

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer**

*Taxation Administration Act 1953*

*Taxation Administration Amendment Regulations 2011 (No. )*

Section 18 of the *Taxation Administration Act 1953* (the Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Act.

Subsection 405-5(1) in Schedule 1 to the Act provides that a transaction is to be reported by a purchaser (entity paying for the transaction) where the payment is made for a supply that is specified in regulations made for the purpose of section 405-5 in Schedule 1 to the Act. The regulations may specify the supply by reference to the goods or services supplied, the supplier, and/or the purchaser.

The *Taxation Administration Regulations 1976* (the Principal Regulations) prescribe information necessary for the operation of the Act.

The purpose of the amending Regulations is to prescribe the information necessary to require businesses in the building and construction industry to report to the Australian Taxation Office (ATO) details of payments they make to contractors providing building and construction services.

The Regulations were a 2010-11 Budget initiative as a result of the ATO having identified significant levels of non compliance with taxation obligations amongst contractors in the building and construction industry.

Division 405 in Schedule 1 to the Act requires entities that are paying for a 'supply' which has been specified in regulations to report the payments they make for those supplies to the ATO.

The Regulations specify the supply by defining both the purchaser (entity paying for the supply) and the goods and services being supplied.

To achieve this, the Regulations:

- define purchasers as businesses in the building and construction industry; and
- define the goods and services being supplied as building and construction services.

Further details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

Public consultation on a discussion paper ran from 30 May 2011 until 27 June 2011. Following receipt of submissions, Treasury and the ATO attended consultation meetings with industry groups and members of the ATO's building and construction consultative forum.

Feedback on the discussion paper led to the development of a 'bridging document'. Again, Treasury and the ATO met with industry groups and members of the ATO's building and construction consultative forum.

Public consultation was also undertaken on the exposure draft regulations and explanatory materials.

A compliant Regulatory Impact Statement was developed prior to the 2010-11 Budget announcement.

The Regulations commenced on 1 July 2012.

## **ATTACHMENT**

### **Details of the proposed *Taxation Administration Amendment Regulations 2011* (No. )**

#### **Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is *Taxation Administration Amendment Regulations 2011* (No. ).

#### **Regulation 2 – Commencement**

This regulation provides that the Regulations commence on 1 July 2012.

#### **Regulation 3 – Amendment of *Taxation Administration Regulations 1976***

This regulation provides that *Taxation Administration Regulations 1976* (the Principal Regulations) are amended as set out in Schedule 1.

### **SCHEDULE 1 – AMENDMENTS**

#### **Item 1 – Regulation 64**

##### ***Subregulation 64(1)***

Subregulation 64(1) of the Regulations provides who is required to report and the supplies that are reportable supplies for the purpose of Division 405 of the *Taxation Administration Act 1953* (the Act). For the purpose of the Regulations, the business paying for the supply is referred to as the purchaser and the business receiving payment for the supply is referred to as the supplier. Paragraphs 64(1)(a) to 64(1)(c) would have to be satisfied for the reporting requirement to arise.

##### ***Paragraph 64(1)(a)***

Paragraph 64(1)(a) of the Regulations provides that a business primarily in the building and construction industry is a purchaser and therefore has a reporting requirement.

##### ***Paragraph 64(1)(b)***

Paragraph 64(1)(b) of the Regulations provides that the business making the payment (the purchaser) and the business receiving the payment (the supplier) must have an Australian Business Number (ABN) for the payment to be reportable. This operates to exclude non-residents from the reporting regime.

##### ***Paragraph 64(1)(c)***

Subparagraph 64(1)(c)(i) of the Regulations provides that for a supply to be a reportable supply it must be a supply of building and constructions services. Alternatively, it could be a supply of both goods and building and construction services, if the services are not merely incidental to the supply of goods.

Purchasers would not be required to report on payments to suppliers for the supply of goods only.

It is the payments to a supplier for a reportable supply that must be included in the purchaser's report.

#### *Examples*

- A paint store provides paint to painters as well as an in-house painting service. For a small additional service fee the store will tint the paint to the colour the painter instructs. As the provision of the tinting service is merely incidental to the supply of the paint, the painter will not be required to report the payment it makes to the paint store. (The painter is assumed to be in the building and construction industry.)
- An electrical business provides goods and services for various electrical applications. A builder pays the business for the supply and installation of wiring in a commercial fit out that he is managing. As the provision of the installation service is a building and construction activity and more than incidental to the supply of goods, the builder will be required to report the payment it makes to the electrical business. (The builder is assumed to be in the building and construction industry.)

