



Explanatory Statement

Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2021

General Outline of Instrument

1. This instrument is made under subsection 396-70(4) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
2. This instrument exempts administrators of a payment system (within the meaning of the *Payment Systems (Regulation) Act 1998*) from having to include specified classes of transactions in reports prepared and lodged in relation to item 9 in the table in section 396-55 of Schedule 1 to the TAA.
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. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

5. This instrument applies with retrospective effect from 1 July 2020.
6. The retrospective action of this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth for the purposes of subsection 12(2) of the *Legislation Act 2003* as this instrument exempts administrators of payment systems from having to report certain transactions to the Commissioner.

Repeal of previous instruments

7. This instrument repeals and replaces F2017L00629 *Classes of Electronic Payment System Transactions Exempt From Being Reported in Third Party Reports Determination 2017* and F2017L00631 *Classes of Electronic Payment System Transactions Exempt In Certain Years From Being Reported In Third Party Reports Determination 2017*.

What is this instrument about

8. Item 9 in the table in section 396-55 of Schedule 1 to the TAA requires an administrator of a payment system (within the meaning of the *Payment Systems (Regulation) Act 1998*) to report a transaction involving an electronic payment if:
 - (a) the transaction is facilitated on behalf of an entity, and
 - (b) the administrator reasonably believes that the transaction
 - (i) provides a payment to the entity, or a refund or cash to a customer of the entity, and
 - (ii) is for the purpose of a business carried on by the entity.
9. Paragraph 396-70(4)(b) of Schedule 1 to the TAA allows the Commissioner, by legislative instrument, to exempt specified classes of transactions from being reported.
10. Paragraphs 5(a) to (d) of this instrument provides the specified classes of transactions exempt from these reporting requirements.

The reporting exemption provided by paragraph 5(a)

11. Paragraph 5(a) of this instrument exempts administrators of a payment system from reporting transactions which have been initiated by another entity, where that other entity is required by item 9 in the table in section 396-55 of Schedule 1 of the TAA to report the transactions to the Commissioner.
12. This exemption was previously only available to authorised deposit-taking institutions, for the purposes of the *Banking Act 1959* (Paragraph 5(a) of repealed instrument F2017L00629 *Classes of Electronic Payment System Transactions Exempt From Being Reported in Third Party Reports Determination 2017*).
13. This instrument extends the exemption to all administrators of a payment system and applies to payments processed after 30 June 2020.

The reporting exemption provided by paragraph 5(b)

14. Paragraph 5(b) of this instrument continues the exemption in paragraph 5(b) of the repealed instrument F2017L00629 *Classes of Electronic Payment System Transactions Exempt From Being Reported in Third Party Reports Determination 2017*.
15. Paragraph 5(b) of this instrument exempts administrators of a payment system from reporting payments processed by Framework Participants under the High Value Clearing System governed by Australian Payments Network Limited.

The reporting exemption provided by paragraph 5(c)

16. Subparagraphs 5(c)(i) to (vii) of this instrument continue the exemptions provided by repealed instrument F2017L00629 *Classes of Electronic Payment System Transactions Exempt From Being Reported in Third Party Reports Determination*

2017 to exempt administrators of a payment system from reporting the following classes of transactions:

- i. Payments made to a carriage service provider (within the meaning of the *Telecommunications Act 1997*).
 - ii. Payments made to a utility for the provision of electricity, water, sewerage or gas.
 - iii. Payments made to a government related entity (within the meaning of section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*).
 - iv. Payments made to a general insurer which are received in the course of the insurer's insurance business (within the meaning of the *Insurance Act 1973*).
 - v. Payments made to a life insurer which are received in the course of the insurer's life insurance business (within the meaning of the *Life Insurance Act 1995*).
 - vi. Payments made to a private health insurer which are received in the course of the insurer's health insurance business (within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*).
 - vii. Payments made to a superannuation fund, approved deposit fund, or pooled superannuation trust (within the meanings of the *Superannuation Industry (Supervision) Act 1993*) or RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*).
17. Subparagraphs 5(c)(viii) and (ix) of this instrument continue the exemptions provided by paragraphs 5(b) and (c) of legislative instrument F2017L00631 *Classes of Electronic Payment System Transactions Exempt in Certain Years from Being Reported in Third Party Reports Determination 2017*, which expires on 30 June 2020.
18. Subparagraph 5(c)(viii) of this instrument exempts the reporting of payments made as a Direct Entry Direct Credit processed through the Bulk Electronic Clearing System governed by Australian Payments Network Limited.
19. Subparagraph 5(c)(ix) of this instrument exempts the reporting of payments processed by New Payments Platform Participants using the New Payments Platform governed by NPP Australia Limited.

The reporting exemption provided by paragraph 5(d)

20. Paragraph 5(d) of this instrument adds further exemptions, in subparagraphs 5(d)(i) and (ii), applicable to payments processed after 30 June 2020.
21. Subparagraph 5(d)(i) of this instrument exempts the reporting of payments processed by an administrator, where the payer, the payee and the administrator (which may be the payer, the payee or neither) are all members of the same consolidated group (within the meaning of section 703-5 of the *Income Tax Assessment Act 1997*) and the same GST group (within the meaning of section

195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. This exemption applies in relation to payments processed after 30 June 2020. The reporting of these payments is exempted because such payments have no income tax or GST consequences.

22. Subparagraph 5(d)(ii) of this instrument exempts the reporting of loan repayments, chattel mortgage repayments, hire purchase payments and finance lease payments. This exemption applies in relation to payments processed after 30 June 2020. The reporting of these payments is exempted because such payments generally include a non-assessable repayment of principal.

Reporting transactions exempt from being reported by paragraphs 5(c) and (d)

23. If by not reporting transactions exempted from the reporting requirement by paragraphs 5(c) or (d) of this instrument would increase the administrative burden on an administrator of a payment system, the administrator may, despite the exemption, report those transactions.

What is the compliance effect of this instrument

24. The list of exempted transactions provides certainty and a potential reduction in compliance cost for entities that may be impacted by the third party reporting legislation.
25. Compliance Cost Impact: Minor – There will be no or minimal impacts for both implementation and ongoing compliance costs. This legislative instrument is minor or machinery in nature.

Consultation

26. Subsection 17(1) of the Legislation Act 2003 requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.
27. For this instrument, broad public consultation was undertaken for a period of seven weeks from 15 May 2020 to 7 July 2020 inclusive.
28. 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 to their subscribers and members. This ensures advice of the draft is disseminated widely across the tax professional community, and that they are in an informed position to provide comments and feedback.
29. No comments were received as a result of the consultation.

Legislative references:

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Payment Systems (Regulation) Act 1998)

Taxation Administration Act 1953

Telecommunications Act 1997

A New Tax System (Goods and Service Tax) Act 1999

Insurance Act 1973

Life Insurance Act 1995

Private Health Insurance (Prudential Supervision) Act 2015

Superannuation Industry (Supervision) Act 1993

Retirement Savings Accounts Act 1997

Statement of Compatibility with Human Rights

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

Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports 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 Legislative Instrument exempts administrators of payment systems (within the meaning of the *Payment Systems (Regulation) Act 1998*) from having to include specified classes of transactions in reports prepared and lodged in relation to item 9 in the table included in section 396-55 of Schedule 1 to the TAA 1953.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. It provides exemptions from reporting requirements which are considered to be minor in nature.

Conclusion

This legislative Instrument does not raise any human rights issues.