

- *Electronic sales suppression tools*



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Electronic sales suppression tools

The purpose of this draft guidance is to facilitate consultation between the Australian Taxation Office (ATO) and the community on the proposed ban on electronic sales suppression tools.

The draft guidance is prepared solely for the purpose of obtaining comments from interested parties. All views are preliminary in nature, and should not be taken as representing either an ATO view or that we will take a particular view.

This paper is not a publication that has been approved to allow you to rely on it for any purpose. It is not intended to provide you with advice or guidance.

Purpose

On 7 February 2018, the [Treasury Laws Amendment \(Black Economy Taskforce Measures No.1\) Bill 2018](#) was introduced to Parliament. One of the measures in the Bill proposes to prohibit the use, possession, production and distribution of electronic sales suppression tools.

This draft guidance describes how we propose to apply the new law on banning electronic sales suppression tools.

Feedback

You can provide your confidential feedback on the draft guidance at ESST@ato.gov.au

Banning electronic sales suppression tools

Legislation is before Parliament to ban entities from manufacturing, supplying, possessing and using electronic sales suppression tools where these actions involve entities that have Australian tax obligations. These actions may soon be criminal offences, and penalties may apply (including if you knowingly assist in these actions).

A business must keep records to explain all of its transactions, including records created by an electronic point-of-sale (POS) system. Electronic sales suppression tool (ESST) is the term used to describe a tool that can be used to facilitate tax evasion by manipulating these records, and under reporting income.

ESSTs can come in different forms and are constantly evolving. For example, an ESST can be:

- an external device connected to a POS system
- additional software installed into otherwise compliant software
- a feature or modification, like a script or code, that is a part of a POS system or software.

An ESST may allow income to be misrepresented and under-reported by:

- deleting transactions from electronic record-keeping systems

- changing transactions to reduce the amount of a sale
- misrepresenting a sales record, for example by allowing GST taxable sales to be re-categorised as GST non-taxable sales
- falsifying POS records.

Determining if a tool is considered an ESST

A reasonable person must consider that one of the principal functions of an ESST is to misrepresent transactions recorded on a POS system.

Examples of an ESST

Example 1: Downloading software with sales suppression capabilities

Ron downloads 'Sales Zapper', a software program that is compatible with his existing POS system. It's designed specifically to manipulate sales records and can also erase certain records without leaving a trace

A reasonable person would consider that one of the program's principal functions is to falsify, manipulate, hide, misrepresent, destroy or prevent the creation of records and so Sales Zapper falls under the definition of an ESST.

Example 2: A USB device with more than one principal function

Anthea operates a café and realises that storing data from her POS system is using too much space on her computer's hard drive, so she buys a USB device to store the information on instead. The USB device is sold as 'SalesUSB' and when the POS system data is transferred to the USB device; there is a hidden program that deletes every fifth cash sale. SalesUSB has two principal functions; one for storage and one to delete every fifth sale.

The hidden program is part of SalesUSB and is an ESST as a reasonable person would consider that one of its principal functions is to falsify, manipulate, hide, misrepresent, destroy or prevent the creation of the user's records.

Example 3: Non-compliant training mode

Stephen operates a pub and buys a separate module called 'TrainStaff' from his POS developer, which he adds to his POS system. The module contains an additional function to enter, amend or delete genuine business transactions (not just those in training mode) without leaving a trace.

A reasonable person would consider the additional function to manipulate and delete live sales is an ESST as one of its principal functions is to falsify, hide, misrepresent, destroy or prevent the creation of transaction records.

Examples of what isn't an ESST

A tool with the ability to change a record isn't an ESST if the principal function ensures records accurately reflect transactions. For example, standard POS systems often include a feature that allows transactions to be edited or modified to correct genuine mistakes.

Example 4: Compliant training mode

Nick owns a book store and runs his POS system in training mode to teach new employees how to use various functions such as correcting errors and issuing refunds.

While in training mode, all transactions are separated from live transactions and there's a printer control that adds a watermark on receipts to indicate they were generated while in training mode.

Example 5: Altering sales records in a compliant way

Kieran owns an ice-cream shop and his POS system has a function to void transactions. This function can be used to legitimately correct errors by reversing the transaction and input a new transaction that accurately reflects the actual transaction. This function can also be used to issue refunds.

When the void transaction function is used, a record is still kept in the history log of the POS system. The void transaction function produces a receipt and marks it as a void transaction. All receipts have sequential transaction numbers so any void transactions with missing receipts can be identified.

Offences relating to electronic sales suppression tools

It is an offence to:

- produce or supply an ESST
- possess an ESST
- incorrectly keep records using an ESST.

Criminal or administrative penalties may apply.

If you know a business you manage or work for has committed any of the ESST offences, you may also be liable for those offences.

Regardless of whether you intended to do the wrong thing, you have committed an offence if it can be proven that it happened. However, in some circumstances you may be able to avoid a penalty.

See also:

- [When you may not be liable for a penalty](#)

Producing or supplying an ESST

It's an offence to:

- manufacture, develop or publish an ESST
- supply or make available for use, an ESST
- provide a service that involves the use of an ESST.

Overseas manufacturers, suppliers or producers of ESSTs that facilitate tax evasion or fraud are responsible if a tool is used to modify records a business needs to keep under Australian tax law.

Penalties for producing or supplying an ESST:

- apply if you're convicted - the Court may impose a criminal penalty up to a maximum of 5,000 penalty units.
- alternatively, we may impose an administrative penalty of 60 penalty units.

If you assist others in taking action that results in an administrative or criminal penalty for production or supply of an ESST, penalties may also apply.