#### **Subregulation 64(2)**

Subregulation 64(2) of the Regulations excludes from the reporting rules payments made from one member of a consolidated group or MEC group for income tax purposes to another member of the same consolidated group or MEC group for income tax purposes.

#### *Example*

Brick Co and Paint Co are both members of the Big Co consolidated group. Brick Co provides building services. It makes a payment to Paint Co for painting its building project. As Paint Co and Brick Co are in the same consolidated group, Brick Co will not have to report on the payment made to Paint Co for the provision of painting services. It will, however, have to report on payments made to entities outside the consolidated group for the supply of building and construction services.

#### **Subregulation 64(3)**

Subregulation 64(3) of the Regulations excludes from the reporting rules payments covered by the definition of *withholding payment* in section 995-1 of the *Income Tax Assessment Act 1997*.

This means that payments made to individuals and entities that have tax withheld under the PAYG withholding system (for example, employees) will be excluded from the reporting rules.

It also excludes payments made that have an amount withheld because an individual or entity has failed to provide an ABN. A purchaser making a payment to an individual or entity without an ABN is excluded from the proposed Regulations as these payments are already subject to reporting.

#### **Subregulation 64(4)**

Subregulation 64(4) of the Regulations ensures that certain phrases used in the Regulations have the same meaning as in the *Income Tax Assessment Act 1997*.

#### **Subregulation 64(5)**

Subregulation 64(5) of the Regulations provides that for the purpose of paragraph 64(1)(a) of the Regulations, a purchaser will be taken to be a ‘business that is primarily in the building and construction industry’ if, in the current financial year or at least one of the two financial years immediately preceding the current financial year more than 50 per cent of the business’ income has been derived from building and construction services.

This means that the business received payments in return for supplying building and construction activities.

Given the definition of a purchaser, along with the requirement for the purchaser to have an ABN, individuals in their domestic capacity (such as ordinary owner-occupiers or owner-builders) that make payments to contractors providing building and construction services are excluded from the reporting rules.

#### *Example – income test*

Scott’s Cabinet Makers is a business that makes and installs custom-made kitchen cabinets. It also makes and sells ornamental wooden carvings. For the financial years from 2012-13, Scott’s Cabinet Makers earns the following income:

<b>Financial year</b>	<b>Type of income earned</b>
Year ended 30 June 2013	30% cabinet-making; 70% carvings sales
Year ended 30 June 2014	60% cabinet-making; 40% carvings sales
Year ended 30 June 2015	40% cabinet-making; 60% carvings sales

As Scott’s Cabinet Makers earned more than 50 per cent of its income from building and construction services in the financial year ending 30 June 2014, it will need to report on payments made to contractors in the 2013-14 financial year through to the 2015-16 financial year.

#### *Example – individual in their domestic capacity*

In order to save money, Kristyn manages the construction of her new home and makes payments directly to the contractors. As Kristyn does not have an

ABN, and does not derive income from building and construction services, she will not be required to report on the payments made to contractors.

*Example –business primarily not in the building and construction industry*

A hardware store sells building equipment to builders and homeowners. For an additional fee the store can arrange for the installation of certain products, such as a skylight. The store will not be required to report payments it makes to contractors as its business is primarily not in the building and construction industry, but rather in the retail industry (i.e. 50 per cent or more of the business' income-earning activities are in the retail sector, and not derived from building and construction services).

*Example –business with separate entity for building and construction services*

The hardware store (Business A) in the above example sets up a separate entity (Business B) to install the products it sells. As above, Business A will not have to report on payments made to contractors as it is not primarily in the building and construction industry. Business B however receives all its income from the provision of building and construction services (installation of products). It will have to report on payments made to contractors.

**Subregulation 64(6)**

Subregulation 64(6) of the Regulations provides that building and construction services include those activities in the list at paragraphs 64(6)(a) to 64(6)(s), when the service is performed on or in relation to any part of a building, structure, works, surface or sub-surface.

The list below provides examples of the types of activities that are considered to be building and construction services and buildings, structures, works, surfaces or sub-surfaces for the purpose of subregulation 64(6).

