



17 August 2015

General Manager
Small Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Re:

New Third Party Reporting Requirements – Comment Letter
Square AU Pty Ltd
360 Little Collins Street, 2nd Floor
Melbourne, VIC 3000

Dear General Manager:

On 10 July 2015, the Treasury of the Australian Government issued an Exposure Draft Amendment (the “Exposure Draft”) and accompanying explanatory material (the “Explanations”) addressing previously announced measures to improve tax compliance by enhanced third party reporting and data matching (the “Reporting Regime”).¹ The Reporting Regime is intended to improve taxpayer compliance by increasing the information reported to the Commissioner of Taxation by certain third parties. The Exposure Draft amends the Taxation Administration Act of 1953 by creating a new reporting regime in which third parties are required to report information to the ATO on transactions that could reasonably be expected to have tax consequences for other entities.

Under the Australian tax system, individual taxpayers are required to file annual income tax returns and generally self-assess transactions that can have an income tax impact. To assist taxpayers in meeting their tax reporting obligations, the ATO is working to implement a ‘pre-filing service’ in which information gathered for other compliance purposes would be uploaded to a taxpayer’s tax return.² According to the Explanations, implementing the Reporting Regime is expected to improve the pre-filing services offered by the ATO by increasing the pool of information

¹ The Exposure Draft states the measure was first announced by the Government in the 2013-14 Budget as “Tax compliance – Improving compliance through third party reporting and data matching”, The Government subsequently extended the start date for this measure to 1 July 2016.

² See 1.4 of the Explanations. The ATO gathers information used for pre-filing income tax returns from various sources such as employers for salary and wages, financial institutions for interest income, share registries for dividend income. The Reporting Regime is expected to provide additional information not currently captured from available compliance sources.



reported to the ATO.³ The information gathered by the ATO will serve the primary purpose of providing rich data directly relevant to the tax compliance activities of the ATO to address issues of taxpayer omissions or underreporting of income.⁴

Interested parties were invited to comment on the design of the Exposure Draft and accompanying Explanations by 14 August 2015. The Treasury granted Square AU Pty Ltd ("Square AU") an extension to provide comments by 18 August 2015. Accordingly, this comment letter is respectfully submitted on behalf of Square AU containing our observations on the Exposure Draft and Explanations.

General comments applicable to the Draft and explanatory material:

- **Taxpayer Identification.** As indicated in the Explanations, the information received by the ATO may be used for pre-filing of income tax returns as well as compliance purposes. As such, this requirement implies that information collected and remitted under the Reporting Regime must be traceable to a specific taxpayer.
- The Exposure Draft, however, does not specify what information must be collected to insure a transaction can be properly attributed to a specific taxpayer.⁵ We request that the Treasury provide additional clarity around this aspect. Based on our understanding of similar legislation in the U.S., a name and address may often not be sufficient to identify a taxpayer, particularly when the taxpayer has a common name and/or multiple addresses. An Australian business number ("ABN") could be used. However, businesses may not be required to apply for an ABN until their turnover reaches A\$75,000. Square AU engages with many micro merchants and sole traders whose business would not have reached this level of turnover. A tax file number could be used to report transactions to a specific taxpayer; however, tax file numbers are currently not collected for payment processing – specifically because they constitute personal information and we currently have no business need for gathering these details which, unlike ABN disclosure, would raise significant privacy related compliance concerns for both Square AU and its registered Australian merchants.
- Square AU requests clarification as to what taxpayer identification information will suffice for the Reporting Regime so that it can determine how its business will be impacted. For example, in addition to costs associated with building a system to request any additional information from its users, Square AU must also anticipate how such requests will impact the

³ See 1.6 of the Explanations.

⁴ See 1.7 of the Explanations.

⁵ See Exposure Draft, 396-60(2)(b), which states that the information required to be reported "may relate to the identification of those other entities."

