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## Explanatory Statement

# Taxation Administration: Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2022

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### 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 table item 9 in section 396-55 of Schedule 1 to the TAA.
3. It maintains exemptions for certain specified classes of transactions where the administrator of a payment system moves from a payment platform previously exempted to a new payment platform.
4. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. 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

6. This instrument applies with retrospective effect from 1 July 2022.
7. The retrospective application 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*. This is because the instrument does not increase the administrative or reporting burden on administrators of payment systems and continues to exempt them from having to report certain transactions to the Commissioner. This instrument also confirms that administrators of payment systems must continue to report certain transactions from 1 July 2022 to be compliant with their taxation obligations.

### Repeal of previous instruments

8. This instrument repeals and replaces Instrument F2021L00278 *Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2021* registered on 22 March 2021.

### **What is this instrument about?**

9. Item 9 of 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.
10. Paragraph 396-70(4)(b) of Schedule 1 to the TAA allows the Commissioner, by legislative instrument, to exempt specified classes of entities from being required to prepare and give reports under section 396-55 (including in relation to specified classes of transactions).
11. Section 3 of this instrument contains reporting exemptions for administrators of a payment system in relation to specified classes of transactions.

### ***The reporting exemption provided by paragraph 3(1)(a)***

12. Paragraph 3(1)(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 table item 9 in section 396-55 of Schedule 1 to the TAA to report those transactions to the Commissioner.
13. This exemption was previously only available to authorised deposit-taking institutions within the meaning of the *Banking Act 1959*. The exemption is now available to all administrators of a payment system.

### ***The reporting exemptions provided by paragraphs 3(1)(b) to (j)***

14. Subparagraphs 3(1)(b) to (j) of this instrument continue the following exemptions previously provided by F2021L00278 *Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2021* (which is being repealed by this instrument) to exempt administrators of a payment system from reporting the following classes of transactions:
  - (a) Payments made to a carriage service provider (within the meaning of the *Telecommunications Act 1997*).
  - (b) Payments made to a utility for the provision of electricity, water, sewerage, or gas.
  - (c) 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*).
  - (d) 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*).
  - (e) 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*).

- (f) 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*).
- (g) Payments made to a superannuation fund, approved deposit fund, or pooled superannuation trust (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*).
- (h) Payments made as a Direct Entry Direct Credit processed through the Bulk Electronic Clearing System governed by Australian Payments Network Limited.
- (i) Payments processed by Framework Participants under the High Value Clearing System governed by Australian Payments Network Limited.

***The reporting exemption provided by paragraph 3(1)(k)***

- 15. The only substantial change to this instrument (when compared to the instrument it is replacing) is to ensure the reporting of payments under a PayTo Agreement. Paragraph 3(1)(k) exempts the reporting of payments processed by New Payments Platform Participants using the New Payments Platform governed by New Payments Platform Australia Limited, except where that transaction is a successfully initiated payment received under a PayTo Agreement, and that transaction was processed after 1 July 2022.
- 16. The reporting of electronic transactions that are received under a PayTo Agreement will ensure that these transactions continue to be reported irrespective of the platform on which they are processed. Such transactions could previously only be processed using another platform and had to be reported to the ATO. However, they can now be processed on the New Payments Platform and will still need to be reported.

***The reporting exemption provided by paragraph 3(1)(l)***

- 17. Paragraph 3(1)(l) of this instrument exempts the reporting of payments processed by New Payments Platform Participants using the New Payments Platform governed by New Payments Platform Australia Limited, where the reporter reasonably believes that the same transaction has been reported to the ATO by another entity under Schedule 1 to the TAA.
- 18. Exempting transactions which the reporter reasonably believes have already been reported by another entity will reduce the compliance burden associated with the reporting regime, while minimising the likelihood of duplicate reporting. For example, payments made via Single Touch Payroll that are already reported on under subsection 389-5 of Schedule 1 to the TAA do not need to be reported again. An administrator may rely on this exemption not to report a transaction even if they would otherwise be required to report it under paragraph 3(1)(k).

***The reporting exemptions provided by paragraphs 3(1)(m) and (n)***

- 19. Paragraphs 3(1)(m) and 3(1)(n) of this instrument continue exemptions provided by F2021L00278 *Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2021* (which is being repealed by this instrument).

20. Paragraph 3(1)(m) 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*). The reporting of these payments is exempted because such payments have no income tax or GST consequences.
21. Paragraph 3(1)(n) exempts the reporting of loan repayments, chattel mortgage repayments, hire purchase payments and finance lease payments. The reporting of these payments is exempted because such payments generally include a non-assessable repayment of principal.

#### ***Additional information may be provided***

22. The instrument is not intended to increase the administrative burden on any person. If not reporting transactions in accordance with the exemptions in the instrument would increase the administrative burden on an administrator of a payment system, the administrator may choose to report those transactions.

#### **Compliance effect of this instrument**

23. Low – There will be minor regulatory impacts OBPR22 01727. Taxation Administration: Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2022.

#### **Consultation**

24. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before he makes a determination.
25. In February 2022 the draft instrument and draft explanatory statement was 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 the community is in an informed position to provide comments and feedback.
26. The draft instrument was discussed at the Financial Institution Data Exchange Consultative Forum in May 2022. This is an ATO led forum with attendance by all the major banks. The draft instrument was republished in September 2022. The ATO held individual meetings with three of the major banks in September. It then made minor updates to the draft instrument to reflect feedback from the banks and public consultation.

**Legislative references:**

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

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Insurance Act 1973*

*Legislation Act 2003*

*Life Insurance Act 1995*

*Payment Systems (Regulation) Act 1998*

*Private Health Insurance (Prudential Supervision) Act 2015*

*Retirement Savings Accounts Act 1997*

*Superannuation Industry (Supervision) Act 1993*

*Taxation Administration Act 1953*

*Telecommunications 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*.

### ***Taxation Administration: Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2022***

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 given to the Commissioner of Taxation in relation to table item 9 in section 396-55 of Schedule 1 to the *Taxation Administration Act 1953*.

Transactions are exempted from the regime to minimise the compliance cost for reporters where those transactions are either already reported (or likely to be reported) to the Commissioner through other existing reporting regimes, or where their exemption is deemed to be a low risk to the broader taxation revenue base.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms and is limited to providing relief from reporting requirements for specified transactions.

#### **Conclusion**

This legislative instrument does not raise any human rights issues.