



Submission to the Australian Taxation Office (ATO)

Draft Law Companion Ruling: Expansion of the taxable payments reporting system to road freight, security, investigation or surveillance, and information technology services

1 February 2019

Introduction

1. The National Road Transport Association (**NatRoad**) is pleased to make comments on the draft ruling on the extension of the taxable payments reporting system (**TPRS**) to road freight and two other industries that is LCR 2018/D8¹ (**Draft Ruling**). Comments are due by 1 February 2019.
2. The Draft Ruling describes how the Australian Tax Office (**ATO**) intends to apply amendments made by Schedule 2 of the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018* (Cth) (**the Amending Act**), in relation to the expansion of the TPRS.
3. The comments in this submission relate only to the Draft Ruling as it concerns the road freight industry. We do not traverse NatRoad's view on the substance of the law, about which we have some reservations, save to press again for a delay in the commencement of reporting for courier services (see paragraphs 13-15 below).
4. NatRoad is Australia's largest nationally representative road transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators moving general freight, road trains, livestock, fuel and refrigerated goods and vehicles. NatRoad members also include heavy vehicle recovery specialists, bus lines, tippers, car carriers and transport-affiliated businesses.

Date of Effect

5. NatRoad notes that the ATO seeks specific feedback on the date of effect of the Ruling. Paragraph 3 of the Draft Ruling indicates that the document will be finalised as a public ruling effective from 1 July 2019. This date is chosen as it is the date of commencement of the Amending Act. This timing is supported and should also apply to the scheme of reporting for couriers.
6. For completeness, however, NatRoad believes that paragraph 4 of the Draft Ruling that deals with context should indicate that the period when reporting commences is from 1 July 2019 to 30 June 2020 with the first Tax Payments Annual Report (**TPAR**) due by 28 August 2020.

Comments on Other Matters

7. The terms of the Draft Ruling are generally supported, subject to the matters now raised.
8. The second dot point in paragraph 16, replicates the substance of paragraph 2 of GSTD 2002/3 *Goods and services tax: how do I account for GST when I supply taxable goods, non-taxable goods and delivery services together?*² (**the GST Ruling**) That paragraph says in part:

*We consider that delivery is a separately identifiable part of a mixed supply where it is significant **and** could realistically be made as a separate supply.*

9. Yet in paragraph 16 the phrasing differs where it is said "Where the delivery is a significant component, **or** could realistically be made as a separate supply." We suggest deleting "or" and using "and." We also suggest that the part of paragraph 2 of the GST Ruling which indicates that a delivery service is significant where it is an aim in itself (i.e. customers have a genuine choice

¹ The document is accessible here

<https://www.ato.gov.au/law/view/document?DocID=COD/LCR2018D8/NAT/ATO/00001>

² <https://www.ato.gov.au/law/view/document?docid=DGD/GSTD2002D3/NAT/ATO/00001>

under the contract about whether the supplier delivers the goods) should be included as part of paragraph 16.

10. Whilst paragraph 17 of the Draft Ruling contains reference to the GST Ruling, the notion of what is considered significant should be explained in the Draft Ruling, as expressed in the prior paragraph.
11. The third line of paragraph 18 containing Example 1 uses the expression “driver-owners.” The expression should be “owner-drivers.”
12. At paragraph 24, Example 3 about delivered goods, the words “and separately charged for” could be added to the end of the sentence which currently says: “The cost of the delivery is added on to the cost of the bricks.” The separate charging of a delivery fee clearly indicates that the delivery is not integral to the supply of the bricks per the example.
13. Appendix 1 relating to the reporting exemption is useful, particularly given the blurred line between what are courier services and what are road freight services. That distinction is important in the 2018-2019 year because reporting of courier service payments to contractors currently applies a year earlier than reporting in respect of road freight contractor payments. Accordingly, we submit that Appendix 1 should remain as part of the final Ruling to highlight this issue unless the NatRoad substantive recommendation that next follows is taken up.
14. In respect of the difference between courier services and road freight services, we note the discussion of the business industry code tool in Appendix 2 of the Draft Ruling. 46100 is noted as designating road freight transport. However, on the ATO web site 46100 also has a descriptor as follows: “Road courier services – predominantly larger, non-mail type packages i.e. over 30 kg.”³ Reference could be made in Appendix 2 to the examples used in LCR 2018/8 entitled *Expansion of the taxable payments reporting system to courier and cleaning services* that seek to distinguish between courier and freight services. NatRoad has previously sought that the TPRS scheme for road freight and courier services both operate from 1 July 2019 to avoid confusion as to the dividing line between road freight and courier services⁴ a matter that still stands as an unsolved problem.
15. Whilst the process of recording payments made for contracted courier services has commenced, the due date for reporting in respect of the 2018-2019 year has not occurred and therefore the deferral we seek is in practice still able to occur.
16. From 1 July 2019 there will be a single reporting requirement for courier and road freight services. This is a sensible approach given the opaque dividing line between these two services when defined by reference to their ordinary meaning. The merging of the obligation therefore supports the recommendation made by NatRoad in prior submissions for a deferral of the commencement date for courier services reporting, a matter that it is still possible to introduce.

Conclusion

17. NatRoad recommends that the Draft Ruling be reconsidered following the deferral of the implementation of the TPRS for couriers so that the time for reporting is the same as that for road freight. This would then involve assimilating elements of LCR 2018/8 with the Draft Ruling.

³ <https://www.ato.gov.au/Calculators-and-tools/Business-industry-code-tool/AnzsicCoder.aspx?s=courier>

⁴ NatRoad submission to the ATO and Treasury *Extending the Taxable Payment Reporting System (TPRS) to the Road Transport Industry* August 2018 especially at para 4

We would recommend a stand alone ruling for couriers and road freight services following any deferral as recommended.