

LI 2024/17 - Explanatory statement -



Explanatory Statement

Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators) Determination 2024

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 to 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 required to be prepared and lodged under table item 15 in section 396-55 in Schedule 1 to the Act for reporting periods starting on or after 1 July 2024.
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 2024.

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 in Schedule 1 to the Act, or are not required to do so for specified classes of transactions.
10. This instrument repeals the *Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023* from 1 July 2024. The exemptions provided in that determination have been generally replicated in this instrument, which means that entities that satisfied the requirements of the previous determination will generally satisfy the requirements of this instrument. This instrument also contains new, additional exemptions that cover certain types of suppliers and transactions.

The reporting exemption provided by section 5

11. 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 to the Commissioner by more than one EDP operator, by placing the obligation to report the transaction on EDPs that provides 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 made through that EDP to the Commissioner where:

- (a) the supply is also made through at least one other EDP;
- (b) the first platform does not itself provide any 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 Schedule 1 to the Act in relation to that transaction.

12. Where the operator of the first platform is seeking to apply this exemption in relation to a transaction but is unsure whether another entity has a reporting obligation in relation to the transaction under table item 15 in section 396-55 in Schedule 1 to the Act, they should seek to confirm this with the other entity before they apply the exemption. That is, if an EDP operator is unsure whether another EDP operator is responsible for reporting a transaction, they should take reasonable steps to confirm this with the other EDP operator before relying on this exemption.

13. If an EDP operator intends to apply this exemption in relation to supplies made through its EDP and another EDP, they must notify the Commissioner in writing that they will be relying on the exemption and not reporting those transactions. They must do so 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.

Reporting exemptions provided by section 6 – transactions involving certain types of suppliers

14. Section 6 of this instrument exempts the operator of an EDP from reporting transactions involving certain types of suppliers. These transactions are exempted because the suppliers are less likely to be sharing economy participants, are generally subject to other regulatory or reporting regimes, and/or are generally likely to be compliant with their tax obligations.

15. If transactions involving a supplier do not need to be reported under section 6, the EDP will not need to consider whether other more specific exemptions (such as those in section 7) apply to transactions involving that supplier.

16. Under subsection 6(1), an operator of an EDP will be exempted from reporting transactions where the supplier is:

- (a) An entity that is a listed entity or a wholly owned subsidiary of a listed entity (paragraph 6(1)(a)). For the purposes of this instrument, a listed entity is 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*; or
- (b) A government department, agency, authority, or entity wholly owned by the government (paragraph 6(1)(b)). This is intended to capture government bodies (including foreign bodies) at all levels of government, including local government.

17. Subsection 6(2) exempts the operator of an EDP from having to report transactions if the supplier is a 'substantial supplier'. For the purposes of this instrument, a substantial supplier is a

supplier that, in relation to a reporting period and an EDP, made a total value of supplies facilitated by that EDP of at least \$1,000,000 (including GST).

18. If the supplier first started using the platform in the 12 months ending on the last day of the reporting period and did not use the platform for that entire 12 month period, the value of the transactions required to meet the definition of substantial supplier is proportionally adjusted to reflect the shortened period that the platform was used in that 12 month period.

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

Reporting exemptions provided by section 7 – transactions involving certain types of supplies

20. Section 7 of this instrument exempts certain types of transactions that are less likely to be sharing economy transactions, where the suppliers of those transactions are likely to be compliant with their taxation obligations, where those transactions are otherwise considered low risk, and/or where information from those transactions is not currently required by the Commissioner.

Supplies of substantial properties

21. Some transactions involving larger hotels and traditional forms of short-term accommodation will already be exempted under subsection 6(2). Paragraph 7(a) contains a further specific exemption for transactions involving a 'substantial property'.

22. 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 months ending on the last day of that reporting period.

23. If the property was first listed on the platform in the 12 months ending on the last day of the reporting period and it was not listed on the platform for that entire 12 month period, the number of transactions required to meet the definition of substantial property is proportionally adjusted to reflect the shortened period that the property was listed in that 12 month period.

24. 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 hotel, or shared workspace) 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.

25. Whether a property is a substantial property is determined on a property-by-property and 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. In calculating the number of transactions, an EDP does not aggregate transactions involving the same supplier, but different properties. This makes it simpler for the operator of an EDP to determine whether the exemption applies.

Supplies of certain services outside Australia

26. Paragraph 7(b) of the instrument exempts the operator of an EDP from having to report transactions where:

- (a) the service was not delivered within the indirect tax zone;
- (b) the supplier has provided the operator with one or more addresses, and none of those addresses are 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.

27. For the purposes of this instrument, indirect tax zone has the same meaning as in the GST Act, assuming that definition included the external territories (the definition of indirect tax zone in the GST Act contemplates the tax definition of Australia, with some specific carve-outs that include the external territories – accordingly, services delivered within the external territories fall within the indirect tax zone for the purposes of this determination).

