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## Explanatory Statement

# Taxation Administration – Single Touch Payroll – Amounts to be Notified Determination 2021

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### General Outline of Instrument

1. This instrument is made under subsection 389-5(3) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
2. This instrument determines the information which the approved form may require to be reported through Single Touch Payroll (STP) for the purposes of paragraph 389-5(2)(b) of Schedule 1 to the TAA.
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 it is registered on the Federal Register of Legislation.
6. As this instrument only has prospective effect, it does not adversely affect the rights, entitlements or liabilities of any entity in relation to any past period and subsection 12(2) of the *Legislation Act 2003* has no application.

### What is the effect of this instrument

7. Section 389-5 of Schedule 1 to the TAA provides that STP reporting must be in the approved form. It also provides that the approved form may only require information about an amount if it is either:
  - (a) an amount to be notified under subsection 389-5(1) of Schedule 1 to the TAA, or
  - (b) an amount of a kind that is determined by the Commissioner by legislative instrument.
8. The effect of this instrument is to determine those kinds of amounts. It replaces the Commissioner's previous determination.
9. This instrument does not itself alter the approved form for reporting in STP. Instead, it determines amounts which the Commissioner may choose to include as required amounts when future changes are made.
10. It is the Commissioner's intention that, when future changes are made to the approved form, amounts determined in this instrument which were not previously required will not become amounts that are required by the approved form until the earlier of either:
  - (a) The date after 4 January 2021 that an entity chooses to commence reporting those amounts, or
  - (b) 1 January 2022.

11. Information about the approved form (for the purposes of Division 388 of Schedule 1 to the TAA) at a given time can be found in the *Standard Business Reporting Australian Taxation Office Payroll Event* package as published from time to time by the Commissioner of Taxation and available at [ato.gov.au/PAYGWapprovedforms](http://ato.gov.au/PAYGWapprovedforms) using Standard Business Reporting (SBR) enabled software.

12. Compliance cost assessment: 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. Division 389 of Schedule 1 to the TAA provides for STP reporting by requiring the reporting of certain amounts by employers to the Commissioner. This reporting requirement commenced for most entities on either 1 July 2018 or 1 July 2019.

14. The approved form for reporting through STP has not been changed during this period.

15. However, changes to the law have made it necessary to introduce future changes, specifically:

- (a) The *Treasury Laws Amendment (2019 Measures No. 3) Act 2020* and the *Treasury Laws Amendment (2018 Measures No. 4) Act 2019* together have changed the way that superannuation guarantee is required to be calculated and reported in relation to amounts salary sacrificed to superannuation, and
- (b) The *Treasury Laws Amendment (2020 Measures No. 2) Act 2020* provides for the simplification of reporting under social security law by enabling the voluntary reporting by employers of amounts relating to a payee's child support obligations through STP.

16. The current approved form does not cater for these changes. This instrument will facilitate the changes to the approved form that are required as a result. It will also enable the Commissioner to make changes to the approved form in response to feedback received regarding the operation of STP more generally.

## **Consultation**

17. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.

18. Public consultation was undertaken from 9 December 2020 to 14 January 2021.

19. In total 28 submissions were received from the public during that period

20. In response to the feedback received, the Commissioner now intends to require the expanded data set to be reported by the later date of 1 January 2022.

## **Legislative references**

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

*Taxation Administration Act 1953*

*Treasury Laws Amendment (2018 Measures No. 4) Act 2019*

*Treasury Laws Amendment (2019 Measures No. 3) Act 2020*

*Treasury Laws Amendment (2020 Measures No. 2) Act 2020*

## Statement of compatibility with Human Rights

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

### **Taxation Administration – Single Touch Payroll – Amounts to be Notified Determination 2021**

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 prescribes kinds of amounts determined by the Commissioner under subsection 389-5(3) for the purposes of paragraph 389-5(2)(b) of Schedule 1 to the *Taxation Administration Act 1953* that the Commissioner may require in the approved form for Single Touch Payroll reporting.

### **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. This instrument determines that the kinds of amounts that are reported under Single Touch Payroll are described in the approved form. The approved form gives instruction for people building software that will be used for reporting under Single Touch Payroll.

This legislative instrument facilitates the changes to Single Touch Payroll reporting required as a result of legislative amendments made by:

- *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020* which changes the way employment income is used to determine a person's rate of payment under the social security law.
- *Treasury Laws Amendment (2018 Measures No. 4) Act 2019* and *Treasury Laws Amendment (2019 Measures No. 3) Act 2020* which change the requirements for calculation and reporting of superannuation guarantee obligations in relation to amounts salary sacrificed to superannuation.
- *Treasury Laws Amendment (2020 Measures No. 2) Act 2020* which facilitates the voluntary reporting of Child Support Deductions and Child Support Garnishee amounts through Single Touch Payroll and the sharing of that information with relevant Commonwealth agencies.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that 'no one shall be subjected to arbitrary or unlawful interference with their privacy'. The Human Rights Committee has said that the right to privacy includes respect for information privacy, including collection, storage, security, use, disclosure or publication of personal information.<sup>1</sup> It has further indicated that the right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order not to be arbitrary, any limitation must be reasonable and necessary in the particular circumstances, as well as proportionate to the objectives it seeks to achieve.<sup>2</sup> This legislative instrument interacts with the right to privacy to the extent that it facilitates

<sup>1</sup> Human Rights Committee, *General Comment No 16: Article 17 (Right to privacy)*, 32<sup>nd</sup> sess UN Doc HRI/GEN/1/Rev 6 (8 April 1988), [10].

<sup>2</sup> Human Rights Committee, *General Comment No 16: Article 17 (Right to privacy)*, 32<sup>nd</sup> sess UN Doc HRI/GEN/1/Rev 6 (8 April 1988). See also Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Engel Services, 2<sup>nd</sup> ed, 2005), 383.

the Commissioner collecting personal information about payees. However, this is considered reasonable and proportionate to support the administration of the relevant legislation.

### **Conclusion**

The legislative instrument is compatible with Article 17 of the ICCPR on the basis that its engagement with the prohibition on interference with privacy will be neither be unlawful or arbitrary. To this extent, the instrument complies with the provision, aims and objectives of the ICCPR.