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Public advice and guidance compendium – LCR 2019/4

This is a compendium of responses to the issues raised by external parties to draft Law Companion Ruling LCR 2018/D8 *Expansion of the taxable payments reporting system to road freight, security, investigation or surveillance, and information technology services*.

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO response / action taken
1	Application to consolidated/multiple entry consolidated groups – whether the supply of relevant services within a group, which is then sub-contracted outside of the group for supply, would be reportable.	A payment to an ABN holder outside of a consolidated group for a relevant service, even where the original supplier and the recipient of the service are within one consolidated or MEC group, is reportable under the taxable payments reporting system (TPRS). Text and examples have been added to the final Ruling showing how TPRS applies to consolidated groups (see paragraphs 51 to 57).
2	Application to offshore contractors – where a provider of a relevant service makes a payment to an offshore entity (affiliated or not), whether the payment is reportable.	If the ABN holder is providing a relevant service and engaging a contractor to provide that service on their behalf, the payment to that contractor is reportable. The law contains no exclusion based on the location or tax residency of the payee.
3	Centralised IT service providers within a group – question whether income tax consolidated groups with centralised information technology (IT) services provided by a subsidiary entity who uses contractors outside the group, will be subject to the reporting obligation (and concern about the compliance burden).	We have considered which entities will be subject to the reporting obligation where a consolidated group consumes the IT services which are provided to it by a subsidiary and sub-contractors. It is our view that the single entity rule does not apply to alleviate reporting obligations as it is not part of working out the company's liability to income tax (see section 701-1 of the <i>Income Tax Assessment Act 1997</i> (ITAA 1997)). Explanatory text and examples added to the final Ruling (see paragraphs 51 to 53 and Example 8).

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4	Use of ‘on their behalf’ in the Ruling – Draft LCR 2018/D8 seems to be narrower than the law. By using ‘on their behalf’ it implies that it is only where the service is supplied to a customer of the entity that reporting is required. The legislation seems much broader, requiring that both the entity and the contractor provide the same type of supply irrespective of who it is supplied to.	We consider the interpretation expressed in the Ruling to be the better view. Broadly, we interpret ‘a supply’ in column 1 of the table in section 396-55 of Schedule 1 to the <i>Taxation Administration Act 1953</i> as the same supply referred to in column 2 (indicated by the definite article: ‘the supply’). Applying IT services as an example and using the column headings, the law reads as: <i>‘(A)n entity that makes a supply of an IT service and has an ABN, must report information about the provision of consideration by the entity to another entity wholly or partly for the supply by the other entity of an IT service, unless ...’</i> We also think that if it were intended to capture businesses who <i>generally</i> supply IT services, the first column would have been written more broadly rather than the making of a single supply attracting a reporting obligation. This interpretation is supported by the Explanatory Memorandum to the Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Bill 2018, which has multiple references to ‘on their behalf’ (for example see paragraphs 2.1 and 2.11 to 2.13), and accords with the GST concept of supply explained in GSTR 2006/9 <i>Goods and services tax: supplies</i> and referred to in the final Ruling.
5	Regarding road freight on the following issues: • ‘Provides’ and ‘supplies’ should not be used interchangeably because they have different meanings in different contexts. • ‘Who is a supplier of a relevant service’ needs to be made clearer. Suggested principles: nature and size of the goods sold, delivery destination, transport availability, etc.	More detail has been provided where possible. For example, Example 3 of the final Ruling has been updated to clarify the services that may be reportable. The final Ruling provides principle-based guidance and examples. The application of the reporting requirement will depend on the facts and circumstances of any given scenario. We are therefore unable to address all of the services listed in this submission as definitively within or outside the reporting requirement.

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Issue No.	Issue raised	ATO response / action taken
	• Merchants may have no interest in or knowledge of how the goods will be delivered. For example, the transport may be actioned using a range of service providers and carriage may not be by road. • Example 3 of LCR 2018/D8 shows there is a supply of road freight services but does not make it clear who has the TPRS reporting obligation. • Help merchants identify when it is the supplier versus when the business is considered to have passed on supplier status to another entity. • Show how/if multiple supplies can arise by different parties in the delivery chain. • Explain how transporters can differentiate a courier and road freight provider – simple tests? ATO and industry agreed criteria? • What contractual terms could be implemented to determine whether reporting obligations apply and for which party? • Non-resident merchants (with or without an ABN) who use Australian businesses for delivery of goods to Australian customers. Regarding security, investigation or surveillance services: • Guidance is needed on bundled services eg. where a single property maintenance fee or rental includes security services. • Services provided by offshore suppliers	The important issue when considering the application of the TPRS is what service the <i>payer</i> provides to <i>their customer</i>. Text has been added to paragraph 44 of the final Ruling clarifying that a payer only needs to report the amount they have paid to the entity they have contracted – they do not need to concern themselves with how that contractor might then deliver or provide the service to their client. For example, a storage facility business providing storage services to their customer is unlikely to fall within the ordinary meaning of supplying ‘security services’. The mere fact that a storage business may engage security contractors does not automatically make payments to those contractors reportable under the TPRS. All the facts and circumstances must be considered, particularly the relationship between the parties and what is being supplied (specifically whether there is a composite supply of a relevant service or mixed supplies which include a relevant service). We will continue to work with the community to identify additional guidance that might usefully be provided to assist taxpayers to comply with their obligations. Appendix 2 of the final Ruling also sets out the Commissioner’s practical approach to administering the potential reporting obligations of entities.

Issue No.	Issue raised	ATO response / action taken
	• Why is surveillance of country borders excluded? • Accountants undertaking financial investigations, forensic accounting work, liquidation investigations, cyber security work? • Security 'master' licence-holders and security training organisations? Private sector operated prisons and detention centres? Guard dog handling? Drone monitoring? • Are safety or assurance services included in security services? For example, lifeguards, abseiling instructors, engineers working at Opal Tower, furniture or wine storage facilities.	
6	The reporting threshold categories - Suggested that the proposed exemptions for each service should be in one location for simplicity and consistency.	All of the reporting exemptions are now contained in the Legislative Instrument registered on 24 June 2019: Taxable Payments Reporting System – Reporting Exemptions for Certain Entities Determination 2019. Appendix 1 of the final Ruling reflects this change.
7	GST grouping and the threshold formula – Application of the threshold test to members of a GST group needs clarifying. Is the turnover threshold applied on an entity by entity basis or on the turnover of the GST group?	The denominator in the threshold formula is intended to cover the GST turnover of all the members of a GST group where the entity is grouped. (The inclusion of group turnover does not apply to a group which is a consolidated group but not a GST group; and will be based on the GST group and not the income tax consolidated group where the groups are constituted differently.) Text has been added to the final Ruling (at paragraph 64) clarifying: 'Entities in a GST group use the turnover of the GST group.' Footnotes refer readers to the relevant sections of the GST Act.