Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2018/SDP/007

Explanatory Statement

EXCLUDED CLASSES OF TRANSACTIONS AND ENTITIES FOR THIRD PARTY REPORTS ON SHARES AND UNITS DETERMINATION 2018

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 identifies classes of entities that:
   a) are not required to report classes of transactions under items 6, 7 or 8 of the table in section 396-55 of Schedule 1 to the TAA 1953;
   b) are not required to prepare and give reports under items 7 and 8 of the table 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.
6. This instrument is to commence retrospectively. It extends the exemption to certain entities from reporting information about employee share schemes to the Commissioner of Taxation where an entity is required to do so under Division 392 of Schedule 1 to the TAA 1953. Consequently, it is not affected by subsection 12(2) of the *Legislation Act 2003.*
7. The previous instrument (see paragraph 8 below) gave fewer exemptions. In recognition of the different structures of employee share schemes, this instrument extends the exemption to listed entities and trustees of unit trusts. It is beneficial for reporters to access this exemption as it reduces their compliance costs.

Repeal of previous instrument

8. This instrument repeals and replaces Instrument F2016L00660 Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2016 registered on 5 May 2016.

What is this instrument about

9. The purpose of this instrument is to exempt classes of transactions from being reported to the Commissioner, and to exempt certain entities from having to prepare and lodge reports, in relation to items 6, 7 or 8 in the table included in section 396-55 of Schedule 1 to the TAA 1953.

What is the effect of this instrument

10. The list of excluded transactions and entities provides certainty and a potential reduction in compliance cost for entities that may be impacted by the third party reporting legislation.
11. This list has been expanded so that certain entities are not required to report information about employee share schemes to the Commissioner (for more detail see paragraphs 6, 7 and 23).
12. Reporting entities that have excluded transactions can omit that information from their reporting obligations.
13. Exempted entities are not required to prepare and lodge a report to the Australian Taxation Office (ATO).
14. This instrument does not prevent the reporting of information where not reporting it would impose an increased administrative burden on the reporting entity.
15. 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

16. This instrument was developed to ensure that the third party reporting regime operates efficiently and the compliance burden on reporters is minimised.
17. Section 396-70(4) of Schedule 1 to the TAA 1953 allows the Commissioner, by legislative instrument, to exempt classes of entities from reporting and allows the Commissioner to exempt certain classes of transactions from being reported.
18. Under items 6, 7 and 8 in the table at section 396-55 of Schedule 1 to the TAA 1953, entities are required to report to the Commissioner information about transfers of shares or units in a unit trust.
19. The information that is required to be reported is in relation to the change to the type, name and number of the shares or units held by an entity.
20. To reduce the administrative and compliance burden on reporters the Commissioner does not require information to be reported on shares listed on Australian financial markets that are not required to deliver data to the Australian Securities and Investment Commission (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 not monitored by the market integrity rules.

21. 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.

22. 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 Annual Investment Income Report (AIIR) which provides an income based exemption for unit trusts that during the financial year did not:

    a) accept 10 or more investments; and

    b) make payments of $1 or more to at least one investor; or

    c) deduct withholding tax from investment income; or

    d) provide farm management deposits.

23. 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; and

    b) entities to which this instrument applies under table items 6, 7 or 8 in section 396-55 of Schedule 1 to the TAA 1953 in relation to a transaction where an entity is required to provide information to the Commissioner in relation to the transaction pursuant to Division 392 of Schedule 1 to the TAA 1953 (which is about employee share schemes).

Consultation:

24. Between 29 November 2017 and 15 December 2017, the ATO consulted key stakeholders on the content to be included in the Legislative Instrument. No comments were received.

Legislative references:

Taxation Administration Act 1953
Human Rights (Parliamentary Scrutiny) Act 2011
Legislation Act 2003
Acts Interpretation Act 1901
Corporations Act 2001

Statement of Compatibility with Human Rights

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

EXCLUDED CLASSES OF TRANSACTIONS AND ENTITIES FOR THIRD PARTY REPORTS ON SHARES AND UNITS DETERMINATION 2018

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 excludes classes of transactions and entities from third party reports on shares and units. Excluding entities and transactions will ensure certainty and reduced compliance costs for entities that may be impacted by the third party reporting legislation.

Human rights implications

The legislative Instrument does not engage any of the applicable rights or freedoms. It excludes classes of transactions and entities for third party report on shares and units to ensure that the third party reporting regime operates efficiently and the compliance burden on reporters is minimised.

Conclusion

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