

## **EXPLANATORY STATEMENT**

### **SELECT LEGISLATIVE INSTRUMENT NO. 111, 2015**

#### **Issued by authority of the Assistant Treasurer**

*Taxation Administration Act 1953*

*Taxation Administration Amendment (Disclosure of Information) Regulation 2015*

Section 18 of the *Taxation Administration Act 1953* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Act.

The purpose of the *Taxation Administration Amendment (Disclosure of Information) Regulation 2015* (Regulation) is to amend the *Taxation Administration Regulations 1976* to allow the release of protected information to combat serious financial crime, as detailed below.

Under the Act, it is an offence for a taxation officer to record or disclose protected information (information obtained under a taxation law that relates to an entity and could be used to identify that entity) that the taxation officer acquired in their role as a taxation officer.

There are various exceptions to this offence, including exceptions for law enforcement purposes. Taxation officers can record or disclose protected information in accordance with these exceptions without committing an offence under section 355-25. This Regulation concerns the exceptions for Project Wickenby and prescribed taskforces.

#### **Project Wickenby**

The Project Wickenby taskforce was established to combat international tax evasion in the Australian taxation system.

The Regulation extends the exception for records made for or disclosures made to Project Wickenby taskforce officers where the record or disclosure is for or in connection with a purpose of the Project Wickenby taskforce. Under the Act, the exception applies until 1 July 2015 or a later prescribed day.

The Regulation prescribes 1 July 2017 for the purposes of this exception. This allows taxation officers to make records for or disclosures to a Project Wickenby officer, or a court or tribunal, where the record or disclosure is for or in connection with a purpose of the Project Wickenby taskforce and is made before 1 July 2017.

## Prescribed taskforces

The Regulation also prescribes the Fraud and Anti-Corruption Centre as a taskforce to which an existing exception in the Act applies. That existing exception allows taxation officers to make records for or disclosures to taskforce officers of a prescribed taskforce where the record or disclosure is for or in connection with a purpose of the prescribed taskforce.

Taskforces may be prescribed by the regulations if a major purpose of the taskforce is to protect the public finances of Australia. This is one of the major objectives of the Fraud and Anti-Corruption Centre, a taskforce intended to address the growth of serious financial crime in Australia.

Amongst its other responsibilities relating to serious financial crime, the Fraud and Anti-Corruption Centre is tasked with investigating international tax evasion. It requires access to protected information to ensure its effectiveness in this role.

Prescribing the Fraud and Anti-Corruption Centre allows taxation officers to make records for or disclosures to a taskforce officer of the Fraud and Anti-Corruption Centre, or a court or tribunal, where the record or disclosure is for or in connection with a purpose of the Fraud and Anti-Corruption Centre. No time limit on these records or disclosures is prescribed. The Act does not specify any conditions that need to be met before the power to make the Regulation may be exercised.

Details of the Regulation are set out in the Attachment.

Exposure drafts of this Regulation and accompanying Explanatory Statement were released for public consultation from 8 to 27 May 2015. The submissions received during the consultation process were supportive of the draft Regulation and Explanatory Statement.

The Act does not specify any conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

A Regulation Impact Statement was not prepared for this Regulation because it is expected to have only a minor impact on business, individuals and the economy. This has been confirmed by the Office of Best Practice Regulation (OBPR reference 18638).

This Regulation commences the day after it was registered.

## ATTACHMENT

### Details of the *Taxation Administration Amendment (Disclosure of Information) Regulation 2015*

#### Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Taxation Administration Amendment (Disclosure of Information) Regulation 2015* (Regulation).

#### Section 2 – Commencement

This section provides that the Regulation will commence the day after it is registered.

#### Section 3 – Authority

This section provides that the Regulation is made under the *Taxation Administration Act 1953*.

#### Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### **Schedule 1 – Amendments**

#### Project Wickenby

The Project Wickenby taskforce was established to combat international tax evasion in the Australian taxation system.

Item 1 of the Regulation extends the exception for records made for or disclosures made to Project Wickenby taskforce officers where the record or disclosure is for or in connection with a purpose of the Project Wickenby taskforce. This exception is in item 3 in the table in subsection 355-70 of Schedule 1 to the Act. Under the Act, the exception applies until 1 July 2015 or a later prescribed day.

