



21 August 2024

Ms Rosie Collard  
Government Response and Reform Unit  
Small and Family Business Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: PaymentTimesReformSMB@treasury.gov.au

Dear Ms Collard,

## Payment Times Reporting Rules Amendments

As the representative of over 150 large corporates that operate across 22 industries, the Corporate Tax Association (**CTA**) welcomes the opportunity to make a submission to Treasury in relation to the *Payment Times Reporting (PTR) Rules Amendments* Exposure Draft and Explanatory Statement.

The amendments to the PTR Rules propose to repeal the existing PTR Rules and remake the Rules to reflect the substantial changes being made to the *Payment Times Reporting Act 2020* (Cth) (**PTR Act**) by the *Payment Times Reporting Amendment Act 2024* (Cth) (**Amending Act**) that commence from 7 September 2024.

The Amending Act makes substantial changes to the PTR Act. The proposed amendments to the PTR Rules are a holistic rewrite of the PTR Rules and therefore may have substantial and costly consequences for entities that have systems in place for reporting under the current rules if significant systems changes are required to be made.

We set out our concerns in the attached Appendix.

Should you have any questions, please do not hesitate to contact me on 0408 028 196 in the first instance.

Yours sincerely,

Stephanie Caredes  
Senior Tax and Policy Adviser

## **Appendix**

### **1. Holistic change to the PTR Rules**

The new PTR Rules repeal the existing Rules and completely overhaul the reporting requirements. Members report to us the need to develop entirely new IT systems to meet the new reporting requirements and will unlikely be able to carry forward any of the systems already invested in when they were first required to report under the PTR Rules.

Significant investment in IT solutions was made to meet the original reporting requirements (for example one member reports spending around \$400,000 to invest in IT solutions to extract the relevant information from their systems to meet the original PTR reporting requirements). Significantly more costs may need to be incurred by large businesses who may have to invest again in a 'new build' of IT systems to extract the relevant information required under the new PTR Rules.

It seems the intention is for more accurate and comprehensive data to be included in reports to ensure correct reporting. It should be ensured that the changes to the data required to be reported arising from the holistic change to the PTR Rules should only be required to advance the new objects of the PTR Act (per new section 3 of the PTR Act as amended by the Amending Act).

### **2. Controlled entity**

The new Rules require an entity to include in their report information from all 'controlled entities'. Section 5 of the Amending Act defines 'control' to mean control of another entity within the meaning of the accounting standards.

The Rules as enacted in 2020 required an entity-by-entity analysis based on various qualifying criteria and the \$100 million /\$10 million thresholds in the PTR Act (depending on the entity type). This structure ensured that non-residents, who are unlikely to engage with Australian small business suppliers, were excluded from reporting. This streamlined the data and kept it Australian-focused.

#### *Definition of a 'small business'*

The definition of 'small business' is at the core of the Payment Times Reporting regime.

The definition of 'small business' in the PTR Act has been amended to remove the note that references the \$10 million annual turnover threshold. Paragraph 1.296 of the Explanatory Memorandum to the Amending Act notes that the note to the definition was removed because "it does not properly define the meaning of small business, which may be based on total revenue rather than annual turnover." However, we cannot locate any reference to total revenue of small businesses either in the PTR Act as amended or the draft Rules.

Therefore, it seems that the term 'small business' is simply defined as:

***small business*** means an entity described as a small business in the Payment Times Small Business Identification Tool.

This means that reporting entities are now solely reliant on what the Payment Times Small Business Identification Tool (**Identification Tool**) defines as a 'small business'. A reporting entity can no longer determine who their small business suppliers are independently (and check these against the Identification Tool as needed). This creates uncertainty for reporting entities about the small business payments they have to report on and in practice means they will have to check ABNs listed in the Identification Tool against all supplier invoices and cannot rely on any other means to determine their reporting obligations.

#### *Controlled foreign entities*

Given the changes to the Rules, we seek clarification on what reporting is required to be done for all controlled foreign entities.

Please confirm whether under the new Rules payments made to small businesses by all controlled foreign entities should be included in reports. If so, this will be a costly task for many large businesses to undertake as they will not necessarily be able to easily access records of payments made to Australian small businesses by an offshore foreign entity they control or information about the payment practices of those entities.

With the definition of 'small business' so uncertain and solely reliant on ABNs recorded in the Identification Tool, there may be difficulty in correctly capturing the necessary information from offshore foreign entities that may not capture ABN information in their systems.