See also:

- [Assisting others to commit ESST offences](#)
- [Penalties](#)

Example 6: Developer and supplier based overseas

Sandra is a software developer based in Spain. She develops an ESST that enables businesses to alter their sales records to decrease figures without detection. She advertises the tool for sale online.

Geoff owns a café in Brisbane. He purchases the ESST from Sandra's website, installs it on his POS system and uses it to modify his business' sales records.

Even though Sandra is not in Australia, she has committed an offence by developing and supplying an ESST to modify records that Geoff is required to keep under Australian tax law. Geoff also committed the offences of possessing and incorrectly keeping records using an ESST.

Possessing an ESST

You have committed an offence if you acquire, possess, control, or have a right to use an ESST.

Penalties for possessing an ESST:

- apply if you're convicted - the Court may impose a criminal penalty up to a maximum penalty of 500 penalty units.
- alternatively, we may impose an administrative penalty of 30 penalty units.

If you assist others in taking action that results in an administrative or criminal penalty for possessing an ESST, penalties may also apply.

See also:

- [Assisting others to commit ESST offences](#)
- [Penalties](#)

Example 7: Possessing an ESST

Kim owns a cafe and directs her employee to purchase and use an ESST to remove every second cash sale from her sales records.

Even though Kim doesn't have physical possession of the tool, she has committed the offences of:

- possessing an ESST as she has 'control' of it by instructing her employee to use it on her behalf
- using an ESST to incorrectly keep records.

Her employee also committed the offences of possessing and using an ESST.

See also:

- [Incorrectly keeping records using an ESST](#)

Incorrectly keeping records using an ESST

It's an offence to keep, make, alter, or prevent making a tax record using an ESST.

The tool doesn't actually have to be used by the person or business that owns the records.

Penalties for incorrectly keeping records with an ESST:

- apply if you're convicted - the Court may impose a criminal penalty up to a maximum penalty of 1,000 penalty units.
- alternatively, we may impose an administrative penalty of 60 penalty units.

If you assist others in taking action that results in an administrative or criminal penalty for using an ESST to incorrectly keep records, penalties may also apply.

See also:

- [Assisting others to commit ESST offences](#)
- [Managing your small business records](#)
- [Penalties](#)

Example 8: Using an ESST through a third party

Nicole develops a POS system with a hidden backdoor that can be activated to give her remote access. Nicole sells her POS system to Lina for her shop and offers to provide an additional service where she uses the backdoor and modifies Lina's sales transactions using an ESST. Lina agrees and pays Nicole a service fee.

At the end of each month, Nicole uses the backdoor to remotely access Lina's POS system and run a script to automatically reduce high-value transactions by substituting them for cheaper items.

By acquiring Nicole's services, Lina has altered her records with an ESST even though Nicole was the one actually using the tool. Lina has committed an offence of incorrectly keeping records using an ESST.

Nicole has committed the offences of using, possessing, producing and supplying an ESST.

Assisting others to commit ESST offences

Administrative and criminal penalties will also apply if you knowingly assist a person or business to take action that would result in an ESST penalty.

Example 9: Assisting with committing ESST offences

Kevin owns a sporting goods shop and learns about ESSTs from the media. Kevin is interested in getting an ESST and asks his tax agent, Frank about it.

Frank purchases and arranges for an ESST to be delivered directly to Kevin, who installs and uses it.

Kevin has committed the criminal offences for possessing an ESST and using it to incorrectly keep records.

Frank has also committed the criminal offence of supplying an ESST. Because Frank has assisted Kevin to acquire an ESST he has also committed the same criminal offences for possessing and using an ESST to incorrectly keep records.

Alternatively, administrative penalties may apply for Kevin and Frank.

When you may not be liable for a penalty

Criminal penalties

You may not have committed an offence for

- producing, supplying or possessing an ESST if you can show the Court that it was for the purpose of preventing or deterring tax evasion, or enforcing a tax law
- producing, supplying, possessing or using an ESST if you can show the Court that you made an honest mistake and have sufficient evidence to support your claims.

Administrative penalties

You may not be liable to an administrative penalty for producing, supplying or possessing an ESST if you can show us that it was for the purpose of preventing or deterring tax evasion, or enforcing a tax law.

See also:

- [Penalties](#)
- [Statements and positions that are not reasonably arguable](#)

Six-month transitional period for possessing an ESST

There are transitional arrangements in place for six months starting from royal assent for possessing an ESST.

If you possess an ESST, you may avoid committing an offence for possessing it if you:

- acquired it before 7:30pm 9 May 2017 (date of announcement), and
- advise us that you possess the tool.

If this doesn't apply to you, we strongly encourage you to make a voluntary disclosure and fully co-operate with us to reduce the serious penalties that can be applied.

The transitional provisions do not apply to the manufacture, development, publication, supply or use of an ESST.

See also:

- [Release of the interim report into the black economy](#)

How to tell us

You can apply for the transitional arrangement by emailing us at esst@ato.gov.au or [writing to us](#) with all of the following details:

- your details, including:

- name (both legal and trading name)
- business address
- Australian business number (ABN)
- name of the POS system and ESST
- date the ESST was first acquired or you became aware of it
- your contact details (telephone number and email) and the way you prefer us to contact you.

We will then contact you and advise you of any action you may need to take and whether the transitional arrangement will apply to you.

Example 10: Transitional application for possessing an ESST

Bob buys a hardware store from Craig in March 2017. Craig doesn't tell Bob about anything unusual or any of the equipment that Bob should be aware of.

In September 2017, Bob is testing the POS system and finds a hidden function that allows him to delete or manipulate transactions from his POS system. Realising this is an ESST Bob emails the ATO with the required information.

As Bob came into possession of the ESST in March 2017 (prior to 9 May 2017) and notified the ATO, the transitional arrangements apply.