



Explanatory Statement

Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Repeal Determination 2022

General outline of instrument

1. This instrument is made under section 370-15 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). Section 370-15 provides the Commissioner with an express power to repeal a determination made under section 370-5.
2. This instrument repeals the *Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020* (the principal instrument), which was made under section 370-5.
3. It is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

4. Under section 370-20 of Schedule 1 to the TAA, this instrument commences on the first day that it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

Effect of this instrument

5. This instrument repeals the principal instrument.

Background

6. Division 355 of Schedule 1 to the TAA contains provisions that protect the confidentiality of taxpayer information. Under this Division, taxation officers may only disclose or make a record of 'protected information' about taxpayers in specific and limited circumstances. Division 355 relevantly permits the disclosure of protected information about a taxpayer to that taxpayer, and to particular 'covered entities' representing the taxpayer (including their registered tax agent or BAS agent and legal practitioner).
7. Before the principal instrument was made, a representative of an executor or administrator of a deceased taxpayer's estate was not a covered entity for the purposes of Division 355, and could not obtain protected information regarding the deceased taxpayer's estate.
8. The principal instrument modified the operation of subsection 355-25(2) of Schedule 1 to the TAA to provide that particular representatives of an executor or administrator of a deceased taxpayer's estate were covered entities for the purposes of the provision. This modification allowed taxation officers to disclose protected information about a deceased taxpayer to relevant representatives of an executor or administrator of their estate.
9. As the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021* amended section 355-25 of Schedule 1 to the TAA to allow disclosures to particular representatives of the executor or administrator of a deceased taxpayer's estate, the modification made by the principal instrument is no longer required and should be repealed.

Consultation

10. Targeted consultation was undertaken for this instrument, over a period of two weeks, with the Commissioner's Remedial Power Advisory Panel (a body comprised of private sector tax specialists, and representatives of the Department of the Treasury and the Australian Taxation Office) and the Board of Taxation. All material feedback received from this consultation has been adopted and no substantial concerns were raised.

11. Wider public consultation was not considered necessary because this instrument only repeals the principal instrument. This change is machinery in nature given that the primary law has already been amended to resolve the issue dealt with in the instrument.

Legislative references

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Taxation Administration Act 1953

Treasury Laws Amendment (2021 Measures No. 5) Act 2021

Statement of compatibility with Human Rights

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

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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 repeals another instrument – the *Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020* (principal instrument).

The principal instrument modified the operation of subsection 355-25(2) of Schedule 1 to the *Taxation Administration Act 1953* (TAA) to provide that particular representatives of an executor or administrator of a deceased taxpayer's estate were 'covered entities' for the purposes of that provision. This permitted the ATO to disclose protected information about a deceased taxpayer to relevant representatives of an executor or administrator of their estate.

The modification made by the principal instrument is no longer required because subsection 355-25(2) of Schedule 1 to the TAA has now been amended to specifically allow for disclosures to relevant representatives of an executor or administrator of a deceased taxpayer's estate.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It merely repeals the principal instrument. This change is machinery in nature given that the primary law has already been amended to resolve the issue dealt with in the instrument.

Conclusion

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