



Explanatory Statement

Taxable Payments Reporting System – Reporting Exemptions for Certain Entities Determination 2019

General outline of instrument

1. This instrument is made under paragraph 396-70(4)(a) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
2. The instrument exempts entities that meet specific criteria from having to prepare and lodge reports relating to payments to third party contractors for courier, cleaning, information technology, security, investigation, surveillance, or road freight services under section 396-55 of Schedule 1 to the TAA.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power includes a power that is exercised in a like manner and subject to like conditions to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. The instrument commences on 1 July 2019.

What this instrument is about

6. The taxable payments reporting system (TPRS) in Subdivision 396-B of Schedule 1 to the TAA requires certain entities to lodge an annual report with the Australian Taxation Office (ATO) giving details about consideration provided to other entities for supplying certain types of services on their behalf.
7. The *Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018* expanded the TPRS to apply to entities with an Australian Business Number (ABN) that supply courier or cleaning services and engage third parties to supply these services on their behalf for reporting periods starting on or after 1 July 2018.
8. The *Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018* further expanded the TPRS to entities with an ABN that supply information technology, security, investigation, surveillance, or road freight services and engage third parties to supply these services on their behalf for reporting periods starting on or after 1 July 2019.
9. Under the TPRS, the Commissioner is given the power to exempt entities from certain reporting obligations. The Commissioner may exempt a class or classes of entity from a TPRS reporting obligation taking into account a range of considerations, including whether the information is necessary to assist the

Commissioner, availability of information, and cost of compliance for the reporting entity.

10. The purpose of this instrument is to provide limited, but ongoing, exemptions to the TPRS reporting requirements to reduce the compliance burden of the regime. These exemptions are available for entities whose supply of relevant services covered by the TPRS makes up only a small part of their overall business activities. The relevant services are courier, cleaning, information technology, security, investigation, surveillance, and road freight services.
11. The instrument does this by repealing, remaking and consolidating the exemptions applicable to the TPRS created by:
 - a. Part 2 of Schedule 2 to the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018* (as amended by Paragraph 3(1)(b) of Schedule 2 to the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018*); and
 - b. Schedule 2 to the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018*. *[Section 4 of this instrument]*
12. The purpose for repealing, remaking and consolidating the existing exemptions in the instrument is to bring together all the relevant ongoing TPRS exemptions. This will provide entities with TPRS reporting obligations and their advisors greater certainty and make it easier to find and therefore apply all the TPRS exemptions relevant to them.

Compliance Cost impact:

13. Minor – There will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

Reporting exemptions for certain entities that supply cleaning, courier, road freight, information technology, security, investigation, or surveillance services

14. This instrument exempts certain entities that would otherwise be required to report to the ATO details of transactions where they have provided consideration to third parties who supplied relevant services on their behalf during a reporting period. ***[Section 5 of this instrument]***
15. A reporting entity is not required to report details of relevant transactions in a particular reporting period if it meets the following criteria:
 - (a) the reporting entity satisfies the ‘turnover-threshold test’ for the relevant TPRS reporting obligation under section 396-55 of schedule 1 to the TAA (section 396-55) (see paragraph 19 below); and
 - (b) the reporting entity is not required to report details of these transactions under a separate TPRS reporting obligation under section 396-55 (see paragraph 31 below). ***[Subsections 5(1), 5(3), 5(5) and 5(7) of this instrument]***
16. A ‘reporting period’ means a period described in paragraph 396-55(a) that commences on or after 1 July 2019. ***[Section 3 of this instrument]***

Reporting entity may lodge annual report even if exempt

17. If a reporting entity is exempt under this instrument from reporting relevant transactions for a reporting period, the reporting entity may still choose to lodge an annual report providing details of those transactions if it wishes. ***[Paragraphs 5(1)(c), 5(3)(c), 5(5)(c) and 5(7)(c) of this instrument]***
18. A reporting entity is not required to notify the Commissioner of Taxation about its election to lodge the report in these circumstances. ***[Subsections 5(2), 5(4), 5(6) and 5(8) of this instrument]***

Exemption criterion 1: the turnover-threshold test

General principles

19. A reporting entity will satisfy the turnover-threshold test for a TPRS reporting obligation in a reporting period if, during that reporting period, the total consideration it receives for the supply of relevant services is less than 10% of its relevant GST turnover. ***[Paragraphs 5(1)(a), 5(3)(a), 5(5)(a) and 5(7)(a) of this instrument]***
20. Section 396-55 broadly groups the seven relevant services mentioned in paragraph 10 above into four distinct TPRS reporting obligations, which are:
 - (a) a reporting obligation for supplying a cleaning service (see table item 11 in section 396-55);
 - (b) a reporting obligation for supplying a courier or a road freight service (see table item 12 in section 396-55);
 - (c) a reporting obligation for supplying a security, investigation or surveillance service (see table item 13 in section 396-55);
 - (d) a reporting obligation for supplying an information technology service (see table item 14 in section 396-55);

The turnover-threshold test applies *separately* to each of the four reporting obligations that are relevant to the reporting entity. ***[Subsections 5(1), 5(3), 5(5) and 5(7) of this instrument]***

Total consideration for the supply of relevant services

21. The total consideration a reporting entity receives for relevant services is the total consideration it *receives* in exchange for supplies it makes of all services of that type during the relevant reporting period. This is to be contrasted to an entity's current or projected GST turnover which is calculated by reference to the value of the supplies it has made or is likely to make during the relevant period, except for excluded supplies (sections 188-15 and 188-20 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act)).
22. 'Consideration' has the same meaning as in the GST Act. ***[Section 3 of this instrument]***

Example:

23. Oksana operates a business supplying both courier and road freight services and has an ABN. During the 2020-2021 reporting period, Oksana's business receives \$100,000 from supplying courier services, and \$200,000 from supplying road freight services, to customers. Because courier and road freight

services are covered by a single reporting obligation under section 396-55, when Oksana applies the turnover-threshold test she needs to add these two amounts together to get the total consideration for her business's supply of relevant services (which will be \$300,000). She then needs to compare this total with her business's relevant GST turnover to work out if she satisfies the turnover-threshold test for the 2020-21 reporting period (see more on relevant GST turnover below).