Item 1 of the Regulation prescribes 1 July 2017 for the purposes of this exception. This allows taxation officers to make records for or disclosures to a Project Wickenby officer, or a court or tribunal, where the record or disclosure is for or in connection with a purpose of the Project Wickenby taskforce and is made before 1 July 2017.

#### Prescribed taskforces

Item 2 of the Regulation prescribes the Fraud and Anti-Corruption Centre as a taskforce to which an existing exception in item 4 of the table in subsection 355-70(1) of Schedule 1 to the Act applies. That existing exception allows taxation officers to make records for or disclosures to taskforce officers of a prescribed taskforce where

the record or disclosure is for or in connection with a purpose of the prescribed taskforce.

Taskforces may be prescribed by the regulations (subsection 355-70(12) of Schedule 1 to the Act). A major purpose of the taskforce must be protecting the public finances of Australia. This is one of the major objectives of the Fraud and Anti-Corruption Centre, a taskforce intended to address the growth of serious financial crime in Australia.

Amongst its other responsibilities relating to serious financial crime, the Fraud and Anti-Corruption Centre is tasked with investigating international tax evasion. It requires access to protected information to ensure its effectiveness in this role.

Prescribing the Fraud and Anti-Corruption Centre allows taxation officers to make records for or disclosures to a taskforce officer of the Fraud and Anti-Corruption Centre, or a court or tribunal, where the record or disclosure is for or in connection with a purpose of the Fraud and Anti-Corruption Centre. No time limit on these records or disclosures is prescribed.

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

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

#### **Taxation Administration Amendment (Disclosure of Information) Regulation 2015**

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**

It is an offence for a taxation officer to record or disclose protected information (information obtained under a taxation law that relates to an entity and could be used to identify that entity) that the taxation officer acquired in their role as a taxation officer (section 355-25 of Schedule 1 to the *Taxation Administration Act 1953*).

There are various exceptions to this offence, including exceptions for law enforcement purposes. Taxation officers can record or disclose protected information in accordance with these exceptions without committing an offence under section 355-25.

This Regulation extends the existing exception for records made for or disclosures made to Project Wickenby taskforce officers where the record or disclosure is for or in connection with a purpose of the Project Wickenby taskforce from 30 June 2015 to 30 June 2017. The Project Wickenby taskforce was established to combat international tax evasion in the Australian taxation system.

This Regulation also prescribes the Fraud and Anti-Corruption Centre as a taskforce to which an existing exception applies. That existing exception allows taxation

officers to make records for or disclosures to taskforce officers of a prescribed taskforce where the record or disclosure is for or in connection with a purpose of the prescribed taskforce.

### **Human rights implications**

This Legislative Instrument engages, and is compatible with, the prohibition on interference with privacy and attacks on reputation. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

The amendments made by this Regulation are not arbitrary, and are in pursuit of a legitimate objective. They allow law enforcement agencies to effectively combat international tax evasion in the Australian taxation system. The records or disclosures of information made to a Project Wickenby officer or a taskforce officer of the Fraud and Anti-Corruption Centre under these exceptions must be for or in connection with a purpose of Project Wickenby or the Fraud and Anti-Corruption Centre (whichever is applicable).

Recipients of records or disclosures made in accordance with one of these exceptions are also subject to strict rules governing any further disclosure of the information received. It is an offence for a recipient to record or disclose the information received (section 355-155 of Schedule 1 to the *Taxation Administration Act 1953*), although there are exceptions. For example, one exception allows a recipient to make further records or disclosures of the information received if those records or disclosures are made for the same purpose as the original record or disclosure (section 355-175 of Schedule 1 to the *Taxation Administration Act 1953*).

This provides a limited, reasonable and lawful basis for recording or disclosing of protected information to taskforce officers of Project Wickenby and the Fraud and Anti-Corruption Centre, in pursuit of the legitimate objective of combatting international tax evasion in the Australian taxation system.

### **Conclusion**

This Legislative Instrument is compatible with human rights.