- user experience and whether there can be an overall negative financial impact to Square AU as a result of a negative user experience.
- We respectfully request you take such concerns into consideration when issuing additional guidance, in particular in respect of those payment transactions that involve Square AU registered payee users that do not have and are not required to have an ABN.
 - **Transaction Size.** The Exposure Draft provides no guidance as to whether a merchant's transactions must be reported regardless of transaction volume for the year. Although the Reporting Regime is expected to provide benefits to the ATO in the form of extensive additional compliance information and for pre-filing income tax returns, there is an associated cost to sorting through the information collected that is to be remitted, including implementing systems to handle the information volume, hiring agents to sort through the information, and hiring representatives to address questions from both taxpayers and reporting parties.
 - As such, we strongly encourage the Government to consider providing a threshold reporting amount over which transactions per taxpayer would only need be reported, for example, if the annual aggregate transaction volume (for all transactions per taxpayer handled by the reporting entity) exceeded A\$50,000.
 - **Reporting Timeline.** The Reporting Regime only allows 31 days from the close of the reporting period for reporting entities to submit reporting information to the ATO and taxpayers. At this time, it is not clear what information will need to be reported nor in what format. Regardless, a 31-day period to compile, sort, review and approve the information to be reported to a government agency could prove to be incredibly challenging. Requiring reporting entities to submit any information within such a short time frame could easily result in errors and miscalculations. If the reporting deadline were extended to 4 months, it would still allow the ATO and tax payer to receive the completed reporting at least two months prior to when personal tax returns would be due.
 - To assist in collecting, sorting, and reporting the most accurate information, we respectfully request that an automatic three-month extension to file any reports under the Reporting Regime be accommodated.

Comments specific to Business transactions made through electronic payment systems:

- **Transactions.** The Explanations indicate that the Reporting Regime is intended to capture those transactions that can reasonably be expected to have tax consequences for other entities. The Explanations makes it clear that a reporting entity does not need to know whether the other entity is otherwise exempt from tax. Accordingly, the Explanations state that in

determining whether a tax-related liability may arise, any exemption under the tax law is to be disregarded.⁶ The Explanations acknowledge that to require reporting entities to find out whether entities, on which they are reporting, are exempt under the tax law would impose an unnecessary compliance burden.⁷

- Square AU appreciates that the Reporting Regime removes the obligation of determining whether an entity may be exempt under the tax law for reporting purposes. However, this exclusion only addresses one of the transaction-reporting hurdles within the Reporting Regime. There are at least three other transaction-related requirements that create the same unnecessary compliance burden, which appear to have been overlooked in the Explanations. The first hurdle is a business-related requirement for transactions involving an electronic payment. The second hurdle involves potential exceptions for specified transactions enumerated by the Commissioner. The third hurdle appears to allow an exemption of reporting certain information as may pertain to classes of entities granted an exemption by the Commissioner.
 - *Business Requirement* – the Exposure Draft appears to limit reporting to “business” transactions.⁸ The Exposure Draft, however, does not address how it is to be determined whether a transaction is business-related. As relates to electronic payments, payment-processing systems in general do not collect information regarding the transaction purpose. Furthermore, although payment-processing systems are most commonly used to process payments related to the sale of goods or services, there is no restriction that the systems be used only for such transactions. It is possible that certain transactions processed via a payment process system could be entirely non-business related. For example, an individual may use a payment process device to collect payment for a shared cost from a group of individuals. Given that payment-processing systems do not gather transaction purpose detail that would allow the reporting entity to distinguish non-business transactions from business-related transactions, to require exclusion of non-business transactions could prove onerous, if not impossible, for the reporting entity to accurately identify such transactions and comply with the law.

As such, we respectfully request an exception be made to the business requirement for electronic payment transactions processed for an

⁶ See 1.8 of the Explanations. See also, Exposure Draft, 396-60(2)(a), parenthetical disregarding any exemptions that may apply under the tax law for purposes of determining whether a transaction may result in a tax-related liability.

⁷ See 1.17 of the Explanations.

⁸ Exposure Draft, 396-55(1), Item 9(a).

entity. Specifically, the Exposure Draft should specify that all electronic payment transactions processed for an entity can be assumed to be business related.

- *Commissioner Exceptions for Transactions* – the Exposure Draft provides an exception to reporting for certain transactions enumerated by the Commissioner.⁹ It is unclear how such exception would apply to certain reporting parties, especially as it relates to the processing of electronic payments. As mentioned above, administrators of payment systems do not generally collect data as to the type of transactions processed and even if collected, have no means of verifying the accuracy of any payment characterization. Thus, it would be incredibly difficult, if not impossible for a payment processing company to remove exception transactions and comply with the law.

