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## Explanatory Statement

# Taxation Administration (Exemption from Providing Payment Summaries to Passbook Account Holders) Legislative Instrument 2023

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### General outline of instrument

1. This instrument is made under section 16-180 of Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. This instrument exempts passbook account providers from the requirement to provide a payment summary to a holder of passbook savings account, for certain payments made to that account.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. 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.

### Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

### Effect of this instrument

6. This instrument exempts passbook account providers from the requirement to give a payment summary to a holder of a passbook account where the criteria in section 6 of the instrument are met.
7. Under section 6, the exemption is only available where:
  - (a) the payment summary relates to a payment made to a passbook account issued by the passbook account provider during the relevant financial year. The passbook account must have been open or in use at any time during the financial year, although it may have since been closed, and
  - (b) an amount must have been withheld from this payment under Subdivision 12-E (Payments where TFN or ABN not quoted) or Subdivision 12-F (Dividend, interest and royalty payments) of Schedule 1 to the Act.
8. However, where a passbook account holder has specifically requested a payment summary in relation to their passbook account, the exemption in section 6 of the instrument will not be available. The passbook account provider must provide the payment summary in these circumstances.
9. This instrument repeals and replaces the *Notice of exemption from providing payment summaries to passbook account holders* (30/11/2012) (F2012L02333).

## **Compliance cost assessment**

10. Compliance cost impact: Minor – There will be no additional impacts as the instrument is minor and machinery in nature OBPR22 -03757.

## **Background**

11. A passbook savings account is a particular type of interest-bearing savings account offered by some financial institutions (passbook account providers), where the passbook account holder is provided with a document (passbook) which records their deposits and withdrawals and negates the need for the financial institution to issue periodic bank statements.

12. Passbook account holders generally have simple affairs and withholding is rarely required. However, when withholding does occur, the requirement for payment summaries to be separately issued places a burden on passbook account providers.

13. Generally, financial institutions can provide payment summaries to their investors detailing amounts subject to withholding by using the statements which they periodically issue to those investors. This method is not available in relation to passbook accounts.

14. Because of this, passbook account providers requested an exemption from the requirement to issue payment summaries to passbook account holders.

15. An exemption from providing payment summaries for passbook accounts was provided by the *Notice of exemption from providing payment summaries to passbook account holders* (30/11/2012) (F2012L02333), which is due to sunset on 1 April 2023. This instrument would continue the exemption.

## **Consultation**

16. Subsection 17(1) of the *Legislation Act 2003* requires that a rule-maker undertake an appropriate level of consultation before making a legislative instrument.

17. Broad public consultation was undertaken on this instrument for a period of 2 weeks from 28 November to 9 December 2022.

18. The draft instrument and draft explanatory statement were published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters that they provide to their subscribers and members.

19. No comments were received as part of this consultation process.

## **Legislative references**

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

*Taxation Administration Act 1953*

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

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

### ***Taxation Administration (Exemption from Providing Payment Summaries to Passbook Account Holders) Legislative Instrument 2023***

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 passbook account providers from the requirement in section 16-155 of Schedule 1 to the *Taxation Administration Act 1953* to issue a payment summary in respect of particular payments (those where an amount is required to be withheld in compliance with Subdivision 12-E (Payments where TFN or ABN not quoted) or Subdivision 12-F (Dividend, interest and royalty payments)). The exemption does not apply in circumstances where a passbook account holder requests a payment summary.

Passbook account providers are generally able to periodically generate payment summaries for investors (which detail amounts subject to withholding) by using statements that they periodically issue to investors. This method is not available in relation to passbook accounts. Without this instrument, passbook account providers would be required to issue separate payment summaries in relation to passbook accounts, which would create an administrative burden for them.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms because the new instrument is of a minor or machinery nature. Holders of passbook savings accounts generally have simple affairs and withholding is rarely required for these account holders.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.