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## Explanatory Statement

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# CLASSES OF ELECTRONIC PAYMENT SYSTEM TRANSACTIONS EXEMPT FROM PROVIDING THIRD PARTY REPORTS DETERMINATION 2016

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### General Outline of Instrument

1. This instrument is made under subsection 396-70(4) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).
2. This instrument exempts administrators of payment systems (within the meaning of the *Payment Systems (Regulation) Act 1998*) from having to include specified classes of transactions in reports prepared and lodged in relation to item 9 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. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

### Date of effect

5. The 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 payments made from 1 July 2017. Subdivision 396-B includes requirements for administrators of payments systems (within the meaning of the *Payment Systems (Regulation) Act 1998*) to provide a report concerning a transaction involving an electronic payment if:
  - (a) the transaction is facilitated by the payment system on behalf of an entity; and
  - (b) the administrator reasonably believes that the transaction:
    - (i) provides a payment to the entity, or provides a refund or cash to a customer of the entity; and
    - (ii) is for the purposes of a business carried on by the entity.

These requirements are listed as item 9 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 list of excluded transactions provides certainty and a potential reduction in compliance cost for entities that may be impacted by the third party reporting legislation. Reporting entities that have excluded transactions can omit that information from their reporting obligations.
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 excluding the specified classes of transactions increases the administrative burden on an administrator of a payment system, 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.

### **Background**

11. This instrument was developed to ensure that the third party reporting regime operates efficiently and the compliance burden on reporters is minimised.
12. Subsection 396-70(4) of Schedule 1 to the TAA 1953 allows the Commissioner, by legislative instrument, to exempt classes of transactions from being reported.
13. Item 9 in the table at section 396-55 of Schedule 1 to the TAA 1953 requires an administrator of a payment system (within the meaning of the *Payment System (Regulation) Act 1998*) to report a transaction involving an electronic payment if the transaction is facilitated on behalf of an entity, and the administrator reasonably believes that the transaction was a payment to the entity, a refund or cash withdrawn by a customer of the entity, and is for the purpose of a business carried on by the entity.
14. To reduce the administrative and compliance burden on administrators of payment systems, the Commissioner will exempt the following classes of transactions from being reported to the ATO:
  - Payments made to a carriage service provider (within the meaning of the *Telecommunications Act 1997*).
  - Payments made to a utility for the provision of electricity, water, sewerage or gas.
  - Payments made to a government related entity (within the meaning of section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*).
  - Payments made to a general insurer which are received in the course of the insurer's insurance business (within the meaning of the *Insurance Act 1973*).

- Payments made to a life insurer which are received in the course of the life insurer's insurance business (within the meaning of the *Life Insurance Act 1995*).
  - Payments made to a private health insurer which are received in the course of the health insurer's insurance business (within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*).
  - Payments made to a superannuation fund, approved deposit fund, or pooled superannuation trust (within the meanings of the *Superannuation Industry (Supervision) Act 1993*) or retirement savings account provider (within the meaning of the *Retirement Savings Accounts Act 1997*).
  - Payments processed by High Value Clearing System (HVCS) Framework Participants under the HVCS governed by Australian Payments Clearing Association Limited (APCA).
15. The Commissioner does not require the reporting of the preceding classes of transactions as these transactions fall outside of the intended scope of transactions to be reported under item 9.

## Consultation

16. In October/November 2015, the Australian Taxation Office (ATO) undertook consultation with key stakeholders such as the Australian Bankers Association (ABA), Australian Payments Clearing Association Limited (APCA), Customer Owned Banking Association (COBA), financial institutions, and payment administrators on the content to be included in the Legislative Instrument. Formal public consultation on the draft Legislative Instrument commenced on the 15 December 2015 and concluded on 15 February 2016. All reporting entities and the public were invited to participate in the consultation. At the conclusion of the consultation window, the ATO received two submissions from reporters raising a number of issues/concerns. Separate to this, the ATO also received an additional request for consideration via telephone that was directly related to the Legislative Instrument. After consideration of the issues raised out of consultation, the ATO has agreed with some of the issues raised and made some changes to the Legislative Instrument and data specifications. Not all issues raised could be adopted by the ATO as the issues raised were inconsistent with the policy intent or not administratively feasible. Feedback was provided to the reporting entities that made a submission via consultation or telephone call on what the ATO could amend and what could not be adopted.

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**Greg Williams**  
**Deputy Commissioner of Taxation**  
 11 April 2016

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*Legislative references:*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

*Payment Systems (Regulation) Act 1998*

### **Statement of Compatibility with Human Rights**

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

#### **CLASSES OF ELECTRONIC PAYMENT SYSTEM TRANSACTIONS EXEMPT FROM PROVIDING THIRD PARTY REPORTS DETERMINATION 2016**

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 administrators of payment systems (within the meaning of the *Payment Systems (Regulation) Act 1998*) from having to include specified classes of transactions in reports prepared and lodged in relation to item 9 in the table included in section 396-55 of Schedule 1 to the TAA 1953.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms. It provides exemptions from reporting requirements which are considered to be minor in nature.

#### **Conclusion**

This legislative Instrument does not raise any human rights issues.