- *Commissioner Exceptions for Entities* – the Exposure Draft and Explanations indicate the Commissioner may provide, by legislative instruments, exemptions for reporting by certain entities.¹⁰ On first impression, this exemption appears to apply to the reporting-level entity. If this is the intent of the exemption for entities, we would appreciate clarification to this matter as this could reduce the amount of information (i.e., entity-based exemptions) an administrator of an electronic payment system would otherwise be required to monitor. If, however, the exemption is meant to address information reported by an administrator of an electronic processing system on certain classes of entities exempted by the Commissioner, then for the following reasons, we request the exemption not be applied with regards to electronic payment processors. It would be particularly burdensome on an administrator of an electronic payments system to sort through taxpayer information, understand what information it could rely on, understand its duty of care in determining which entities are exempt, determine those entities subject to a Commissioner exemption, and redact such exempted information from reporting. A perhaps more efficient process would be for the reporting entity to report on all entities, for which it processes payments. The ATO would have the best insights as to whether a particular entity were truly exempted from reporting and could then simply disregard this entity's information.

⁹ The Commissioner may notify an entity that it is not required to report for specified transactions. See Exposure Draft, 396-65(1)(b).

¹⁰ Exposure Draft, 396-65(1) and(4); see Explanations at 1.26 through 1.29.



We request that such exceptions (transactional or entity-specific information) not be applied to electronic payment processing. An administrator of a payment processing system would instead report on all transactions without regard to any exceptions; and responsibility for excluding such transactions or information from a taxpayer's income tax filing would remain with the taxpayer benefitting from the exception. Because the taxpayer has the information and support for excluding excepted transactions and information, we believe this is a more efficient and accurate means of handling excepted transactions or entities.

- Although Square AU may be able to determine whether a particular user falls within a tax-exempt class, additional steps would have to be implemented to gather the needed data to verify such classification. Additional guidance would be needed as to the specific methods and documentation that would be acceptable upon which an administrator of a payments system could rely in determining if a merchant were exempt from reporting. In addition, Square AU would need to have a system in place that could continuously monitor the tax status of the user and/or transaction. Finally, Square AU would need to maintain separate filing systems for those entities and transactions that would otherwise be exempt. We would ask the question as to if it would not be easier for the ATO to determine if a particular merchant were exempt for tax purposes and simply have the administrator report on every user who met certain payment volume thresholds. We respectfully request that thoughtful consideration be applied when providing additional guidance for electronic payment processors to ensure substantial costly administrative burdens are not imposed with respect to business-related requirements or Commissioner exceptions.
- Gross Payments Processed. The Explanations clarify that administrators of payment systems must report information about transactions involving an electronic payment processed on behalf of an entity carrying on a business. The provision appears to be limited to transactions that "produce income for the business," or otherwise provide a refund or cash to a customer of the business. The Explanations do not address the level of detail required to be collected and submitted on these transactions. Specifically, it is unclear if a reporting entity must provide transaction information related to a reported entity on a gross basis (i.e., aggregating all payments processed for the entity), on a net basis (only report the total net amount remitted to the business, which would also be net of any chargebacks or fees paid for the service), or separately (e.g., gross payments received, refunds made, fees charged, chargebacks made).
- Example 1.7 in the Explanations illustrates a simplified reporting requirement of online payment systems. The example explains that the taxpayer, Jane, has a payment processing account for her baking business, and that under the Reporting Regime, information regarding (i) sales



transactions, and (ii) transactions wherein the business provided a refund or cash back to a customer would need to be reported. However, the example overlooks other transactions that may resemble refunds. For example, a merchant may provide credit to a customer for customer-relation reasons such as goodwill if the customer had a negative experience with the business. This credit would be reported similar to a refund. As pertains to cash back payments, such payments would depend on users of the devices to reflect a reduction in the payment processed; however, such reduction would not separately be categorized as a cash back payment.

- Reporting on a transaction-type level (e.g., refunds, cash back, credits) would thus prove extremely difficult, if not impossible to track. We would also like to suggest that anything other than reporting gross payment volume would provide less clarity to the ATO as to the nature of the offsetting adjustments so as to determine if they were taxable or non-taxable in nature.
- We, thus, respectfully request that transaction reporting on electronic payments be required at an aggregate gross payment processed level, aggregating all transactions processed for an entity, and that responsibility for supporting reductions for refunds, credits, cash back payments, and other such transactions remain with the entity reported on (i.e., the user of the payment processing system).

We kindly appreciate your consideration in the above matters, in providing guidance to entities impacted under the Reporting Regime. We strongly feel our recommendations will improve the quality of information to be collected and reported to the ATO; will reduce the cost of implementation to all reporting entities; and does not contravene the purpose of the Reporting Regime.

We look forward to hearing back from you regarding our comments to the Reporting Regime.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Hamel".

Greg Hamel,
Chief Tax Officer, Square, Inc.
Parent of Square AU Pty Ltd