



Explanatory Statement

Taxation Administration Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2022

General outline of instrument

1. This instrument is made under subsection 396-70(4) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
2. This instrument identifies classes of entities that are not required to report certain classes of transactions under table items 6, 7 or 8 in section 396-55 of Schedule 1 to the TAA.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. The instrument applies with retrospective effect and commences on 1 July 2017. This retrospective application is necessary and appropriate as it:
 - (a) provides certainty for Australian and multinational entities that have not been reporting on certain transactions that they are complying with their Australian taxation obligations, and
 - (b) is concessional in nature and will not disadvantage any entities; it will reduce relevant entities' reporting obligations and compliance costs.
6. For the purposes of subsection 12(2) of the *Legislation Act 2003*, the retrospective effect of this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth. It exempts entities from having to report certain transactions to the Commissioner where they would otherwise be required to do so under Division 396 of Schedule 1 to the TAA. It will reduce their compliance costs and provide greater certainty in relation to their reporting requirements.

Repeal of previous instrument

7. This instrument repeals *Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2018* (F2018L00473) registered on 9 April 2018.

What is this instrument about

8. This instrument exempts certain companies and trusts from reporting on certain transactions which change the composition of assets held by the company or trust, which would otherwise be required to be reported (see items 6, 7 or 8 in the table in section 396-55 of Schedule 1 to the TAA).
9. It maintains each of the exemptions contained in the previous instrument (see paragraph 7 above). It also contains two additional exemptions:
 - (a) in relation to erroneous transactions that have been reversed (noting the limited benefit to taxpayers from capturing these events, compared to the significant cost to reporters to provide them), and
 - (b) where a company has shares listed for quotation on both an Australian financial market and a foreign financial market; in these circumstances only the off-market transactions relating to the shares listed for quotation on the official list of an Australian financial market need to be reported.
10. It is generally beneficial for relevant entities to rely on these exemptions as it reduces their compliance costs. However, the instrument does not prevent the reporting of information. For example, entities may still choose to report information, along with other information they are required to report under the TAA, where this creates administrative efficiencies for them.
11. This instrument applies from 1 July 2017 to ensure that entities which have not historically reported on relevant transactions will not have failed to comply with relevant reporting obligations.
12. The new exemption for erroneous transactions applies to all entities to which the instrument applies. In many cases a taxpayer would be eligible for roll over relief where their shares or units are sold without their permission and then subsequently replaced. As such, the benefit to taxpayers from capturing this data is very low and does not justify the increased cost for reporters to provide this data.
13. The instrument also provides certainty for dual listed companies which have some shares listed for quotation on the official list of an Australian financial market (ASX-listed shares) and other shares only listed for quotation on the official list of a foreign financial exchange (foreign-listed shares). The existing legislation has an unintended requirement for these companies to report any transactions relating to their foreign-listed shares.
14. Compliance Cost Impact: Minor – There will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

Background

15. This instrument was developed to ensure that the third-party reporting regime operates efficiently and the compliance burden on reporters is minimised.
16. Subsection 396-70(4) of Schedule 1 to the TAA allows the Commissioner, by legislative instrument, to exempt classes of entities from reporting (including in respect of specified classes of transactions).
17. Under table items 6, 7 and 8 in section 396-55 of Schedule 1 to the TAA, entities are required to report to the Commissioner information about transfers of shares or units in a unit trust. The information that is required to be reported

relates to changes to the type, name and number of the shares or units held by an entity.

18. To reduce the administrative and compliance burden on reporters, the Commissioner does not require certain information to be reported. In addition to the two new exemptions described above, the instrument will maintain the current reporting exemptions described below.
19. Entities to which the instrument applies are not required to report on transactions relating to shares listed on Australian financial markets, where they are not required to deliver data on the transactions to ASIC under the market integrity rules. The bulk of the share transaction information required by the Commissioner will be captured through the existing ASIC market integrity system. The exemption to report is provided for those financial markets not captured under this system because it is considered unnecessarily burdensome to require transaction reporting from brokers and listed entities for shares listed on markets that are not monitored by the market integrity rules.
20. To reduce the administrative and compliance burden on small unit trusts and trustees of other trusts, the instrument exempts certain trustees from having to prepare and lodge reports to the ATO.
21. For example, in recognising that the benefit of very small entities providing third party data reports is frequently outweighed by the cost, the instrument provides exemptions for small unit trusts with fewer than 10 investors and less than \$5 million in assets. This is consistent with the reporting requirements for Annual Investment Income Reports under Division 393 of Schedule 1 to the TAA, which provides an income-based exemption for unit trusts.
22. There is also an exemption for:
 - (a) trustees, other than trustees of a unit trust, if they are not required to hold an Australian Financial Services Licence and hold total assets of less than \$5 million in all trusts of which they are the trustee,
 - (b) trustees of a trust (other than a unit trust) where the trustee can reasonably expect that some other entity will report the transaction (for example under a margin lending scheme), and
 - (c) entities to which the instrument applies under table items 6, 7 or 8 in section 396-55 of Schedule 1 to the TAA in relation to a transaction where an entity is required to provide information to the Commissioner in relation to the transaction under Division 392 of Schedule 1 to the TAA (which is about employee share schemes).
23. There is limited value in requiring the off-market transactions that relate to foreign-listed shares to be reported as the majority of stock movements occur on-market. Similarly, requiring on-market transactions that relate to foreign-listed shares will not be captured by ASIC and the Commissioner will be unable to form a complete picture of share movements.