28. These transactions are exempt as they are unlikely to have any Australian income tax or GST consequences.

29. Further, a transaction for the supply of real property – for example, by way or lease or license, including a supply of short-term accommodation – is only reportable under table item 15 in section 396-55 in Schedule 1 to the Act if the property is in the indirect tax zone. A supply of real property located outside the indirect tax zone is not reportable under table item 15 in section 396-55 in Schedule 1 to the Act, regardless of the tax residence of the owner of that property, and this exemption does not need to be applied in relation to these supplies.

Example 1: transaction exempt due to supply being made outside the indirect tax zone

Dorian is an Australian resident planning a trip to France. Before he departs, he uses the Easy Tour Bookings platform to book a three-day tour of the vineyards in the Champagne region through an online platform. The supplier:

- is a company that is incorporated in, and resident of, France;
- has provided the Easy Tour Bookings platform with only one address which is in France; and
- receives payment of the consideration for the booking in a bank account they hold with a financial institution in France.

Easy Tour Bookings is not required to report this transaction as the supply was made outside the indirect tax zone, and the other requirements in paragraph 7(b) of the instrument are met.

Example 2: transaction involving supply of short-term accommodation outside of the indirect tax zone

Toby uses the Japan Super Holiday Rentals website to rent an apartment in Tokyo, Japan, for 7 nights. The apartment is owned and supplied by Jack, who is an Australian resident.

Toby accepts the agreement and pays for the rental at the time of the booking through the Japan Super Holiday Rentals website.

While the supply is made through Japan Super Holiday Rentals website which is an EDP, its operator is not required to report this transaction under table item 15 in section 396-55 in Schedule 1 to the Act as it relates to the supply of real property located outside of the indirect tax zone. Because the transaction is not reportable, the operator of the Japan Super Holiday Rentals website does not need to rely on this exemption.

Mere reservations or bookings

30. Paragraph 7(c) of this instrument exempts transactions where an EDP facilitates a mere booking or reservation but does not otherwise facilitate the supply. It does this by exempting transactions where:

- (a) the consideration for the supply was not specified at the time the booking or reservation was made;
- (b) the consideration for the supply will not be provided via the platform; and
- (c) the operator of the platform will not have visibility of whether the supply is made in practice, or whether consideration is provided for it.

31. This exemption ensures that an EDP is only required to report transactions for which they are likely to have complete or accurate data. It also ensures they do not need to report on transactions where they act only as a booking service for the transaction. The exemption strengthens the quality of the data collected under the SERR by ensuring that transactions are not reportable if the EDP does not know whether the supply is actually made, does not directly facilitate or have visibility of the payment being made to the supplier, and does not provide any other assistance in relation to the supply. For example, the exemption does not apply where the payment for a reportable supply is made through a payment system linked to the EDP operator's platform, that it uses to process the payment for the supply at the time of booking.

Example 3 – transaction exempt on the basis that the EDP is providing a booking service only

Erica uses Taxi Booking Co's mobile application to book a taxi. To make the booking, Erica provides her name, the address that she wants to be picked up from, and the date and time at which the taxi is to pick her up. Emma does not input any information about her intended destination. Taxi Booking Co arranges for a taxi driver to collect Emma. Payment for the fare is not made through the app and must be made directly to the taxi driver at the end of the trip.

Taxi Booking Co has no way of knowing whether the taxi driver ever actually made the supply of taxi travel, or what the value of the consideration for the supply would have been. It is not required to report this transaction.

Example 4 – transaction not a mere booking and not exempt

Saferider is digital platform that allows passengers to book taxi travel. Trisha wants to go to the airport. She uses the Saferider website, enters her pickup location, time and destination.

The website quotes her an estimated price for the requested service. Trisha accepts and a taxi is dispatched. On completion of the ride, the driver confirms the total fare through the Saferider platform. Trisha's payment is then processed by the Saferider platform using a third-party payment provider.

As the operator of the Saferider platform knows that the service was delivered and the amount of consideration that was actually paid, this exemption does not apply to this transaction. The operator of the Saferider platform must report the transaction.

Scheduled passenger travel services

32. Paragraph 7(d) of this instrument exempts transactions involving the supply of certain scheduled passenger travel services.

33. A supply is one of scheduled passenger travel service if:

- (a) it is a passenger travel service (including arranged tours and cruises) that is supplied as a scheduled service on a pre-defined route operated by the supplier;
- (b) the price is set by the supplier;
- (c) the terms and conditions of the supply are set by the supplier; and
- (d) any member of the public may book passage on it.

34. A service does not cease to be a scheduled passenger travel service merely because the service itself may be cancelled or rescheduled, the price may be varied from time to time, or boarding may be denied at the time of travel (for example, due to the behaviour of a passenger, weather, or overbooking).