Relevant GST turnover

24. If a reporting entity has been operating for 12 months or more, then their 'relevant GST turnover' for the purposes of the turnover-threshold test is their 'current GST turnover' (as defined in the GST Act), as at the end of the relevant reporting period. **[Section 3 of this instrument]**
25. If an entity has been operating for less than 12 months, then their 'relevant GST turnover' for the purposes of the turnover-threshold test is their 'projected GST turnover' (as defined in the GST Act), as at the end of the relevant reporting period. **[Section 3 of this instrument]**

How to apply the turnover-threshold test where the reporting entity has multiple TPRS reporting obligations

26. If a reporting entity supplies multiple services covered by more than one TPRS reporting obligation under section 396-55, the reporting entity needs to apply the turnover-threshold test *separately* for each applicable *reporting obligation*. In this situation, the reporting entity only needs to report transactions for services covered by a TPRS reporting obligation if it did not satisfy the turnover-threshold test for that reporting obligation.

Example (continued):

27. Following on from the example above, Oksana expands her business and now supplies cleaning services in addition to courier and road freight services. For the 2021-22 reporting period, her business receives \$110,000 from courier services, \$200,000 from road freight services, and \$90,000 from cleaning services. Assume that the relevant GST turnover of her business for this period is \$1 million.
28. Because cleaning services fall under a separate reporting obligation to courier and road freight services in section 396-55, Oksana needs to apply the turnover-threshold test separately for these two reporting obligations.

Obligation in relation to Courier and Road Freight services

29. Oksana applies the turnover-threshold test for the courier and road freight services reporting obligation first: she adds the receipts for courier and road freight services together to get the total consideration received for supplying those services (\$310,000), and compares this with her relevant GST turnover (\$1 million). The result is that the total consideration received for courier and road freight services is 31% of her relevant GST turnover for the 2021-22 reporting period. This means Oksana does not satisfy the turnover-threshold test and must report the transactions where she provided consideration for courier and road freight services for this reporting period.

Obligation in relation to Cleaning services

30. Oksana then applies the turnover-threshold test for the cleaning service reporting obligation: she compares the total consideration her business received for cleaning services (which are the total receipts of \$90,000) with her relevant GST turnover (\$1 million). The result is that the total consideration received for cleaning services is 9% of her relevant GST turnover for the 2021-22 reporting period. This means Oksana satisfies the turnover-threshold test and is exempt from reporting transactions where she provided consideration for cleaning services for this reporting period.

Exemption criterion 2: No exemption where the reporting entity is otherwise required to report details of the relevant transactions

31. Even if the reporting entity satisfies the turnover-threshold test for the TPRS reporting obligation applying to it, it is still required to report the transactions covered by that reporting obligation if the transactions are also captured by another third-party reporting obligation under section 396-55 (such as government related entities providing grants or consideration for services). This ensures existing reporting obligations in other items in the table in section 396-55 are not affected by the exemption in this instrument. ***[Paragraphs 5(1)(b), 5(3)(b), 5(5)(b) and 5(7)(b) of this instrument]***

Consultation

32. An early draft of this legislative instrument was consulted on between 23 July 2018 and 17 August 2018. The consultation was extended until 31 August 2018 at the request of some stakeholders who needed more time to consider it and provide a response. Consultation was conducted, and feedback obtained, through the ATO's 'Let's Talk' consultation platform. At the time of the early consultation, the draft legislative instrument only proposed to cover TPRS reporting exemptions for security, investigation, surveillance, and information technology services.
33. Consultation on the early draft was advertised through the ATO's tax practitioner and digital service provider newsletters, the ATO's 'new legislation' webpage for TPRS, and on Treasury's consultation webpage for the exposure draft of the Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Bill 2018. Both the ATO and Treasury invited industry representative bodies, among others, who were previously consulted during the development of the TPRS measure in the Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Bill 2018.
34. Stakeholder feedback on the early draft instrument was mostly favourable. A recurring theme in the feedback was that stakeholders preferred the TPRS reporting exemptions to all be located in the same place. The ATO responded to this feedback in this draft instrument by proposing to relocate the exemptions in the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018* and the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018* to this instrument. Other stakeholder feedback sought greater clarity on how the exemptions work. The ATO responded to this feedback by providing greater detail and clarity in the accompanying explanatory statement. The ATO has also provided further guidance in the law

companion rulings that offer the Commissioner's interpretation of the two expansions of the TPRS.

Legislative references:

Acts Interpretation Act 1901

A New Tax System (Australian Business Number) Act 1999

A New Tax System (Goods and Services Tax) Act 1999

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Taxation Administration Act 1953

Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Act 2018

Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The taxable payments reporting system requires certain entities to lodge an annual report with the Australian Taxation Office (ATO) giving details about consideration provided to other entities for supplying courier, road freight, cleaning, security, investigation, surveillance or information technology services on their behalf.

This instrument provides an exemption from the reporting obligation in relation to particular services for a reporting period where the consideration received by the entity for that type of service in the reporting period is less than 10% of its GST turnover for the reporting period.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms because it merely reduces the compliance burden for businesses where the supply of relevant reportable services only makes up a relatively small part of their business activities.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.