



# ***PS LA 2004/9 - Disclosing information about the affairs of a taxpayer to Ministers***

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## Disclosing information about the affairs of a taxpayer to Ministers

This Law Administration Practice Statement outlines the protocol on disclosing protected information about taxpayers to Ministers.

*This Practice Statement is an internal ATO document and an instruction to ATO staff.*

*Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

### 1. What is this Practice Statement about

Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) contains the provisions which provide for taxpayer confidentiality and sets out the rules that we, as taxation officers, need to abide by when dealing with protected information.

This Practice Statement explains the exceptions to these rules when disclosing protected information to Ministers.

**Note:** disclosing taxpayer information to Ministers should be distinguished from disclosing taxpayer information to Treasury. For information on disclosure of protected information to Treasury, refer to Law Administration Practice Statement [PS LA 2005/23](#) *Disclosing information about the affairs of a taxpayer to Treasury*.

The exceptions are:

- general exceptions (that is, they do not just apply to disclosures to Ministers), and
- specific exceptions (relating only to disclosures to Ministers).

All legislative references in this Practice Statement are to Schedule 1 to the TAA, unless otherwise indicated.

**Note:** this Practice Statement does not apply to disclosure of protected information to Parliamentary Committees, even if members of that Committee happen to be Ministers. Protected information can be provided to Parliamentary Committees.<sup>1</sup>

### 2. What is protected information

Protected information is defined in subsection 355-30(1) as information that:

- (a) was disclosed or obtained under or for the purposes of a law that was a taxation law (other than the *Tax Agent Services Act 2009*) when the information was disclosed or obtained
- (b) relates to the affairs of an entity, and
- (c) identifies, or is reasonably capable of being used to identify, the entity.

When information does not identify an entity and it is not possible to identify an entity from the information<sup>2</sup>, it is not protected information and Division 355 does not apply.

Tax file numbers are not protected information and cannot be disclosed under any of the exceptions in this Practice Statement.

**Note:** the protected information to which Division 355 applies does not equate to information that is classified under our internal security classification of 'protected'.<sup>3</sup>

### 3. General exceptions which allow disclosure of protected information to a Minister

The following are general exceptions to the rules for disclosing protected information, and these apply equally to disclosing such information to a Minister.

#### *Where the protected information is already available to the public*

Provided the protected information was not made available through a breach of Division 355, it can be

<sup>1</sup> Because of the combined effect of section 16 of the *Parliamentary Privileges Act 1987* and subsection 355-60(2).

<sup>2</sup> Simply removing a taxpayer's name from information does not always mean that the identity of the taxpayer cannot still

be identified. You need to consider whether the information as a whole still allows the taxpayer's identity to be ascertained, even by a process of deduction.

<sup>3</sup> See Chief Executive Instruction [Security](#) (link available internally only) and related guidelines.

disclosed.<sup>4</sup> However, you need to take care that you do not supplement or qualify that information with information from ATO records.

Information is available to the public if it is in open court records, books, newspapers or other sources that are generally available, even if a member of the public has to pay a fee to access it.

### ***Where the protected information relates to the Minister's own affairs***

Just as for any other taxpayer, protected information about a Minister's own affairs may be disclosed to that Minister.<sup>5</sup>

### ***Where the Minister is representing a taxpayer***

Protected information can be disclosed to 'covered entities'<sup>6</sup> which, among others, include a representative the taxpayer has nominated in the approved form to act on their behalf.

A taxpayer may, if they wish, nominate a Minister to act on their behalf.

## **4. Specific exceptions which allow disclosure of protected information to a Minister**

Section 355-55 sets out the specific exceptions relating to disclosure to Ministers.

### ***To enable a Minister to exercise taxation law powers or functions***

Protected information can be disclosed to the Minister if it is for the purpose of enabling the Minister to exercise a power or perform a function under a taxation law.<sup>7</sup>

A Minister for this purpose will usually be the Treasurer. However, there may be other Ministers either within or outside the Treasury portfolio with a function under a taxation law.

The Explanatory Memorandum to the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010 (the EM) includes examples of when this exception would apply:

#### **Example 5.13**

Subdivision CB, Part III of Division 3 of the ITAA 1936 provides that the Treasurer may determine that a company is a regional headquarters company and is eligible to claim a tax deduction for certain expenditures incurred. It is not an offence for a taxation officer to provide information about a company to the Treasurer

to enable him to determine whether or not that company is a regional headquarters company.

#### **Example 5.14**

Under subsection 14(2) of the ITAA 1936, the Minister has the function of tabling a copy of the Commissioner's annual report outlining the operation of that Act. This report may include taxpayer information relating to any breaches of the Act over the course of the year (see subsection 14(1)). It is not an offence for the Commissioner to disclose taxpayer information in the annual report to the Minister as the Minister has the function under a taxation law of tabling that report in each House of the Parliament.

