

LI 2023/36 - Explanatory statement -



Explanatory Statement

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

General outline of instrument

1. This instrument is made under 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 exempts operators of EDPs from having to include specified classes of transactions in reports prepared and lodged in relation to table item 15 in section 396-55.
4. This instrument reduces the compliance costs imposed on operators of EDPs by exempting transactions which the Commissioner considers to be a low risk to the broader taxation revenue base, or certain transactions which are reported to the Commissioner by other EDP operators.
5. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
6. 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

7. This instrument commences on 1 July 2023. It has a retrospective commencement date to provide reporting exemptions from the date that the SERR commenced operation (1 July 2023). It provides reporting exemptions in certain circumstances to reduce the compliance costs for reporting operators. Consistent with section 12(2) of the *Legislation Act 2003*, it does not adversely affect the rights or liabilities of any person other than the Commonwealth.

Effect of this instrument

8. 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.
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.

The reporting exemption provided by section 5

10. Section 5 of this instrument applies in circumstances where a supply is made through more than one EDP. It reduces the likelihood that the same transaction will be reported by more than one EDP operator, by placing the obligation to report the transaction on EDPs that provide all or part of the consideration they receive in relation to the supply directly to the supplier. It does this by exempting the operator of an EDP (the first platform) from having to report a transaction involving a supply of relevant accommodation or taxi travel made through that EDP to the Commissioner where:

- (a) the supply that is also made through at least one other EDP,
- (b) the first platform does not itself provide consideration it receives in relation to the supply directly to the supplier, and
- (c) the operator of another EDP provides all or part of the consideration given by the recipient of the supply to the supplier and has a reporting obligation under table item 15 in section 396-55 in relation to that transaction.

11. Where the operator of the first platform is seeking to apply this exemption in relation to a transaction but is unsure whether another entity involved in the transaction has a reporting obligation under table item 15 in section 396-55, they should seek to confirm this with that other entity before they apply the exemption. In other words, if an EDP is unsure whether another EDP is responsible for reporting a transaction, they should take reasonable steps to confirm this with the other EDP before relying on this exemption.

12. If an EDP intends to apply this exemption they 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 for a period 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.

The reporting exemption provided by section 6

13. Paragraph 6(a) of this instrument exempts the operator of an EDP from having to report transactions involving a supply of relevant accommodation or taxi travel if the supplier is either a 'listed entity', or a wholly-owned subsidiary of a listed entity. For the purposes of this instrument, a listed entity means an entity whose membership interests are publicly traded on an approved stock exchange within the meaning of section 995-1 of the *Income Tax Assessment Act 1997*. The reporting of these transactions is exempted because these entities are generally subject to other forms of regulatory supervision and transparency which promote them complying with their tax obligations, and they are not participants in the sharing economy.

14. Where transactions involving larger hotels and traditional forms of short-term accommodation are not exempted under paragraph 6(a), a specific exemption is provided in paragraph 6(b) to exempt transactions where they involve a 'substantial property'.

15. In particular, paragraph 6(b) of this instrument provides that the operator of an EDP does not have to report transactions that involve the provision of consideration relating to a 'substantial property'. A substantial property is a property where, for a reporting period, at least 2,000 transactions were facilitated by the EDP in relation to that property in the 12 month period ending on the last day of that reporting period (if the property was listed on the platform for that entire period). If the property was first listed on the platform in the 12 month period ending on the last day of the reporting period, the number of transactions required to be made through that platform to meet the definition of substantial property is proportionally adjusted, to reflect the shortened period that the platform was used. The reporting of these transactions is exempted because operators of these larger properties are generally not involved in the sharing economy and are generally more likely to be aware of, and compliant with, their taxation obligations.

16. To calculate the number of transactions that were made through an EDP in relation to a property, each distinct address is considered a separate property. This means that all transactions in relation to multiple rooms at a single address (such as in a commercial hotel) would be counted towards a single property, whereas transactions in relation to separate addresses within a building (such as apartments in a building or complex) would be counted as being in relation to separate properties.

17. Whether a property is a substantial property is determined on a platform-by-platform basis, based on the number of transactions for the property made through the platform. Transactions made through an EDP cannot be aggregated with transactions made through another, separate EDP, even where all those transactions are in relation to the same property. This makes it simpler for the operator of an EDP to determine whether the exemption applies.

18. Paragraph 6(c) of this instrument exempts the operator of an EDP from having to report transactions where:

- (a) the supplier has provided the operator with one or more addresses, and none of those addresses are within the indirect tax zone,
- (b) for a reportable transaction involving a supply of taxi travel, the taxi travel did not occur within the indirect tax zone,
- (c) the consideration provided to the supplier in relation to the transaction was not paid to an account held with a financial institution in the indirect tax zone, and
- (d) there is no other information available to the operator that indicates that the supplier is a resident of Australia.

19. For the purposes of this instrument, indirect tax zone has the same meaning as in the GST Act, if that definition included the external Territories.

20. The reporting of these transactions is exempted because such transactions generally have no Australian income tax or GST consequences.

Other information

21. 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

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

Background

23. 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.

24. 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

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

26. 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.

27. 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.

28. 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

29. 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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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 operators of electronic distribution platforms from having to include specified classes of transactions in reports required to be prepared and given to the Commissioner of Taxation under the sharing economy reporting regime in the *Taxation Administration Act 1953*.

Transactions are exempted from the regime to reduce the compliance cost for reporting operators where those transactions are made through multiple platforms and will already be reported by other reporting operators who transact directly with a supplier, or where there is 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 merely provides relief from reporting requirements for specified transactions.

Conclusion

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