

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Taxation Administration Act 1953

*Taxation Administration Amendment (Serious Financial Crime Taskforce)
Regulations 2019*

The *Taxation Administration Act 1953* (the Act) sets out the administrative framework for the tax law. This includes rules for the collection and recovery of income tax and other liabilities, objection, review and appeal processes, charges and penalties, rulings and other tax administration matters, including rules relating to the protection of taxpayer information.

Section 18 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Taxation Administration Amendment (Serious Financial Crime Taskforce) Regulations 2019* (the Regulations) is to amend the *Taxation Administration Regulations 2017* (the TA Regulations 2017) to prescribe the Serious Financial Crime Taskforce.

The Serious Financial Crime Taskforce has been extended for a further four years from 1 July 2019 and will now be formally led by the Australian Taxation Office. The amendments made by Schedule 1 to the Regulations enable the ongoing disclosure of information between taskforce agencies under the new governance arrangements.

Under the Act, it is an offence for a taxation officer to record or disclose (hereafter referred to as ‘disclose’) protected information that they acquired in their role as a taxation officer.

There are various exceptions to this offence, including disclosure for law enforcement and related purposes. In particular, taxation officers can disclose protected information to a prescribed taskforce officer if the disclosure is for or in connection with a purpose of the prescribed taskforce. The TA Regulations 2017 prescribes taskforces for the purposes of this exception.

Schedule 1 to the Regulations amends the TA Regulations 2017 to add the Serious Financial Crime Taskforce to the list of prescribed taskforces. This allows taxation officers to disclose relevant information to taskforce officers in the Serious Financial Crime Taskforce.

A major purpose of the Serious Financial Crime Taskforce is to protect the public finances of Australia by addressing serious and significant risks to Australia’s tax and superannuation systems.

The amendments made by Schedule 1 to the Regulations apply to disclosures made on or after 1 July 2019, regardless of the time that the relevant taxpayer information was obtained.

Further details of these amendments are set out in the [Attachment](#).

Consultation on Schedule 1 to the Regulations was undertaken with the Australian Taxation Office. No public consultation took place on the amendments made by Schedule 1 as they are minor and machinery in nature, relating to the internal processes of Government.

The Regulations commenced on the day after it was registered on the Federal Register of Legislation.

The Office of Best Practice Regulation (OBPR) has been consulted and a short form regulation impact statement was completed (OBPR ID 24074). The amendments made by Schedule 1 to the Regulations are estimated to have no impact on revenue or compliance costs – they will only impact the internal operations of Government agencies.

A Statement of Compatibility with Human Rights is in the [Attachment](#).

Details of the *Taxation Administration Amendment (Serious Financial Crime Taskforce) Regulations 2019*

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Taxation Administration Amendment (Serious Financial Crime Taskforce) Regulations 2019* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on the day after it is registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Taxation Administration Act 1953* (the Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Item 1

Item 1 in schedule 1 to the Regulations amends the *Taxation Administration Regulations 2017* (the TA Regulations 2017) to allow taxation officers to disclose protected information to Serious Financial Crime Taskforce officers.

Section 355-25 in Schedule 1 to the Act provides that it is an offence for a taxation officer (defined at subsection 355-30(2) in Schedule 1 to the Act) to record or disclose protected information (that is, 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 355-70 in Schedule 1 to the Act provides exceptions to this offence for records or disclosures made for law enforcement and related purposes. This includes records made or disclosures to a prescribed taskforce officer that is for or in connection with a purpose of the prescribed taskforce (see item 4 of the table in subsection 355-70(1) in Schedule 1 to the Act).

A taskforce officer is an entity who holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce (subsection 355-70(11) in Schedule 1 to the Act).

Subsection 355-70(12) in Schedule 1 to the Act provides that the regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection 355-70(1) in Schedule 1 to the Act. A major purpose of the taskforce must be protecting the public finances of Australia.

Consistent with the requirements of the Act, a major purpose of the Serious Financial Crime Taskforce is protecting the public finances of Australia by addressing tax avoidance or evasion.

Section 67 of the TAR 2017 contains a list of prescribed taskforces for the purposes of subsection 355-70(12) in Schedule 1 to the Act.

Schedule 1 to the Regulations amends the TAR 2017 to include the Serious Financial Crime Taskforce in this list. This allows taxation officers to disclose protected information to Serious Financial Crime Taskforce officers where the record or disclosure is for or in connection with a purpose of the Taskforce.

The Serious Financial Crime Taskforce currently operates under the auspices of the Fraud and Anti-Corruption Centre, led by the Australian Federal Police. The Fraud and Anti-Corruption Centre is a prescribed taskforce for the purposes of section 67 of the TAR 2017.

From 1 July 2019, the Serious Financial Crime Taskforce will be led by the Australian Taxation Office. This means that the Serious Financial Crime Taskforce needs to be prescribed as a taskforce in its own right in section 67 of the TAR 2017 for taxation information disclosure purposes.

Item 2

Item 2 of Schedule 1 to the Regulations provides that the amendment to section 67 made by item 1 applies to disclosures made on or after 1 July 2019, regardless of the time relevant taxpayer information was obtained.

Statement of Compatibility with Human Rights

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

Taxation Administration Amendment (Serious Financial Crime Taskforce) Regulations 2019

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

Section 355-25 in Schedule 1 to the *Taxation Administration Act 1953* (the Act) provides that it is an offence for a taxation officer (an Australian Taxation Office employee, Commissioner or Second Commissioner) 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 355-70 in Schedule 1 to the Act provides exceptions to this offence for records or disclosures made for law enforcement and related purposes. This includes records made or disclosures to a taskforce officer of a prescribed taskforce that is for or in connection with a purpose of the prescribed taskforce (see item 4 of the table in subsection 355-70(1) in Schedule 1 to the Act).

A taskforce officer is an entity who holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce (subsection 355-70(11) in Schedule 1 to the Act).

Subsection 355-70(12) in Schedule 1 to the Act provides that the regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection 355-70(1) in Schedule 1 to the Act. A major purpose of the taskforce must be to protect the public finances of Australia.

Regulation 67 of the *Taxation Administration Regulations 2017* contains a list of prescribed taskforces for the purposes of subsection 355-70(12) in Schedule 1 to the Act.

Schedule 1 to the *Taxation Administration Amendment (Serious Financial Crime Taskforce) Regulations 2019* amends this table to include the Serious Financial Crime Taskforce. This allows taxation officers to disclose protected information to Serious Financial Crime Taskforce officers where the record or disclosure is for or in connection with a purpose of the taskforce.

Human rights implications

Schedule 1 to the Regulations 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 prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

The amendment made by these Regulations is not arbitrary, and is in pursuit of a legitimate objective. The amendment allows law enforcement agencies to effectively combat the most serious tax avoidance and financial crime. The records or disclosures of information made to a taskforce officer of the Serious Financial Crime Taskforce under the exception in subsection 355-70(1) in Schedule 1 to the Act must be for, or in connection with, a purpose of the relevant taskforce.

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 on-disclose the information received (section 355-155 in Schedule 1 to the Act), 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, or in connection with, the original purpose for which the record or disclosure was made (section 355-175 in Schedule 1 to the Act).

This provides a limited, reasonable and lawful basis for recording or disclosing protected information to taskforce officers of the prescribed taskforces, in pursuit of the legitimate objective of addressing the most serious crimes that present the highest risk to Australia's tax and superannuation system.

Conclusion

This Legislative Instrument is compatible with human rights.