### ***To enable the Minister to reply to representations***

Protected information can be disclosed to the Minister if:

- the information is about an entity, and
- the disclosure is for the purpose of enabling the Minister to respond directly to the entity in relation to a representation made by the entity to the Minister or to another member of Parliament.<sup>8</sup>

'The Minister' means any of the Ministers appointed to administer the Department of Treasury; that is, the Treasurer and any Assistant Minister or parliamentary secretary for the Treasury portfolio.

Care must be taken to ensure that only information about *the entity making the representation* is disclosed to the Minister. Protected information about any other entity must not be disclosed to the Minister.

The EM includes an example of when this exception would apply:

#### **Example 5.15**

Fred writes to his local member (who is also the Minister for Defence) saying that the ATO has charged him a penalty for late payment, when his payment was only slightly overdue and for a very good reason. His local member forwards the letter to the Treasurer. It is not an offence for a taxation officer to provide information about Fred's tax affairs to the Treasurer to enable the Treasurer to respond to Fred's concerns.

Note that Fred's taxpayer information cannot be provided to his local member. A letter may be provided to Fred's local member noting that the Treasurer has responded directly to Fred, provided that letter does not disclose any taxpayer information about Fred.

### ***To inform decisions made under the CDDA Scheme***

Protected information may be disclosed to a Treasury portfolio minister if it is for the purpose of informing decisions made under the [Scheme for Compensation](#)

<sup>4</sup> Section 355-45.

<sup>5</sup> Subparagraph 355-25(1)(a)(ii).

<sup>6</sup> Subsection 355-25(2).

<sup>7</sup> Table item 1 of subsection 355-55(1).

<sup>8</sup> Table item 2 of subsection 355-55(1).

[for Detriment caused by Defective Administration](#) (CDDA Scheme).<sup>9</sup>

### ***To inform decisions about tax debt waivers and act of grace payments***

Protected information can be disclosed to the Finance Minister for the purpose of:

- the making or possible making of a payment referred to in section 65 of the *Public Governance, Performance and Accountability Act 2013* (about act of grace payments) in connection with administering a taxation law, or
- the waiver or possible waiver of a tax debt, under section 63 of the *Public Governance, Performance and Accountability Act 2013*.<sup>10</sup>

However, protected information cannot be disclosed to assist the Finance Minister to make decisions about waivers of non-tax debts or act of grace payments that are unrelated to the administration of a taxation law.

### ***To inform decisions about ex-gratia decisions***

Protected information may be disclosed to any Minister for the purpose of determining whether to make an ex-gratia payment or administering (for example, delivering) such a payment<sup>11</sup>, regardless of whether the ex-gratia payment is related or unrelated to taxation laws.

The EM includes an example of when this exception would apply:

#### **Example 5.17**

The Prime Minister and Cabinet determine that an ex-gratia payment should be granted to certain family members of former Australian servicemen. The Department of Defence does not have up to date contact information for these individuals and is unable to get in touch with them. The ATO, which does have current contact details for the relevant individuals, is able to provide this information to the Defence Minister to allow these payments to be made.

### ***To provide Ministers with information in relation to foreign investment in agricultural land***

Protected information contained in the Register of Foreign Ownership of Agricultural Land may be provided to specified Ministers<sup>12</sup> for the purpose of enabling them to discharge specified responsibilities.<sup>13</sup>

## **5. Approvals required for specific exceptions**

Paragraph 355-55(1)(c) provides that a disclosure of protected information under the specific exceptions relating to Ministers must be approved by either:

- the Commissioner
- a Second Commissioner, or
- a Senior Executive Service (SES) employee or acting SES employee of the ATO who is not a direct supervisor of the disclosing officer.

A direct supervisor is the officer with immediate managerial responsibilities for the disclosing officer (their manager in the ATO's payroll system).

If you are proposing to disclose information to a Minister, you should consult Parliamentary Services (in the ATO Corporate business line) and refer also to Chief Executive Instruction [Providing services to Treasury Portfolio Ministers and Parliament](#) (link available internally only).

Further, if the information to be disclosed has been obtained via an exchange of information (EOI) process with another country's tax administration, you should engage the [EOI Unit](#) in the Public Groups business line prior to any disclosure being made.

## **6. When protected information cannot be disclosed to a Minister**

The general exception to disclosing protected information, which is in the course of performing duties as a taxation officer, cannot be used to allow disclosure to a Minister. Additionally, parliamentary privilege<sup>14</sup> cannot be relied upon to support disclosure.

