Australian Banking Association

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Proposed Legislative Instrument LI 2022/D15

The Australian Banking Association (**ABA**) welcomes the opportunity to provide this preliminary comment on the Australian Taxation Office (**ATO**) Draft Legislative Instrument LI 2022/D15. The ABA supports ATO's decision to consolidate the current 51 legislative instruments governing Recipient Created Tax Invoices (**RCTIs**) into a single legislative instrument (**LI**).

RCTIs are an important feature of the GST regulatory framework that enables Australian businesses to efficiently invoice suppliers. The ABA understands the ATO has identified instances where there has been a failure by suppliers to remain registered for GST whilst continuing to receive payment for services supplied when registered for GST. However, it appears that in the process of addressing the issue, the draft LI will remove the efficiency of RCTIs.

Australian Banks take their obligations as taxpayers seriously and are committed to working with the ATO to ensure that taxation owed by suppliers is collected. When onboarding suppliers' banks confirm their GST status and require suppliers to advise banks when they are no longer registered for GST. However, the draft LI, in its current form requires recipients to actively confirm the GST status of each supplier for every RCTI they issue.[1] Such a requirement will impose several complications:

a. Defining 'Confirmation'

Meaning. It is unclear what specific actions the ATO considers as satisfying the requirement to 'confirm' the registration status of the supplier, including what evidence would be required to demonstrate a confirmation was conducted. Without this clarity, it is not possible to provide specific and relevant feedback on the practicality of compliance. If 'confirmation' refers to a recipient checking the Australian Business Register (**ABR**) on every occasion an RCTI is produced, this represents a significant change to the way RCTIs are administered and would be a highly manual task. Automation is also not currently available for such a task due to limitations of the ABR register.

Consistency. The requirement for the recipient to actively 'confirm' ongoing supplier registration also appears inconsistent with the wording of the 'written agreement', which is reproduced in effectively identical form to its historical wording in clause 9 of the draft LI. This states that "*The supplier acknowledges that it is registered for GST and that it will notify the recipient if it ceases to be registered.*" This acknowledgement appears on each RCTI that has been issued. The ABA seeks clarification if it is intended that this acknowledgment will be in addition to the initial 'confirmation'.

Cost. The ATO has indicated the cost of compliance is to be advised. We suggest the measure will impose significant costs on both recipients and potentially suppliers given the additional manual processes confirmation will entail.

b. Non-registered suppliers receiving GST funds

Suppliers may be registered for GST at the time of making the supply and the issue of the first RCTI but may deregister before they are entitled to receive other payments (e.g., trail commission) which also should be subject to a RCTI. The impact to suppliers receiving funds but not registered for GST is unclear. Further, it is unclear what, if any, action is expected from banks if they identify entities that are in receipt of funds but not registered for GST.

We note that in these circumstances a recipient may be contractually required make a GST inclusive payment but unable to claim an input tax credit. This would mean that the tax burden of the GST has been passed onto the recipient in these circumstances. We request the ATO to confirm that this is not the intended outcome of the LI.

[1] Per section 7(3)(b) of the draft LI.

c. The underlying concern is not addressed by the LI

In our view, the LI does not address the underlying concern, that is, the 'disengagement' between suppliers and the ATO rather than a failure by recipients to ensure suppliers are registered for GST when engaging with them. The 'written agreement' included on each RCTI already (and would continue under the draft LI) requires a notification by the supplier of any change to their status.

d. Out of date information

Even if banks were to check the GST status of their suppliers, there is no guarantee that the check would be up to date by the time the RCTI reached the supplier. It is possible that the ATO will receive out of date information, or at the time at which the effect of the RCTI is reflected in the Business Activity Statement (**BAS**) of the supplier or recipient. We are concerned that the ATO may penalise banks for providing outdated information and request the ATO to provide clarity of its actions in such circumstances.

The draft LI is impractical to implement and is not aligned to the intended purpose of RCTIs. Further, our view is that the LI does not address the underlying concern. Therefore, the ABA does not support the draft LI in its current form.

The ABA submits that as an overarching approach there are other mechanisms which the ATO could employ which directly address the underlying issue:

- The ATO can implement systems changes to flag when suppliers deregister for GST when they are still receiving GST inclusive payments and shares that information with recipients; and
- The ATO can educate entities registered for GST that they should inform their recipients immediately after deregistering for GST on their eligibility to receive GST-inclusive payments.

We understand that there may be some role for recipients to play in the case of open-ended arrangements (such as mortgage brokers with trailing commissions). The ABA has briefly considered supportive measures such as:

- A requirement that recipients conduct periodic reviews of the GST registration status of suppliers, perhaps as a subset of recipients' existing Justified Trust requirements, which already encompass RCTI processes.
- Recipients only be required to review suppliers in specific industries identified by the ATO as likely to de-register for GST, for example by issuing a separate LI, including the requirement to 'confirm' registration for those identified industries only.

We invite the ATO to work with the ABA to consider such solutions and others in the new year.

Thank you for the opportunity to provide feedback. If you would like to discuss further, please do not hesitate to contact

Kind regards,

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About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.