Example 1.1

Narla Ltd. is a biomed company which operates in Australia and New Zealand. Narla Ltd. has some of its shares listed for quotation on the Australian Stock Exchange (ASX) and the rest of its shares listed for quotation on the New Zealand Stock Exchange (NZX).

Narla Ltd. is required to report any transactions to the Commissioner which would not be required to be reported to ASIC under item 6 of section 396-55 of Schedule 1 to the TAA. The test under the legislation is applied at the

company level, so Narla Ltd. would be required to report all transactions (on or off-market) in relation to the NZX shares (as those transactions are not reported to ASIC under the market integrity rules), as well as any off-market transactions in relation to the ASX shares.

The NZX is not required to report on-market transactions in relation to the NZX shares data to the ATO.

The legislative instrument exempts Narla Ltd. from reporting on-market or off-market transactions to the Commissioner that involve the NZX shares. As such the NZX share transactions would not need to be reported.

Example 1.2

Helen is a New Zealand resident for taxation purposes and in January 2021 she purchased 500 shares in Narla Ltd. through a trade on the NZX. The NZX is not required to report the transaction to be reported to ASIC under the market integrity rules.

In April 2021, Narla Ltd. undertakes an off-market share buyback which Helen participates in to sell her 500 NZX shares.

Subsection 4(6) of the legislative instrument exempts Narla Ltd. from reporting the off-market buyback transaction to the Commissioner.

24. The exemption will also apply to companies which have some shares listed for quotation on an Australian financial market and other shares which are not listed for quotation on any financial market. The new exemption in subsection 4(6) also makes clear that transactions in the unlisted shares do not need to be reported to the Commissioner.

Example 1.3

Samir is an Australian resident for taxation purposes and owns Class B unlisted shares in Big Company Limited (BCL). BCL also has class A ordinary shares which are listed on the ASX. On-market transactions relating to the class A BCL shares are reported to the Commissioner by ASIC and market participants and off-market transactions are reported to the Commissioner by BCL.

The legislative instrument exempts BCL from reporting any transactions relating to the Class B unlisted shares to the Commissioner.

Consultation

25. Subsection 17(1) of the *Legislation Act 2003* requires a rule-maker to be satisfied that appropriate consultation, which is reasonably practicable to undertake, has been undertaken before they make a legislative instrument.
26. For this instrument, broad public consultation was undertaken for a period of four weeks from 14 February 2022 to 14 March 2022 inclusive.
27. The draft instrument and draft explanatory statement were published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.
28. Industry engaged with the ATO to clarify current practices for the communication of erroneous transactions, and to better understand the ATO's concerns with the previous exemption. This interaction improved the ATO's understanding of these issues and allowed a more specific exemption to be provided. As a result of this consultation, the legislative instrument now

includes a permanent exemption for erroneous transactions where the reporters are taking steps to reduce the risk of an unfavourable outcome for the taxpayer.

Legislative references:

Acts Interpretation Act 1901

Corporations Act 2001

Human Rights (Parliamentary Scrutiny) Act 2011

Income Tax Assessment Act 1997

Legislation Act 2003

Taxation Administration Act 1953

Statement of Compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Taxation Administration Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2022

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

This legislative instrument exempts specified classes of entities from having to report on certain classes of transactions (relating to shares and units). The exemptions provide greater certainty and reduced compliance costs for entities that may be impacted by the third-party reporting legislation.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It exempts classes of entities from having to report on particular transactions to assist to ensure that the third-party reporting regime operates efficiently, and minimise the compliance burden on relevant entities.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.