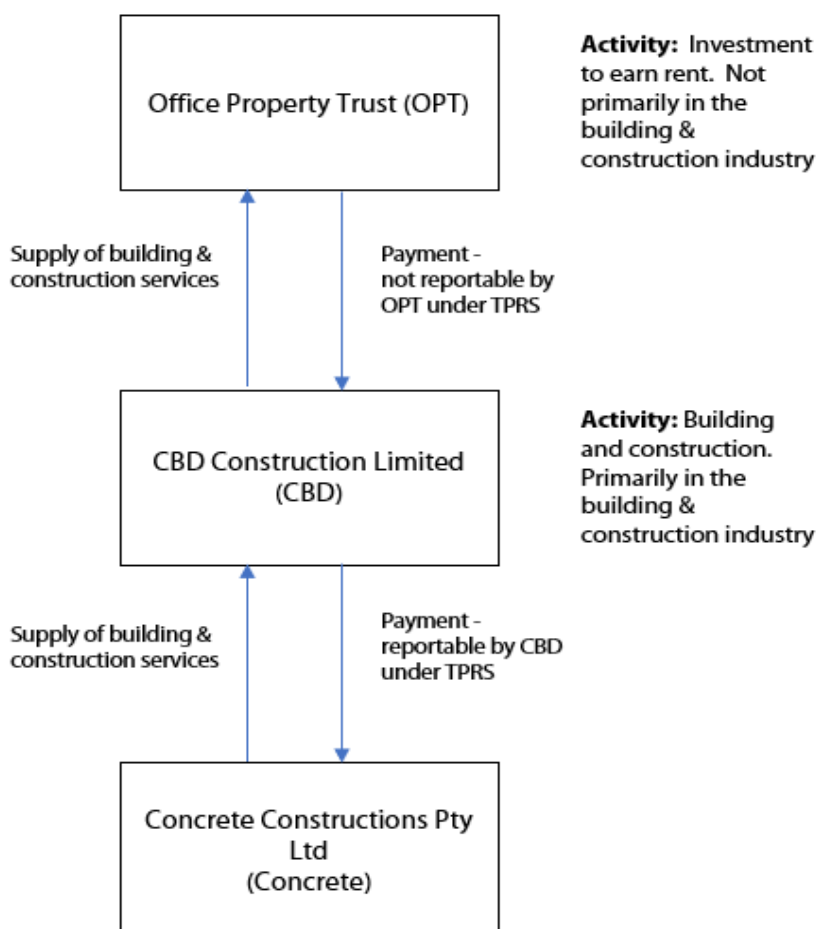
The Explanatory Memorandum illustrated the operation of the provisions with a number of examples, including the following:

Example –business primarily not in the building and construction industry

A hardware store sells building equipment to builders and homeowners. For an additional fee the store can arrange for the installation of certain products, such as a skylight. The store will not be required to report payments it makes to contractors as its business is primarily not in the building and construction industry, but rather in the retail industry (i.e. 50 per cent or more of the business' income-earning activities are in the retail sector, and not derived from building and construction services).

The reporting requirement under these provisions for an owner of a commercial building who is the purchaser of building and construction services is illustrated by the following example:

Office Property Trust (OPT) engages and makes payments to CBD Construction Limited (CBD), a construction company, to construct an office building which, when completed, OPT will rent to office tenants. OPT and CBD have no other business activities. CBD sub-contracts and makes payments to Concrete Constructions Pty Ltd (Concrete) to perform concreting as part of the building's construction. In this example, the TPRS applies as follow



Although OPT is a purchaser of building and construction services, its business is not primarily in the building and construction industry and there is no reporting requirement. CBD, as a construction company whose activities satisfy the 50% business requirement, is required to report its payment to Concrete. In simple terms, OPT is the customer, CBD is the head contractor and Concrete is the sub-contractor, the only intra-industry payment is between CBD and Concrete.

Proposed cleaning and courier provisions are inconsistent with the TPRS

The measures in relation to reporting of payments for cleaning and courier services are contained in proposed Items 11 and 12 to s.396-55 of Schedule 1 to the TAA. In a significant divergence from the TPRS, the requirement in the TPRS for the purchaser of the services to be carrying on a business in the relevant (building and construction) industry is absent.

In particular, Example 6 in the ATO draft guidance indicates that an entity which provides any cleaning services will be required to report payments, even in cases where the entity is not carrying on a business that is primarily in the cleaning or courier services industries. This approach will impose a reporting obligation on a variety of entities who may provide cleaning or courier services as an incident to their main business, which is not in the cleaning or courier industry. For example, a car servicing business which provided a car washing service for customers as part of its business of servicing cars would apparently be required to report any payments it made to a contractor who received payment for washing those cars.

Furthermore, an entity which supplies any cleaning or courier service, no matter how minor, appears to be required to report on all payments that it makes to contractors for cleaning or courier services. For example, in the case of the car servicing business above, reporting also appears to be required of payments to a contractor who is engaged to clean the car business's own workshop and office premises. The contractor's activities do not have to be connected to the cleaning or courier service provided by the entity.