Protected information (apart from publicly available information to which section 355-45 applies) cannot be disclosed to Ministers on the basis that parliamentary privilege would apply to the disclosure, in documents such as responses to questions on notice and question time briefs.

<sup>9</sup> Table item 3 of subsection 355-55(1).

<sup>10</sup> Table item 4 of subsection 355-55(1).

<sup>11</sup> Table item 5 of subsection 355-55(1).

<sup>12</sup> Relevant Ministers and responsibilities are listed in table item 6 of subsection 355-55(1).

<sup>13</sup> Table item 6 of subsection 355-55(1).

<sup>14</sup> Parliamentary privilege is the special legal rights and immunities applying to the Houses of parliament and their members to enable them to carry out their functions effectively without external interference.

## 7. More information

For more information, see:

- Chief Executive Instruction [Providing services to Treasury Portfolio Ministers and Parliament](#) (link available internally only)
- Chief Executive Instruction [Security](#) (link available internally only).

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**Business line** ATOC

## Amendment history

18 April 2024

Part	Comment
All	Updated to ensure compliance with current ATO style and accessibility guidelines.

21 May 2020

Part	Comment
Various	Updated CEI titles.

25 February 2016

Part	Comment
Section 1 and related practice statements	Included reference to PS LA 2005/23.

10 December 2015

Part	Comment
All	Updated to new LAPS format and style.
Section 4	Inserted general exception in relation to foreign investment in agricultural land.

8 October 2014

Part	Comment
Paragraph 31	'Section 33 of the <i>Financial Management and Accountability Act 1997</i> ' changed to 'section 63 of the <i>Public Governance, Performance and Accountability Act 2013</i> ' to reflect changes to legislation.
Legislative references	Removed FMA Act and replaced with PGPA Act.

8 May 2014

Part	Comment
Contact details	Updated.

7 April 2014

Part	Comment
Paragraphs 57 and 58	Updated to reflect changes to the <i>Privacy Act 1988</i> .
Contact details	Updated.

### 3 May 2013

Part	Comment
Paragraph 3	Unnecessary punctuation removed; 'Protected' capitalised; 'S' capitalised in 'sensitive'; ATO Guidelines to Information Security changed to Information classification and handling CMPI 2006/07/10; 'legislative' changed to 'subsequent'.
Paragraph 13	'It is' changed to 'This'.
Paragraph 16	PS CM 2003/13 Provision of Services to Treasurer and Minister for Revenue and Assistant Treasurer changed to PS CM 2003/13 Provision of Services to Treasury Portfolio Ministers and Parliament.
Paragraph 46	Subsection 355-55(2) changed to subsection 355-25(2).
Related practice statements	PS CM 2003/13 Provision of Services to Treasurer and Minister for Revenue and Assistant Treasurer changed to PS CM 2003/13 Provision of Services to Treasury Portfolio Ministers and Parliament.
Contact details	Updated.

### 4 February 2011

Part	Comment
Throughout	Updated as a result of Division 355 of Schedule 1 of the <i>Taxation Administration Act 1953</i> .

### 15 March 2007

Part	Comment
Throughout	Move reference to the <i>Superannuation (Government Co-Contribution for Low Income Earners) Act 2003</i> from Table 3 in Attachment A into Table 1 of Attachment A.

### 1 July 2006

Part	Comment
Throughout	Update reference to section 68 of the TAA to section 355-5 of Schedule 1 to the TAA.

### 18 August 2005

Part	Comment
Throughout	As a result of advice received from the Solicitor-General on 5 May 2005.

### References

Legislative references	TAA 1953 Sch 1 Div 355 TAA 1953 Sch 1 355-25(1)(a)(ii) TAA 1953 Sch 1 355-25(2) TAA 1953 Sch 1 355-30(1) TAA 1953 Sch 1 355-45 TAA 1953 Sch 1 355-55(1) TAA 1953 Sch 1 355-55(1)(c) TAA 1953 Sch 1 355-60(2)
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	ITAA 1936 Pt III Div 3 Subdiv CB ITAA 1936 14(1) ITAA 1936 14(2) PGPA Act 2013 63 PGPA Act 2013 65 Parliamentary Privileges Act 1987 16 Tax Agent Services Act 2009
<b>Other references</b>	Explanatory Memorandum to the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010 <a href="#">Providing services to Treasury Portfolio Ministers and Parliament</a> (link available internally only) <a href="#">Security</a> (link available internally only) <a href="#">Scheme for Compensation for Detriment caused by Defective Administration</a>
<b>Related practice statements</b>	PS LA 2005/23

#### ATO references

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