



SUBMISSION BY THE
Housing Industry Association

to the
The Treasury
Business Tax Division
on the
Exposure Draft Taxation Administration Amendment
Regulations - Reporting of Taxable Payments for Contractors
in the Building and Construction Industry

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CONTENTS

1	<u>INTRODUCTORY COMMENTS</u>	3
2	<u>RESPONSE TO DRAFT REGULATIONS</u>	4

HIA :

David Humphrey
Senior Executive Director – Business, Compliance & Contracting
Housing Industry Association
79 Constitution Avenue
Campbell ACT 2612
Phone: 02 6245 1300
Email: d.humphrey@hia.com.au

HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 43,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.



HIA's submissions on the Exposure Draft Regulations

1. Introductory comments

- 1.1 Housing Industry Association Ltd (HIA) welcomes the opportunity to comment on the draft regulations and explanatory statement designed to give effect to the Government's 2011-12 Budget measure, *Tax compliance – reporting taxable payments*.
- 1.2 From the outset, HIA opposes the Government's budgetary measures.
- 1.3 Whilst HIA agrees that it is important that the Government take steps to address non-compliance amongst contractors in the building and construction industry, its current approach is flawed. It is effectively a very expensive data matching exercise that does not directly deal with those businesses that are not meeting their taxation obligations. Rather the regulatory measures are entirely focused on those businesses that pay subcontractors. The threats of penalty sanctions on such businesses (purchasers) are draconian.
- 1.4 HIA does not agree that such a policy that penalises builders and principal contractors for choosing to engage subcontract labour by imposing significant additional red tape and administrative and accounting costs upon them is a proportionate response.
- 1.5 The compliance burden on purchasers of subcontract labour has been considerably understated by Treasury in both the original May 2011 consultation paper and the Regulation Impact Statement. Building on an already heavy compliance and paperwork burden, HIA expects that the additional annual compliance costs on many businesses will exceed \$500. This is well in excess of the Treasury estimate of \$90.
- 1.6 As HIA stated in its submissions dated 27 June 2011 whilst the measures will have a detrimental impact upon the residential building industry they will not do anything to capture the non-reporting of income of consumers, businesses or subcontractors in the cash economy and the owner-builder market.
- 1.7 HIA submits that a much more appropriate response would be targeted on those entities that are not meeting their taxation obligations rather than exclusively focus on those that pay them.
- 1.8 HIA also believes that much more can be done to improve education and awareness in this area by all parties.
- 1.9 HIA strongly submits that these Regulations not proceed in their current form.

2. Response to draft regulations

With respect to the content of the draft regulations, HIA have several concerns:

2.1 *Form of the regulations*

- 2.1.1 Firstly, the regulations are unnecessarily imprecise and vague in part; whilst they are only 2 and half pages long they are supported by more than 8 pages of explanatory material.
- 2.1.2 HIA submits that much of what is in the explanatory material can be included in the Regulations proper.
- 2.1.3 Further, although HIA understand the terminology of “purchaser” and “supplier” used in the draft Regulations is consistent with the *Taxation Administration Act*, the language of “contractor”, “subcontractor”, “builder” and “principal contractor” is much more commonly used in the industry.

2.2 *Mixed supply of goods and building and construction services*

- 2.2.1 HIA supports the Government’s policy intent to not require payments where they have been made for goods or materials only. Unfortunately Subregulation (1)(c)(ii) is drafted in a confusing and convoluted manner and HIA expects that this element of the new Regulations will create the greatest confusion at a practical level - many builders will be querying what invoices they are required to report on and what invoices they need not include for reporting purposes.
- 2.2.2 HIA submits that a positive exemption should be provided for contracts where the labour or “building and construction services” supplied under the contract are ancillary or incidental to supply or use of goods.
- 2.2.3 Such “goods” for this purpose should be defined to include:
 - (a) materials and components to form part of any building, structure or work arising from construction work;
 - (b) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work.

2.3 *Definition of “building and construction services”*

- 2.3.1 HIA’s principal concern with the draft Regulation is with the overly broad definition of “building and construction services” provided at subregulation 6.
- 2.3.2 For the sake of certainty, HIA submits that the Regulation should contain a much more exhaustive list of what is considered to be a “building and construction service”. It is unsatisfactory to simply provide 4 pages of examples of activities in the explanatory material.



- 2.3.3 For instance, the explanatory material refers to “building” of room components (kitchens, bathroom components, laundry components, cupboards). “Building” is however is defined. HIA has concerns that that businesses involved in the manufacture of such components – taps, window fittings – will be caught, whether as purchasers or as suppliers. In HIA’s view the intention of the Regulations should not be to capture such activities, as they fall within the manufacturing sector. In any event, this should be clearly articulated.
- 2.3.4 The inclusion of “maintenance” is also of concern. The installation of a lift for instance, would be regarded as a building and construction activity but its ongoing servicing is not. Again it is HIA’s view that it should not be the government’s intention to capture such activities. HIA submits that the regulations should exclude all services for general repairs, maintenance and cleaning.
- 2.3.5 A much more appropriate form of definition lies in the form used in the repealed sections 126 (2) and 126(3) of the *Income Tax Regulations 1936* which dealt with the old prescribed payment system (PPS).
- 2.3.6 Additionally, notwithstanding the voluminous examples provided in the explanatory material it is still not clear whether some activities are included or not included.
- 2.3.7 To this extent the regulations and/or explanatory should provide a non-exhaustive list of the type of matters that are not “building and construction” activities.