

15 February 2016

Ms. Tamara Linehan
New Measures, Smarter Data
Australian Taxation Office

Dear Ms Linehan

Improving tax compliance - enhanced third party reporting, pre-filling and data matching Business transactions made through payment systems

The Australian Bankers' Association (**ABA**) welcomes the opportunity to provide feedback on the ATO measure which intends to capture, via financial institutions, business transactions made through electronic payment systems.

The ABA understands that the Financial Services Council (**FSC**) will be doing a submission on the ATO Shares and Units measure. A number of ABA members are also members of the FSC and have had input into the FSC response.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

On 14 August 2015, the ABA provided feedback¹ on the Exposure Draft of the *Tax and Superannuation Laws Amendment (2015 Measures No.5) Bill 2015: Third party reporting*. The comments below should be read in conjunction with that submission, as many of the industry concerns outlined still remain.

The ABA reiterates the point that Treasury and the ATO have a duty to accommodate the fact that industry is already undertaking a number of substantial mandatory projects driven by government. This includes, FATCA, CRS, AIIR, AUSTRAC reporting, Country-by-Country reporting, the New Payments Platform (**NPP**), Standard Business Reporting, Single Touch Payroll, Basel III and Basel IV to name a few currently in progress. Reporters, regardless of size, have a limited amount of resources to deal with so many competing projects.

It is a fact that each reporters' technology resources are being redirected to work on the above government projects whilst forgoing other revenue generating and efficiency projects. This is resulting in significant opportunity costs to all reporters and the broader economy. While the focus on supporting small business is the ATO's stated policy objective, the costs incurred in implementing the vast number of diverse state and federal data initiatives comes at an economy-wide cost.

¹ <http://www.bankers.asn.au/Submissions/Tax>



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The ABA makes the following observations on the ATO measure.

Mandatory fields

The draft specification contains several mandatory fields where customer data in some instances may not be held or required to be captured by the reporting financial institution. For example, the Australian Business Number (**ABN**) or Australian Company Number (**ACN**) is not required to be captured when opening a merchant facility or BPay biller code.

The collection and validation of ABN and ACN requirements detailed in the document entitled “Guidance Note – Business transactions made through payment systems” (**Guidance Note**), states that “Where a reporter does not have either of these recorded for their client/customer, the reporter can look to using the ATOs ABN Look up tool”, and that this tool can be integrated to customer on-boarding systems (in addition to the use of the ABN algorithm - comments below). These requirements would necessitate the reporter to update their front line customer management systems and amend customer on-boarding business processes. These changes, together with staff training etc., will result in significant cost and business impacts. Extensive data remediation would also have to be undertaken for existing customers resulting in significant additional costs to reporters.

The ABA requests the ATO confirm that where data (e.g. the ABN or ACN) is not currently held in the reporter’s business system, the reporter should not be required to obtain this data from customers, other banking systems, or government tools in order to populate the ATO report. The ATO Business Portal lodgement tool and the associated data validations at lodgement should cater for such instances.

Another example of the above is the *Business service registration commencement date* (ATO specifications reference number 6.40) the specifications require the reporting entity to provide a business service registration commencement date. However, in some instances, this information will not be known or stored by the reporting entity.

The ABA also recommends that where this information is not available to the reporting entity, a type of default date be used in the relevant fields.

New Payments Platform

The ATO previously advised the NPP will be in scope for reporting once operationalised. In this regard, industry would like the ATO to provide formal guidance to acknowledge that any reporting under this platform will be deferred until the ATO and reporters have collaborated on the requirements and reporters provided with sufficient time to implement any reporting processes. This is necessary as the NPP will come online in December 2017 (assuming the target commencement date is realised) and so will be in scope under the legislation from this time unless (temporarily) excluded by the ATO.

Clarification of definitions

The ABA seeks further clarification on the definitions contained in the Guidance Note, in particular the second and fifth dot points under the heading “What payment systems are to be captured”. The ABA seeks written clarification and further explanation on these items as they appear to contradict not only each other but also conflict with the requirements listed in the legislative instrument and explanatory statement.

