



THE TAX INSTITUTE

THE MARK OF EXPERTISE

18 August 2015

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

By email: taxlawdesign@treasury.gov.au

Dear Mr Cambell,

Improving tax compliance – enhanced third party reporting, pre-filing and data matching

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Bill 2015: Third Party Reporting Exposure Draft (Exposure Draft)*.

Summary

Our submission below addresses issues arising in relation to the Exposure Draft. In particular:

- clarification of the breadth of the application of the proposed amendments; and
- minor improvements to the explanatory material.

Discussion

Our comments are limited to the Exposure Draft and associated Explanatory Memorandum (**EM**) only.

1. Breadth of approach

- a) All tax liabilities or income tax only?

Proposed section 396-60 in the Exposure Draft refers to the information required to be provided which includes information that relates to identifying, collecting or recovering a possible 'tax-related liability'. The term 'tax-related liability' is defined in section 255-1 of the *Taxation Administration Act 1953 (Cth) (TAA)* as a 'pecuniary liability to the

Commonwealth arising directly under a 'taxation law'...'. A 'taxation law' is defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth) (**1997 Act**) as 'an Act of which the Commissioner has the general administration...'. This includes Acts such as the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) and the *Fringe Benefits Tax Assessment Act 1986* (Cth).

The EM only includes income tax related examples implying that the scope of the information required to be reported could be limited to transactions likely to only have income tax implications.

It would be useful if Treasury could confirm the breadth of the approach intended under this proposed amendment. In the event the approach is intended to be broader than just income tax liabilities, it would be useful to examples in the EM concerning tax liabilities other than income tax liabilities. Alternatively, if the intention is to limit these measures to income tax liabilities, amendments are required to achieve this.

b) Business transactions conducted electronically

If it is intended that all business transactions conducted electronically be reported under the proposed amendments¹, then in our view, given that almost every transaction of this kind is likely to have an associated tax-related liability, this will require that almost every business transaction will likely need to be reported to the Australian Taxation Office. If this is the case, a significant administrative burden will be placed on the administrators of payment systems, the cost of which will ultimately be passed on to businesses. This appears to be inconsistent with the overall deregulation agenda to reduce 'red tape'. It would be useful if Treasury could confirm whether this is intended.

2. Financial benefit vs consideration

Clarification is required as to whether provision of a financial benefit by a government related entity is intended to mean 'consideration' for GST purposes. Confusion may arise regarding whether a financial benefit is also intended to be regarded as consideration for a supply for GST purposes as a result of how the terms in Item 2 in the table in proposed section 396-55(1) are defined. The definitions of 'government related entity' and 'supply' are drawn from the GST Act and the definition of 'financial benefit' is drawn from section 974-160 of the 1997 Act. As a result, it may be implied that 'financial benefit' also means 'consideration' for GST purpose. It would be useful if Treasury could confirm whether this is intended.

3. Example 1.1 in the EM

It appears Example 1.1 is intended to be an example of when a government related entity is required to report a payment for services that are not incidental, particularly as Example 1.2 is included in the EM as an example of when a government related entity

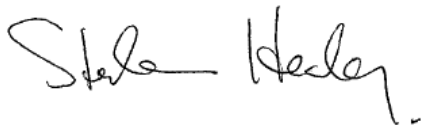
¹ This arises as a result of the potential application of Item 9 in the table in proposed section 396-55(1) of the Exposure Draft.

is not required to report a payment for services where the service is provided incidentally.

However, in Example 1.1, the provision of services is noted as being incidental but the example concludes the Commonwealth Department should report the entire \$1,000 payment. The operation of the law does not support this outcome (see Item 2 in the table in section 396-55(1)). In our view, the example should be amended to describe the services as a substantial part of the supply (not incidental to it) to justify the conclusion in the example accords with the operation of the law.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in black ink, appearing to read "Stephen Healey". The signature is written in a cursive style with a horizontal line underlining the first part of the name.

Stephen Healey
President