We observe that where there is little to no engagement of non-resident controlled / head entities in Australia, it remains to be seen what benefit this additional data will have for the completion of a comprehensive assessment of payment times to Australian Small Businesses.

#### *Consolidated revenue*

New section 5 of the PTR Act defines consolidated revenue by including the revenue of all 'controlled entities'. Please advise if it includes all revenue or just ordinary revenue (eg excludes non-operating revenue such as interest earned). Also, it is unclear how to calculate the revenue figure for a controlled entity located outside of Australia where that entity's revenue is not calculated in Australian dollars.

[Guidance Note 1 Key Concepts](#) (at paragraph 58) provides that entities that prepare financial statements in a foreign currency need to translate their total income into Australian dollars to determine if they meet the income threshold (of \$100 million). We suggest that this conversion method be maintained under the new Rules.

### **3. Payment Term**

The draft Rules introduce a definition for the term 'payment term'. This term was not previously defined in in the Rules or the PTR Act, though could be drawn from Guidance Note

1. It is useful that the draft Rules now include a definition for this term rather than relying on extracting the definition from guidance from the Regulator.

The definition focuses on the number of 'calendar days' based on a stated period in which payment is required to be made or due date for payment that is stated on an invoice. In practice, however, large businesses can have an agreed standard term in which they ordinarily will pay a supplier, including small business suppliers, which can differ from the payment term noted on invoices issued by the small supplier. The due date is calculated based on the date the invoice is received, not the date on the invoice.

Reports will also have to include the payment term that represents the 'statistical mode' of all payment terms for payments in the dataset for the reporting period for each entity (section 13(2)).

Prescribing the 'payment term' in this way will require some businesses to change longstanding practices on how payment terms are measured and will impact systems that are designed to record the date of receipt of an invoice rather than 'read' an invoice to find the date noted on the invoice. This may result in an additional compliance burden for reporting entities. Please confirm that the reason for seeking this information is to ensure the determination of who is a 'fast small business payer' or 'slow small business payer' is done accurately.

#### **4. Payment Time**

The draft Rules introduce a definition for the term 'payment time'. This term was not previously defined in the Rules or the PTR Act. The term is defined by reference to the date an invoice was issued or received (depending on the circumstances).

Please confirm whether item (d) in the definition is designed to catch all other payment arrangements not defined by an invoice, including contractual arrangements.

##### *Contractual arrangements*

Current guidance<sup>1</sup> states that:

*For contractual arrangements, the invoice will be considered received by the entity in accordance with the contract's invoicing requirements (either written or oral). This will ensure payment times reported reflect the terms agreed.*

This position is important in practice in regard to contractual arrangements as the start date for the payment time is the later of a valid tax invoice and the receipt of goods. We are concerned that including the limited 'payment time' definition in the Rules does not respect contractual arrangements which the current guidance accommodates.

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<sup>1</sup> Guidance Note 1 Key Concepts at paragraph 98

We recommend including in the Rules confirmation that an invoice will be considered 'received' by the entity in accordance with the contract's invoicing requirements, rather than relying on guidance.

If this cannot be done, please confirm that the current guidance for contractual arrangements will be maintained and will apply together with item (d) in the definition of 'payment time' and therefore results in no change to how payment times arising under contractual arrangements are currently reported.

### *Recipient Created Tax Invoices*

It appears that Recipient Created Tax Invoices (**RCTI**) are included in the invoices that should be included in datasets from reporting entities. We note that they are currently excluded from being reported per Guidance Note 1 Key Concepts (at paragraph 86). Please confirm that the Guidance Note will be updated to reflect this change.

We note the definition provides that the 'payment time' where an RCTI is involved is calculated between "the date on which the supply of goods or services covered by the invoice occurred and the date the invoice was fully discharged by the payment". It is often the case that a weekly timesheet for a contractor may be provided for services that have been provided on a daily basis in a week. The RCTI is generated weekly after the receipt of the timesheet.

In our view, it makes more sense to calculate the payment time period from the date the goods or services are valued in line with [Legislative Instrument LI 2023/20 A New Tax System \(Goods and Services Tax\): Recipient Created Tax Invoice Determination 2023](#) rather than the date the goods or services are received. Guidance will need to be provided to reflect this.

## **5. General requirements for the content of a payment times report**

Section 10(2)(c) refers to whether another law of the Commonwealth or State or Territory or a code of conduct imposes any requirements on the entity or its controlled entities on their payment times and practices for small business suppliers. It would be preferable to include examples in the Explanatory Statement of laws and codes being referred to here.

