

# Building and construction industry

## Taxable payments reporting

### Frequently asked questions

#### Who needs to report?

You will need to lodge a Taxable Payments Annual Report with the ATO if you meet all the following requirements:

- You have an ABN;
- You are carrying on a business that is primarily in the building and construction industry; and
- You make payments to contractors for building and construction services.

#### Do you still need to report if both the purchaser and supplier are members of the same tax consolidated or Multiple Entry Consolidated (MEC) group?

No. Members of the same tax consolidated or MEC group are treated as a single entity for tax purposes. Payments between them do not need to be reported.

#### What constitutes 'building and construction services'?

Building and construction services include any of the following activities if they are performed on, or in relation to, any part of a building, structure, works, surface or sub-surface:

Building and construction services						
Alteration	Assembly	Construction	Demolition	Design	Destruction	Dismantling
Erection	Excavation	Finishing	Improvement	Installation	Maintenance	Modification
Removal	Repair	Site Preparation	Organisation of building and construction services	Management of building and construction services		

Attached are two appendices which contain a detailed list of examples of:

Appendix 1: Occupations and activities that satisfy the definition of building and construction services; and

Appendix 2: Things that are considered buildings, structures, works, surfaces or sub-surfaces.

#### How do you determine if you are carrying on a business that is 'primarily in the building and construction industry'?

You are taken to be carrying on a business that is primarily in the building and construction industry if you meet **any** of the following three thresholds:

- In the current financial year, more than 50% of your business activity relates to building and construction services; or
- In the current financial year, more than 50% of your business income is derived from providing building and construction services; or
- In the financial year immediately before the current financial year, more than 50% of your business income was derived from providing building and construction services.

### What payments should be reported?

You need to report payments you make to contractors for building and construction services.

The ATO requires taxpayers to report on a cash basis. Accordingly, unpaid invoices as at 30 June 2020 should be excluded from this year's report.

Invoices that were excluded from last year's report because they had not been paid as at 30 June 2019 should be included in this year's report if they have now been paid.

### Do land owners who engage developers need to report?

If the land owner's primary source of income is from the sale or lease of the developed land as opposed to from providing building and construction services to others, the ATO considers that the land owner may, in some circumstances, still be required to report payments they make to the developer or to other entities that are engaged in relation to the development of the land.

The ATO makes a distinction between the two following scenarios:

#### Scenario 1:

##### **The land owner undertakes no other activities other than to engage a development entity**

Where the land owner undertakes no other activities other than to engage a development entity (i.e. it passively holds the land), the ATO considers that the land owner is not carrying on a business that is primarily in the building and construction industry and therefore is not required to report payments it makes to the development entity.

However, if the land owner is more than a passive land holder in that, for example, it has employees who assist the development entity to develop the land, then in the ATO's view the land owner may have an obligation to report, as discussed below in scenario 2.

#### Scenario 2:

##### **The land owner's employees assist a development entity to undertake the development of the land (e.g. obtaining planning permits, appointment of contractors etc.)**

In this scenario, the ATO considers that the land owner is required to report the payments it makes to the developer or to other entities that are engaged in relation to the development of the land if more than 50% of its business activity in the current financial year relates to building and construction services. This is on the basis that while the land owner does not provide building and construction services to third parties, its activities do "*relate to building and construction services*". In the ATO's view, those activities form part of the land owner's business activity for the purposes of applying the activity test (see above).

On that basis, if the land owner's only activities in the current financial year relate to the development of the land with the assistance of a development entity, more than 50% of the land owner's business activity would relate to building and construction services. It would therefore be required to report the payments it makes to the development entity or to any other entity it acquires services from in relation to the development of the land.

If the land owner also undertakes activities other than building and construction activities, you will need to assess whether more than 50% of its business activities in the current financial year relate to building and construction services. The following factors have been provided by the ATO to assist in determining whether a land owner exceeds the 50% threshold:

- In which activities are employees and/ or contractors deployed?
- In which activities are plant, equipment and other capital assets deployed?
- How is expenditure associated with the activities allocated? For example, do the activities have assigned cost centres?

The developer, project manager and any other entity engaged in relation to the development of the land will also need to report the payments they make to other contractors for building and construction services if they (the developer etc.) are carrying on a business that is primarily in the building and construction industry (see above).

### **Is an appointed administrator required to report?**

The ATO has advised that where an administrator has been appointed to manage an entity (“the incapacitated entity”) which is primarily in the building and construction industry, the administrator is required to report payments which the incapacitated entity made to contractors both before and after the date of the administrator’s appointment.