If the principles of the existing TPRS were extended to cleaning and courier businesses, no reporting would be required where the entity's business is not primarily in the cleaning or courier industries (as is illustrated by the Office Property Trust commercial building example included above). Limiting the operation of the TPRS to intra-industry cleaning and courier payments is consistent with the stated policy in the Federal Budget announcement, which is to extend the TPRS to contractors in the courier and cleaning industries.

Potential impacts for owners of commercial buildings if ED is unchanged

In the limited period available for consultation on this ED, there has been insufficient time for the industry to identify all arrangements where owners of commercial buildings may be required to report under this measure. Proposed Items 11 and 12 contain a gateway rule that adopts the GST concept of "supply" which can have an overly wide application, given the focus of the proposed measures. The

following examples indicate common situations where owners of commercial buildings may be impacted by this measure:

Example 1 - Cleaning of common areas: An owner of a commercial building (such as an office building or shopping centre) will generally engage a cleaning contractor to provide cleaning services for the common areas of the building. These costs are generally recovered from tenants as a payment under the lease. It is unclear from the ED whether the building owner would be supplying a cleaning service.

Example 2 - Cleaning of tenancies: The building owner may also engage cleaners to clean tenancies, the charge again being recovered from the tenant. In office buildings particularly, the building owner may choose to engage cleaners for tenancies for operational and security reasons. This activity is merely incidental to the building owner's rental business and is not a separate business. It is unclear from the ED whether the building owner would be supplying a cleaning service.

Example 3 - Concierge courier services: A CBD shopping centre through its concierge desk may provide services to shoppers for the free delivery of items purchased within the centre to their CBD hotel. The shopping centre owner would generally engage a third party commercial courier service to make the delivery, in exchange for a fee. It is noted that there appears to be no requirement under the ED for the entity supplying the courier services (i.e. the shopping centre owner) to receive any payment (i.e. from the shopper) for those services. It is unclear from the ED whether the building owner would be providing a courier service.

Reporting may extend to all payments for cleaning and courier services

In the concierge delivery example above, it would appear that if the shopping centre owner is considered to be providing a courier service, the building owner would be required to report on all payments to contractors for courier services, including all courier costs incurred at head office and as part of its leasing business (eg courioring leases to tenants). This is despite the shopping centre owner clearly not conducting a courier business because no income is earned.

A corresponding outcome may arise if the building owner is providing a cleaning service, no matter how minor.

Recommendations

Our recommendations below are consistent with the delivery of the integrity outcomes recommended by the Black Economy Taskforce and the Federal Budget announcement:

1. Consistent with the Federal Budget announcement, the measure be implemented by extending the TPRS (amending regulation 70 of the Taxation Administration Regulations), incorporating the requirement that:
 - the purchaser be carrying on a business that is (as relevant) primarily in the cleaning services/ courier services industry; and

- a purchaser is taken to be carrying on a business that is (as relevant) primarily in the cleaning services/ courier services industry only if:
 - i) in the current financial year, 50% or more of the purchaser's business activity relates to (as relevant) cleaning services/ courier services; or
 - ii) in the current financial year, 50% or more of the purchaser's business income is derived from providing (as relevant) cleaning services/ courier services; or
 - iii) in the financial year immediately preceding the current financial year, 50% or more of the purchaser's business income was derived from providing (as relevant) cleaning services/ courier services.
- 2. Examples be included in either the explanatory memorandum or ATO guidance confirming that a reporting requirement does not arise under the provisions for owners of commercial properties (such as shopping centres and offices) in relation to activities such as:
 - the cleaning of common areas and tenancies;
 - provision of concierge delivery services.

We would welcome the opportunity to discuss these issues with you further and would be pleased to assist by reviewing any relevant examples.

Please contact me (02 9033 1929) if you have any queries.

Yours sincerely



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Attachment – Drafting Observations

We note our recommendation for the new measures to be included as part of the existing TPRS contained in s.405-5 of Schedule 1 to the TAA and Regulation 70 of the Taxation Administration Regulations. Nonetheless, we provide the following observations on the ED drafting.

The proposed drafting of Items 11 and 12 to s.396-55 of Schedule 1 to the TAA does not appear to be consistent with the outcomes in the examples contained in the draft ATO guidance. In particular, the provisions appear to require an entity to report on income received by the entity, rather than payments made to sub-contractors. We suggest the following drafting corrections may be required to align these provisions with the outcomes in the examples in the draft ATO guidance.

11	an entity that *supplies cleaning services	the provision of consideration (within the meaning of the *GST Act) by the entity to an entity wholly or partly for the *supply of a cleaning service, unless: (a) both entities are *members of the same *consolidated group or *MEC group; or (b) Division 12 requires that an amount be withheld from the payment of the consideration
12	an entity that *supplies courier services	the provision of consideration (within the meaning of the *GST Act) by the entity to an entity wholly or partly for the *supply of a courier service, unless: (a) both entities are *members of the same *consolidated group or *MEC group; or (b) Division 12 requires that an amount be withheld from the payment of the consideration

Appropriate changes will also be required to commentary in the explanatory memorandum (eg paragraph 2.10).