



Explanatory Statement

CLASSES OF GOVERNMENT RELATED ENTITIES EXEMPT FROM PROVIDING THIRD PARTY REPORTS DETERMINATION 2017

General Outline of Determination

1. This instrument is made under paragraph 396-70(4)(a) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).
2. This instrument exempts specified classes of government related entities from having to prepare and lodge reports 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*.

Repeal of previous instrument

5. This determination replaces *Classes of Government Related Entities Exempt from providing Third Party Reports Determination 2016* – F2016L00510; registered on 14 April 2016 (previous determination). The previous determination is repealed on commencement of this determination.
6. The legislative instrument is being repealed because of an unintended consequence. Some government departments may have been excluded from reporting because they could be within a class of exempt entities. The remaking of the legislative instrument clarifies the original intention and provides certainty to entities that they will be reporters.

Date of effect

7. This instrument commences on 1 July 2017.

What is this instrument about

8. 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 or the provision of consideration wholly or partly for the supply of services. These requirements are listed as items 1 and 2 in the table included in section 396-55.
9. This instrument exempts certain entities from these reporting requirements.

What is the effect of this instrument

10. The effect of this instrument is to reduce the compliance burden for certain classes of entities by not having to prepare and lodge a report. These classes of entities have been identified as having:
 - a) made grants and payments to recipients with low compliance risks;
 - b) made low value and low volume grants and payments;
 - c) a high risk of double reporting, as a large number of controlling entities make grants and payments on behalf of the identified classes.
11. Although some grants and payments will not be reported due to these exemptions, the reporting of information would place a disproportionately high compliance cost on the reporter relative to the benefit of providing the information to the Commissioner of Taxation. Exempting certain entities is consistent with a broader objective of the third party reporting regime to minimise overall compliance costs.
12. 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

13. This instrument has been developed to ensure that the third party reporting measure operates efficiently and the compliance burden on reporters is minimised.
14. Exempting these classes of entities from this reporting measure is aligned to the intent and strikes a considered balance between the compliance risks and minimising the reporting burden.

Consultation

15. The consultation period of the draft legislative instrument commenced on 18 April 2017 and concluded on 4 May 2017. The ATO provided one entity with an extension of time until 9 May 2017, to ensure the stakeholder received a fair opportunity to respond.
16. The ATO distributed an invitation directly to impacted government entities and forums seeking participation in consultation on the proposed legislative instrument. Twenty-one government entities and three government forums known to the ATO were contacted directly, including:

- a) Commonwealth, state and territory departments of finance or treasury, who were asked to distribute the draft to other government entities within their jurisdictions.
 - b) Commonwealth, state and territory departments of education, as the unintended consequence was raised by an education department and had potential impacts for them.
 - c) States and territories industry partnership forum, Federal CFO forum and Government tax managers forum, who were also asked to distribute the draft to their government entity member contacts.
- 17.** The ATO also published information about consultation on its website.
- 18.** The ATO considered all issues in preparing the final legislative instrument. The majority of the feedback received sought clarification about the application of the legislative instrument to specific circumstances and the ATO provided that clarification directly.

LEGISLATIVE REFERENCES

Legislation Act 2003

Taxation Administration Act 1953

Human Rights (Parliamentary Scrutiny) Act 2011

A New tax System (Goods and Services) Act 1999

A New Tax System (Family Assistance) (Admin) Act 1999

Private Health Insurance Act 2007

Superannuation Industry (Supervision) Act 1993

Acts Interpretation Act 1901

Statement of compatibility with Human Rights

This statement is 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 specified classes of government related entities from having to prepare and lodge reports 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 entities from this reporting measure strikes a considered balance between the compliance risks and minimising the reporting burden.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. It exempts specified classes of entities from preparing and lodging reports, so they will not need to collect or provide the range of personal information required in the report to the Commissioner of Taxation.

Conclusion

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