## **6. Payments datasets**

A 'complete payments dataset' is required to be prepared for the purpose of determining the proportion of payments made to small business suppliers. We note that this dataset is not limited to trade credit arrangements. In this regard, we note the following:

- *The 'small business payments dataset' appears to only include trade credit arrangements (section 13(1)(a)).* However, the 'complete payments dataset' is not limited to trade credit arrangements. Currently, business systems are set up to capture trade credit arrangement only.

It also appears that small business trade credit spend will need to be measured as a proportion of total small business spend. However, it is unclear where the requirement is to measure total small business spend against the spend on all suppliers that are required to be included in the complete payments dataset.

Please confirm it is intended that three datasets are required to be prepared - the 'complete payments dataset' (which includes all trade credit and non-trade credit payments to all suppliers), a 'small business trade credit payments dataset' and a 'small business payments dataset' (that includes all small business trade credit payments).

Also, please provide examples of what would be excluded from the 'small business trade credit payments dataset' that would only be included in the 'small business payments dataset'.

- *Collating different data sets involves the building of a lot of new IT solutions for businesses to generate these reports to meet the requirements in the new Rules.* It is not clear what difference will be made or if there is a benefit from the collation of these different datasets to meeting the new objectives of the PTR Act.
- *Section 11(2) Step 2(e) inclusion of the payment method in the complete payments dataset* – existing Rule 10 (Method for determining certain proportions for payment times reports) discusses the payment of invoices by way of cash, cheque or electronic transfer and how this impacts the calculation of the time period in which the payment is made. Different payment methods take different periods of time to process, including electronic transfers. Please advise if similar information will be included in the rules or guidance regarding how certain payment methods impact the calculation of the payment time as this seems to go a core issue, namely determining the 'payment time'.
- *Section 11(2) Step 2(h) inclusion of whether the payment discharged the invoice obligation in full or in part* - some members note it may be difficult for systems to establish whether a particular payment discharges an obligation in full or in part. Please provide examples of how a reporting entity should make these disclosures.
- *Section 11(3) Step 3(c) the requirement to remove from the complete payments dataset the payments to a government entity* – please confirm whether this means that all payments to a government entity will be excluded even if they are for the provision of services that could be deemed a trade credit arrangement.
- *Section 11(3) Step 3(c) Payments to government entities* - Suppliers' master files do not categorise what is a government vs non-government entity based on the definition in the draft Rule which refers to the *A New Tax System (Australian Business Number) Act 1999* (Cth). Please confirm that it will be sufficient for reporting entities to rely on how the entity is categorised in [ABN Lookup](#) for this purpose. Note also that large businesses can have many thousands of suppliers. If this is the requirement, some large businesses may need to rebuild their underlying supplier master file which may

consequently be a significant compliance burden. Therefore, it would be useful to understand why payments to government entities are being excluded from the complete dataset.

- *Section 11(3) Step 3(e) the requirement to remove from the complete payments dataset payments other than payments for the supply of goods or service* – please provide examples in the Explanatory Statement of payments other than for a good or service and whether this excludes payments under licenses, leases and workers compensation arrangements.
- *Section 12 proportion of payments to small business suppliers relating to Peppol enabled invoices* – large businesses use other systems to receive electronic invoices from suppliers aside from the Peppol system. This is accepted by the ATO. While we acknowledge that Peppol is the preferred e-Invoicing system recognised by the government, the new Rules should recognise all systems enabling electronic invoices and should not be limited to Peppol only.

## **7. Small business trade credit payment times and terms statistics**

- *Payment times* – a significant amount of statistical information is required to be included in reports in relation to the payment times for small business trade credit arrangements. We query what value this information adds.
- *Section 13(1)(f)* – this subparagraph is concerned with the timeframe in which a payment has discharged an invoice or obligation. The language used in this subparagraph is overcomplicated. It is unclear when the discharge date is recognised and whether this is taken from the agreed payment term or the payment time derived from the 80<sup>th</sup> percentile in subparagraph 13(1)(d). We suggest more simplified language should be used in this subparagraph.

## **8. Application of new Rules to reports for reporting periods beginning on or after 1 July 2024**

[Information Sheet 9: transition to new Scheme](#) provides that reports with reporting periods starting in the period 1 July 2024 to 30 September 2024 are required to include the new details from the amended PTR Act and new Rules though this report is not due until 30 June 2025.

The new Rules and all updated guidance will need to be finalised in a timely manner with sufficient time for large businesses to get systems in place to meet the new reporting obligations.