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Mr Andre Moore
Assistant Secretary Law Division
Treasury
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19 October 2021

Dear Mr Moore,

Second round of miscellaneous amendments to Treasury portfolio laws 2021: amendments to the Payment Times Reporting Act 2020

Thank you for the opportunity to provide a response to *the Exposure Draft Legislation Treasury Laws Amendment (Measures for Consultation) Bill 2021: Miscellaneous and Technical Amendments No. 2* (the exposure draft) with particular reference to amendments to the Payment Times Reporting Act 2020 (PTR Act).

As a leading professional services firm, KPMG Australia (KPMG) is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also employees, governments, regulators and the wider community. We strive to contribute to debate that seeks to develop a strong and prosperous economy and welcome the opportunity to provide a response to the exposure draft.

KPMG's Payment Times Reporting Advisory team has been assisting numerous clients over the last 12 months to understand and prepare for Payment Times Reporting. In addition, the team have also been interacting with Treasury in understanding and interpreting the complexities of the PTR scheme on behalf of our clients. Given this background, KPMG is pleased to provide insights from our clients that relate to the amendments proposed in the exposure draft.

Procurement wording amendment

KPMG understands that the amendments are intended to ensure that the reporting content requirement captures the proportion, by total value, of all invoices paid by the entity during the reporting period that were small business invoices rather than the total value of procurement which may differ from invoices paid.

Currently the PTR Act requires you to “state the proportion, determined by total value, of all procurement by the entity during the reporting period that was procured from small business suppliers”. The amendment proposes that this be changed to “state the proportion, determined by total value, of all invoices paid by the entity during the reporting period that were small business invoices”.

KPMG supports this amendment noting that the *Payment Times Reporting Scheme: guidance for reporting entities* (Guidance Material) already notes that the calculation should be made on an invoice paid basis. On this basis it would be beneficial for the exposure draft to confirm that there will be no change to the Guidance Material (i.e., no change to the denominator and/or numerator for calculations) and provide industry with certainty that they do not have to revisit the method used for calculations at the next reporting period. This is particularly important as the majority of KPMG clients used the procurement calculations included in the Guidance Material (i.e. on an invoice paid basis), if the rules were to change then these businesses would need time to address the change and we would suggest a commencement date of next income year.

While not directly related to this amendment, it may be an opportune time to also address an error in the PTR rules that relates to non-trade credit arrangements. The Guidance Material states that “any small business invoice that is not paid under a trade credit arrangement is to be disregarded”, however the PTR rules state non-trade credit arrangements should only be disregarded for the payment times metrics. The PTR rules may need to be updated to better reflect the Guidance Material.

Method used for calculations

The exposure draft seeks to amend the PTR Act to allow the rules to prescribe a method for working out any of the matters mentioned in section 14(1)(g) of that Act, including in relation to the issue or payment of small business invoices but also calculating standard payment periods, payment ranges and procurement percentages. Previously only payment ranges were included. KPMG is supportive of this amendment as it provides additional legislative support to the calculations in the Guidance Material, increasing certainty for industry.

Allowing for greater delegation powers

These amendments relate to the delegation of regulator powers and functions under the PTR Act, including limiting these powers to Senior Executive Service (SES) employees, while other functions can be carried out by Executive Level 2 (EL2). KPMG supports the amendment to delegate at the EL2 level decisions that relate to ceasing being a Registered Entity due to eligibility changes and for extensions in time to submit reports. We are aware of a number of businesses that experienced long wait times for these applications and allowing these to be actioned at the EL2 level should help address these delays.

In addition, given the complexity of the scheme it is recommended that the regulator is appropriately resourced in order to ensure it carries out its functions appropriately.

Rules governing 'volunteering entities'

The PTR Act allows for a constitutionally covered entity which does not meet the criteria for a reporting entity to volunteer to provide reports by writing to the Regulator prior to the beginning of an income year. The amendments will mean that a volunteering entity will become a reporting entity at the time at which they give notice of their election to become a reporting entity but report in the next reporting period regardless of whether it is the first or the second reporting period of an income year.

The exposure draft may want to provide additional guidance to businesses about the implications of volunteering to be a reporting entity earlier than required i.e. the Commonwealth's Payment Times Connected Procurement Policy may apply. In addition, the regulator may want to assess any impact on the PTR Portal of the amendment. For example, if you acquire a non-registered entity in the first 6 months of an income year, the new volunteering rules will allow a business to apply to be a reporting entity sooner. If the business wants the purchased entity to start being part of group PTR reporting in the last 6 months of the year instead of waiting for the new tax year (due to systems requirements etc), you could use the amendment to volunteer the entity sooner. It may be worth assessing whether this would be allowable within the PTR Portal. KPMG has experienced issues with the PTR recognising new Controlling Corporations and this may need to be assessed in parallel.

Other matters

KPMG has assisted many of its clients lodge their PTR reports for the last reporting period and have some important insights to share with the regulator and Treasury outside of what has been covered in the exposure draft if this is of interest. We are aware that the Australian Government is committed to undertaking a post-implementation review in early 2023 and we would also like to be involved in this process.

We hope these insights have been valuable and we would be happy to discuss further at any stage.

Yours sincerely,

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