The list in subregulation 64(6), together with these examples, provides the purchaser with enough information to be able to determine whether they would be considered to be a business in the building and construction industry.

The list in subregulation 64(6), together with these examples, also provides a guide to determining whether a supply is a supply of building and construction services and therefore a reportable supply.

*Examples of building and construction services*

- Architectural work (including drafting and design)
- Asphalt and bitumen work
- Assembly, installation or erection of pre-fabricated houses
- Installation of hard-wired alarm systems (security, fire, smoke, etc)
- Installation of hot water systems
- Installation of pre-fabricated components (e.g. kitchens, bathroom

components, laundry components, cupboards, etc)

- Block laying
- Bricklaying
- Building of room components (e.g. kitchens, bathroom components, laundry components, cupboards, etc)
- Cabinet making (including joinery and offsite fabrication for installation at a building site)
- Cable laying
- Communications construction
- Concreting (including formwork, pouring and finishing)
- Construction and sealing roads
- Construction management
- Decorating
- Demolition
- Distribution line construction
- Drainage work
- Dredging
- Earthworks
- Electrical machinery, heavy, installation (on-site assembly)
- Installation of pre-fabricated temperature controlled structures
- Installation of septic tanks
- Installation of solar devices (e.g. hot water or electricity connections)
- Installation of tanks
- Installation of window frames
- Installation of windows
- Installation or work on devices for heating and cooling
- Insulation work (walls, roofs, windows, etc)
- Internet infrastructure construction
- Irrigation system construction
- Land clearing
- Landscaping construction (including paving and design)
- Levelling sites
- Painting (internal and external surfaces, including roofs)
- Pile driving
- Pipeline construction

- Electrical work
- Electrical construction
- Elevator and escalator installation and work
- Engineering
- Equipment rental with operator (if there is no operator, it is just rental of a good and not a building and construction activity)
- Erection of frames (regardless of materials)
- Erection of scaffolding
- Excavation and grading
- Fencing
- Finishing
- Flood control system construction
- Flooring (e.g. tiling, laying carpet, laying linoleum, timber flooring, floating floors, resilient flooring, slate tiles, etc)
- Foundation work
- Gas plumbing
- Glass and glazing work
- Hanging or installing doors
- Installation of fittings
- Plastering (or other wall and ceiling construction)
- Plumbing work
- Preparation of site
- Project management
- Rendering (or other internal or external surface finishes)
- Retaining wall construction
- River work construction
- Roofing and guttering
- Sewage or stormwater drainage system construction
- Stonework
- Surveying
- Swimming pool installation
- Swimming pool, below ground concrete or fibreglass, construction
- Tiling (walls etc)
- Timber work
- Wallpapering
- Waterproofing interior and exterior

surfaces

- Weatherboarding

*Examples of buildings, structures, works, surfaces or sub surfaces*

- Aerodrome runways
- Apartments
- Breakwaters
- Bridges
- Canals
- Commercial buildings
- Communications, internet and electrical infrastructure
- Dams
- Duplex houses
- Electricity power plants
- Elevated highway
- Flats
- Footpath, kerb and guttering
- Furnaces
- Garages
- Golf courses
- Harbour works
- High-rise flats
- Industrial buildings
- Jetties
- Lakes
- Mine sites
- Office buildings
- Oil refineries
- Parking lots
- Pipelines
- Power plants
- Railways
- Roads
- Semi-detached houses
- Sewage storage and treatment plants
- Sheds
- Sports fields
- Streets
- Television or radio transmitting towers
- Tunnels

- Highways
- Housing buildings (including pre-fabricated housing)
- Water tanks
- Waterworks

## **Supplement – Further Information**

**The following information is provided to give guidance about how the above regulations will be administered.**

### *Details of payment*

Businesses would be required to report actual payments made.

### *Details of report*

A business that is required to make a report under Regulation 64 would be required to include the following details:

- the contractor's name;
- the contractor's ABN;
- the contractor's address (if known);
- the total amount paid or credited to the contractor over the income year
- whether any GST has been charged;
- any other information the Commissioner may require.

Businesses are only required to provide an aggregate report for each contractor they make payments to during the income year.

Businesses will be required to report on an annual basis, 21 days after the conclusion of the financial year, subject to the Commissioner exercising his discretion under subsection 405-10(4) to vary the frequency of reporting from quarterly to annual.