

LI 2023/35 - Explanatory statement -



Explanatory Statement

Taxation Administration (Transitional Exemptions for Reporting by Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023

General outline of instrument

1. This instrument is made under subparagraph 396-55(b)(ii) and subsection 396-70(4) in Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. Under the Sharing Economy Reporting Regime (SERR) that is given effect by table item 15 in section 396-55 in Schedule 1 to the Act, operators of electronic distribution platforms (EDPs) are required to report information about certain supplies made through their platforms to the Commissioner of Taxation.
3. This instrument provides transitional support to operators of EDPs preparing to comply with reporting obligations under this regime in its first year of operation. It provides relevant operators with a choice of either a reporting exemption, or a deferral of the time by which their reports must be lodged, based on their relative circumstances.
4. The 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 commences on 1 July 2023. It has a retrospective commencement date to provide support to operators of EDPs while they transition to the SERR that commenced from 1 July 2023. It will provide operators with reporting exemptions or extensions. Consistent with section 12(2) of the *Legislation Act 2003*, it will not adversely affect the rights or liabilities of any person other than the Commonwealth.

Effect of this instrument

7. Table item 15 in section 396-55 in Schedule 1 to the Act requires an operator of an EDP – within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) (but disregarding paragraph 84-70(1)(c) of that Act) – to prepare a report about specified transactions made through that EDP.
8. That report must generally (unless there is a legislative instrument specifying a later due date) be given to the Commissioner on or before the 31st day after the end of the period in relation to which it is prepared.

The reporting exemption provided by section 5

9. Subsection 396-70(4) in Schedule 1 to the Act allows the Commissioner, by legislative instrument, to determine that specified classes of entities are not required to prepare and give reports under section 396-55, or are not required to do so for specified classes of transactions.

10. Section 5 of this instrument exempts the operator of an EDP from having to prepare and give a report about reportable transactions for a reporting period ending on or before 30 June 2024 where:

- (a) the transactions involved a supply of relevant accommodation or taxi travel,
- (b) the operator either was operating the platform on or before 30 June 2023, or had completed building the systems required to operate the platform on or before 30 June 2023 and commenced operating the platform on or before 31 December 2023, and
- (c) the operator had reportable transactions with a total value (including GST where applicable) of less than either \$1,000,000 in the 12 month period ending on the last day of the reporting period, or a lesser 'prorated amount' if they did not operate the platform for the full 12 months.

11. The prorated amount is calculated by dividing the number of days the operator was operating the platform by 365, and multiplying the result of that calculation by \$1,000,000.

12. In addition, under paragraph 5(d) the operator of an EDP that intends to apply this exemption must notify the Commissioner in writing that they will be doing so. They must notify the Commissioner either on or before the day that they would otherwise be required to give a report under paragraph 396-55(b) in Schedule 1 to the Act, or (if they ask the Commissioner for an extension of time and the Commissioner agrees) a day notified by the Commissioner in writing.

13. This exemption will provide operators of smaller EDPs with additional time to implement the necessary infrastructure and processes required to enable reporting.

The reporting extension provided by section 6

14. As noted above, the operator of an EDP must generally give the Commissioner a report to comply with their obligations under the SERR on or before the 31st day after the end of the relevant reporting period. However, subparagraph 396-55(b)(ii) in Schedule 1 to the Act allows the Commissioner, by legislative instrument, to specify a later due date for a report.

15. Section 6 of this instrument extends the due date for a report for the reporting periods ending on 31 December 2023 and 30 June 2024. The extension applies where the operator of an EDP could, but chooses not to, rely on the exemption in section 5 of the instrument. That is, it applies where the conditions in paragraphs 5(a), 5(b) and 5(c) of the instrument are met. The extension is as follows:

- (a) for the reporting period ending on 31 December 2023, the report must be given to the Commissioner on or before 29 February 2024, and
- (b) for the reporting period ending on 30 June 2024, the report must be given to the Commissioner on or before 2 September 2024.

16. Additional time to lodge required reports has been provided to support EDP operators that are transitioning into the regime and preparing to meet their reporting obligations, but that may not require a complete exemption for the initial reporting periods.

Other information

17. This instrument does not affect any other reporting requirements that reporting entities may have under section 396-55 in Schedule 1 to the Act.

Compliance cost assessment

18. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (OIA23-05448).

Background

19. The *Taxation Administration (Reporting by Electronic Distribution Platform Operators) Legislative Instrument 2023* was made on 8 June 2023, to substitute the default annual reporting period for the SERR with an alternate six-monthly reporting period. The new reporting periods are from 1 January to 30 June, and 1 July to 31 December, each year.

20. Consequently, and in acknowledgment of the additional compliance costs imposed by more frequent reporting periods, this instrument was developed to give operators of certain small EDPs transitional support as they prepare to meet their reporting obligations.

21. The ATO will continue to work with the operators of EDPs that have reporting obligations under the SERR to help them understand and manage their reporting obligations.

Consultation

22. For this instrument, broad public consultation was undertaken for a period of 4 weeks to 12 September 2023.

23. Targeted consultation was also undertaken during this period. Copies of the draft legislative instrument and explanatory statement were sent to known operators of EDPs, professional and industry bodies for comment and feedback. One on one consultations were also held with known operators of EDPs.

24. As part of the consultation process, the draft instrument and draft explanatory statement were published to the ATO Legal database on the 'What's new' page. They were also advertised on the ato.gov.au website on the 'Open Consultation' page and on the ATO webpage that provides general guidance on the SERR.

25. 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.

Outcome of consultation

26. Changes were made to the draft instrument following consultation, including as a result of feedback received on the legislative instrument and the explanatory statement. The changes were intended to improve the language and clarity of the instrument and explanatory statement.

Legislative references

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

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Taxation Administration Act 1953

Statement of compatibility with Human Rights

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

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Overview of the legislative instrument

This legislative instrument provides transitional support to certain operators of electronic distribution platforms. It provides them with either an exemption from having to prepare and give a report to the Commissioner of Taxation under the sharing economy reporting regime in the *Taxation Administration Act 1953* or, if they choose not to rely on that exemption, gives them an extension of time to lodge a report.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It merely provides either relief from reporting requirements, or additional time to report.

Conclusion

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