ABN algorithm

The data specifications state that “use of the ABN algorithm is required” [Page 36]. This is inconsistent with the AIIIR specifications (version 10) where it is stated that use of the ABN algorithm is recommended (but not required) [Page 95]. Any change in requirements for using ATO algorithms for tax reporting purposes should be considered holistically as this impacts reporters’ front end CRM systems and client on-boarding processes. Such costly standalone requirements should not be introduced just for electronic payment reporting considering other ATO reporting has different requirements.



Exemptions for reporting

The legislative instrument includes a number of different exemption categories for transaction reporting which are based on legislative definitions (e.g. payments made to a general insurer within the meaning of the *Insurance Act 1973*).

Reporters do not characterise their customers based on these definitions. Rather, banks generally use Merchant Category Codes (**MCC**) or an equivalent industry code which is assigned to customers, for characterisation purposes. The ATO should draft the exemptions to reflect these existing characterisations or provide detailed guidance as to what MCC or ANZIC codes would fall within each exemption category.

Aggregator transactions

The Guidance Note states that a “Merchant Acquirer” is not required to report on any transactions for sub merchants that have been on-boarded by an Aggregator. However, this is not specified in the legislative instrument which has the force of law. It would be preferable to have this set out in the legislative instrument as well as in the Guidance Note to provide additional certainty for reporters.

Payments made to interposed entities

In regard to payments made to entities that hold cash on behalf of others, a number of banks offer within their business banking product portfolio, facilities such as transaction accounts for interposed investors where deposits are held for the benefit of underlying investors. Examples of these accounts include:

- **Real estate agents receive cash representing rental income to landlords.** Typical real estate agency business will take a fixed percentage of the rent as commission business income.
- **Law firms receiving funds from settlement payments for the benefit of the underlying investors.** A lawyer may take their fees from the settlement amount as business income, banks are not provided with this information.

In these two particular examples above, banks are not provided with the information required to determine what “business income” to the payee is, and what is the “cash amount” to be paid to the landlord or client of the law firm.

The ABA recommends a broad and clear reporting exemption should apply to these and similar situations.

Amendments

The legislation specifies that errors in a report must be rectified within 28 days of the matter being identified. The electronic reporting specifications stipulate how the amendments are to be made and provide details of what is to be included/excluded from amended reports. However, the data specifications do not provide an amendment threshold or time period for the amendment to be lodged.

To avoid costly administration associated with amendments, the ABA recommends the following:

- 1) If a reporter is reporting on a monthly or quarterly basis, reporters should have the option of correcting errors in subsequent reports for the income year rather than amending previous reports. The rationale here is that the data for the income year will be correct, eliminating the need for amendments and where this would be administratively cumbersome.
- 2) Similar to the AIIR, there should be a threshold for amendments so that minor errors which do not have a material impact on the customer’s tax position are not required to be addressed. This threshold should be specified in the data specifications, as it is for the AIIR.



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- 3) There should also be a time limit for amendments which coincides with the amendment period for taxpayer returns. As it currently stands, the legislation does not impose a time limit for reporting errors, so technically, a reporter would be required to correct reports indefinitely, notwithstanding that the ATO can only amend individual and small business returns (which include information provided in the electronic payment report) within a 2 year time limit or company return within a 4 year time limit (fraud aside).

Consultation and lead time for future business systems that may be captured under the legislation

Reporters must be consulted on future/new business systems that will be captured under legislation, and sufficient lead time provided by the ATO for reporters to build reporting capabilities. Sufficient lead time can be up to 24 months depending on the size of changes, and implementation timeframes must also accommodate the fact that industry is already undertaking a number of substantial mandatory projects driven by multiple government agencies at both state and federal level.

The ABA seeks a commitment from the ATO for stability in reporting specifications. Each time specifications are updated, reporters incur technology, resource and business costs. Often a small change to reporting specifications result in significant costs to reporters.

Reporting format

The ATO has requested feedback on their proposed data delivery method. Many reporters will be unable to consider this until their project work commences, post the issue of the final data specifications by the ATO.

The ABA remains committed to continuing to work with the ATO on this matter and is happy to engage on any of the matters raised above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Aidan O'Shaughnessy'. The signature is fluid and cursive.

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