Notwithstanding the administrator’s obligation to report payments made to contractors both before and after the appointment date, the ATO does accept that where an administrator does not have access to details of the payments made to contractors before their appointment, provided the administrator has used best endeavours to include in the report all payments made to contractors that the administrator is aware of, the ATO will accept that the administrator has met their reporting obligations.

### **What payments should not be reported?**

The following payments should not be reported:

- Payments to contractors and individuals which are subject to PAYG withholding (e.g. payments to employees, contractors who do not quote an ABN); and
- Payments for materials only.

Where an invoice includes both labour and materials, you will need to report the whole amount of the payment, unless the labour component is only incidental to the supply of the materials.

### **What information needs to be included in the report?**

The following details need to be reported in respect of each contractor you have made a payment to in the year ended 30 June 2020:

- Australian Business Number (ABN);
- Name;
- Address;
- Gross amount paid to the contractor for the financial year (this is the total paid including any GST); and
- The amount of GST included in the gross (total) amount paid to the contractor.

The details you need to report will generally be contained in the invoices you receive from your contractors.

### **In what format can the information be reported?**

The format of the information provided to the ATO must comply with the reporting requirements that have been prescribed by the ATO.

The following options are the only ones available:

- Paper – a paper form can be obtained from the ATO;
- Online – the annual report can be lodged through the Business Portal, Tax Agent Portal (for tax agents only) or Standard Business Reporting (SBR).

The ATO will not accept annual reports created using non-approved software including Excel spread sheets and other similar programs.

### **What is the lodgement due date for the report?**

The Taxable Payments Annual Report is due by 28 August 2020 for payments made in the year ended 30 June 2020.

## What is the penalty for lodging the report late?

The amount of the penalty the ATO can impose for late lodgement of the report depends on the entity size and the period for which the report is overdue, as follows -

Failure to lodge penalty amount according to entity size (where infringement occurs on or after 1 July 2020)				
Days overdue	Small	Medium	Large	Significant Global Entity
28 days of less	\$222	\$444	\$1,110	\$111,000
29 to 56 days	\$444	\$888	\$2,220	\$222,000
57 to 84 days	\$666	\$1,332	\$3,330	\$333,000
85 to 112 days	\$888	\$1,776	\$4,440	\$444,000
113 days or more	\$1,110	\$2,220	\$5,550	\$555,000

### Size Tests to determine the penalty amount:

A *small* entity is an entity that is neither a medium nor a large entity.

A *medium* entity is a 'medium' withholder for PAYG withholding purposes (i.e. amounts withheld during a financial year were \$25,001 to \$1 million), or an entity that has assessable income or a current annual GST turnover of more than \$1 million and less than \$20 million.

A *large* entity is a 'large' withholder for PAYG withholding purposes (i.e. amounts withheld during a financial year exceeded \$1 million) or that has assessable income or a current annual GST turnover of \$20 million or more.

An entity is a *significant global entity* for a period if it is one of the following:

- A 'global parent entity' whose 'annual global income' is AUD\$1 billion or more; or
- A member of a group of entities consolidated (for accounting purposes) where the global parent entity has an annual income of AUD\$1 billion or more.

## How can we assist you with your reporting obligation?

There are several ways in which we can assist you with your reporting obligation:

- We can work with you to determine which entities within your group need to report, and what information needs to be reported for the various suppliers you engage.
- We can assist you to generate the information from your systems in a suitable format for reporting to the ATO.
- We can prepare and lodge the annual report on behalf of the reporting entity, subject to getting the required information. If we act as the entity's tax agent, we can lodge the report through the Tax Agent Portal. Alternatively, we can lodge a paper report with the ATO.

## Further information

Please contact one of our tax experts below for further information about taxable payments reporting:

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# Appendix 1

List of occupations and activities which satisfy the definition of 'building and construction services':

Examples of building and construction services			
Architectural work (including drafting and design)	Asphalt and bitumen work	Assembly, installation or erection of prefabricated houses	Block laying
Bricklaying	Building or 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
Communication 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)	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	Erection of scaffolding	Excavation and grading	Fencing
Finishing	Flood control system Construction	Flooring (e.g. tiling, laying carpet, 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
Installation of hand-wired alarm systems (security, fire, smoke, etc.)	Installation of prefabricated 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	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	

## Appendix 2

List of examples of things that are considered buildings, structures, works, surfaces or sub-surfaces:

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	Highways	Housing buildings (including prefabricated housing)
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 transmission towers	Tunnels	Water tanks	Waterworks

# Making business *personal*



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