Explanatory Statement

CLASSES OF TRANSACTIONS FOR WHICH GOVERNMENT RELATED ENTITIES ARE EXEMPT FROM PROVIDING THIRD PARTY REPORTS DETERMINATION 2016

General Outline of Determination

1. This instrument is made under paragraph 396-70(4)(b) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

2. This instrument exempts government related entities from having to include specified classes of transactions in reports prepared and lodged in relation to items 1 and 2 in the table included in section 396-55 of Schedule 1 to the TAA 1953.

3. 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.

4. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

5. This instrument commences on 1 July 2017.

What is this instrument about

6. Subdivision 396-B of Schedule 1 to the TAA 1953 introduced third party reporting arrangements that apply to transactions that happen from 1 July 2017. Subdivision 396-B includes requirements for government related entities to provide a report concerning the provision of a grant to an entity that has an ABN and consideration for the supply of services. These requirements are listed as items 1 and 2 in the table included in section 396-55.

7. This instrument exempts certain transactions from these reporting requirements.

What is the effect of this instrument

8. The effect of this instrument is to reduce the compliance burden for government related entities by not having to include all transactions in the report they are required to prepare.

9. 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.

Excluding classes of transactions from reports

10. If exempting the specified classes of transactions increases the administrative burden on a government related entity, it will not be required to exclude the transactions and can instead report all of the relevant transactions, in accordance with the requirements of the approved form.

11. The exemption contained in paragraph 4(a) of the instrument relating to electronic payments contains specific terms that may be unfamiliar. A brief description of the terms is as follows:

    a) A BPAY biller is a business that has a unique BPAY Biller identification number which allows customers of the business to pay their accounts through the BPAY system.

    b) A recurring direct debit entails a financial institution periodically deducting amounts from an account holder's account and paying the amounts to a biller.

    c) A merchant acquiring system is one in which a financial institution processes debit or credit card payments made to a business.

    d) A third party payment processor is an entity that facilitates electronic payments on behalf of businesses. A third party payment processor may hold a single merchant identification number or a BPAY Biller identification number through which all transactions are processed. Funds are collated by the third party payment processor and distributed to various businesses that use their services. Other terms for a third party payment processor include a third party payment provider, a third party provider, or a third party payment facilitator.

Background

12. This instrument was developed to ensure that the third party reporting regime operates efficiently and the compliance burden on reporters is minimised.

13. During the development of the regime, it was determined that it would be appropriate to exempt certain classes of transactions from being reported due to a number of factors:

    a) some classes of transactions are beyond the intended scope of the measure;

    b) some recipients of classes of transactions do not represent a high compliance risk; and

    c) uncertainty arises whether the consideration is provided for a service or for another type of supply.

14. It was determined that excluding these classes of transactions would improve the clarity of the reporting regime and make it easier for reporters to identify what transactions to report.

15. Consultation with government entities during the development of the regime indicated that some will face administrative difficulties in excluding certain classes of transactions and would prefer to report all consideration provided to

an entity for a supply of services, in the manner required by the approved form.

16. The Australian Taxation Office (ATO) recognises this administrative difficulty and will accept the specified exempted classes of transactions on a report where the government entity faces an increased administrative burden by having to exclude them.

Consultation

17. The consultative period for the draft legislative instrument commenced on 15 December 2015 and concluded on 15 February 2016. The ATO provided some entities with extensions of time until 19 February 2016 to ensure stakeholders received a fair opportunity to respond.

18. The ATO distributed an invitation to provide feedback to at least six government forums known to the ATO, and to over 580 stakeholders known to the ATO from previous consultation activities. Those canvassed included federal government departments, representatives from a number of state government departments and smaller government entities, and local councils. The public were also invited to provide feedback during the consultation period.

19. The ATO considered all issues in preparing the final legislative instrument. The majority of the feedback sought clarification about the application of the legislative instrument to specific circumstances and the ATO provided clarification. Where appropriate, additional clarity was added by making changes to the draft. Further guidance is provided in this explanatory statement in response to stakeholder feedback.

Greg Williams
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11 April 2016

Legislation Act 2003

Taxation Administration Act 1953

Human Rights (Parliamentary Scrutiny) Act 2011

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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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 instrument exempts government related entities from having to include specified classes of transactions in reports prepared and lodged in relation to items 1 and 2 in the table included in section 396-55 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

Exempting these classes of transactions from this reporting measure aims to ensure that the measure operates efficiently and the compliance burden on reporters is minimised.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms because the specified classes of transactions exempted by this instrument are beyond the intended scope of the measure, do not present a high compliance risk or are already being reported under other reporting regimes.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.