35. The exemption for the supply of a scheduled passenger travel service does not apply to charter services, taxi travel, or situations where the supplier had made 9 or less places for the service available for booking through the EDP.

36. For the purposes of this instrument, a charter service means a passenger travel service where the customer hires an entire aircraft, motor vehicle or vessel, and can specify or negotiate some or all of the conditions, or the nature of the services to be provided. A passenger travel service does not become a charter service merely because the passenger may select from pre-defined options set by the service provider – for example, different classes of booking, seat, or meal selection.

Example 4 – exempt booking for scheduled passenger travel service

Karen uses the Great Holiday Deals platform to book a 5-night cruise from Melbourne to Hobart on the Very Big Cruise Ship cruise liner. The Very Big Cruise Ship operates cruise liner services on this route on a weekly basis, departing at 9am every Wednesday, and tickets are purchasable by members of the public at rates set by the supplier. Great Holiday Deals does not have to report this transaction as it is for the supply of a scheduled passenger travel service.

Example 5 – reportable transaction for chartered travel

Victor uses the Great Holiday Deals platform to book a scenic flight over the Hunter Valley, which is operated by local pilot, Krystal. Using the platform, Victor and Krystal negotiate the time, duration and cost of the flight and they agree that no other bookings will be taken for this flight. This transaction is a reportable transaction as it involves a charter service. It was not a scheduled passenger travel service because the flight was not operated on a regular schedule, with a pre-defined route and a price set by the platform.

Scheduled events

37. Paragraph 7(e) of this instrument provides an exemption for a transaction involving the supply of a right to attend or participate in a scheduled event in certain circumstances. The exemption applies to events for which the supplier has made 200 or more places for the event available for booking on the platform.

38. Under the definition in section 4, an event is a scheduled event if it is a one-off or temporary series of events in a particular location, and:

- (a) the time, price, and terms and conditions are set by the supplier; and
- (b) any member of the public may book a right (for example, by buying a ticket) to attend or participate in the event.

39. This includes things such as concerts, sporting events and festivals.

Permanent attractions and experiences

40. Paragraph 7(f) of this instrument provides an exemption for a transaction involving the supply of a right to attend or participate in a permanent attraction or experience in certain circumstances. The exemption applies if the supplier has made 50 or more places for that attraction or experience available for booking on the platform each day it was open during the reporting period.

41. A permanent attraction or experience is defined in section 4 to mean an attraction or experience that is open to the public on a regular and ongoing basis, for which:

- (a) the opening times, price and terms and conditions are set by the supplier; and
- (b) any member of the public may make a booking (for example, by buying a ticket).

42. This includes things such as theme parks, museums, zoos, skydiving, or driving track day experiences that are offered on an ongoing basis. It does not include one-off or temporary attractions or experiences that are only offered for a limited period of time or on an ad hoc basis. These types of things are scheduled events, as described above.

Supplies of certain assets

43. Paragraph 7(g) of this instrument exempts transactions involving the rental or lease of assets, other than real property, where:

- (a) the supply was not of a specific asset (that is, the terms of the rental are such that the renter will receive an asset of a particular kind or class rather than a specific asset); and
- (b) the supplier had at least 50 assets available for booking on the platform each day it was open during the reporting period.

44. For the purposes of subparagraph 7(g)(ii) of this exemption, an asset is treated as being available for booking on an EDP on a day if it had already been rented or leased for that day, or is otherwise temporarily unavailable for booking.

Example 6 – reportable transaction for supply of asset hire

Liza uses the Share My Ride platform to arrange a hire car for a few hours. Liza uses the platform to view cars listed as available at the time she needs and then contacts Marco to arrange to hire his Toyota Camry. Liza then pays for the hire through the Share My Ride platform. This transaction is not exempted under paragraph 7(g) because the agreement between Marco and Liza relates to the supply of a specific car – Marco's Toyota Camry – rather than the supply of a vehicle that belongs to a particular class.

Example 7 – exempted transaction for supply of asset hire

Alistair uses the Hire Cars 4 U website to book and pay for a hire car from Tropical Hire Cars R US for his upcoming holiday. Tropical Hire Cars R US has more than 50 cars listed as available for hire on the Hire Cars 4 U website. Further, the terms of the booking are such that Alistair will be supplied with whichever 4 door automatic sedan the supplier has available at the time he arrives to collect the vehicle. Hire Cars 4 U are exempted from reporting this transaction as the requirements of paragraph 7(g) are met.

Other information

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

46. The exemptions in this instrument must be considered and applied by an EDP operator on a transaction by transaction basis, and a reporting period by reporting period basis. For each reporting period in which an entity operates an EDP, they need to consider whether they are obliged to report any supplies made through their EDP in that reporting period. This means that:

- (a) for any given reporting period, an EDP operator may be required to report none, some or all the supplies made through its EDP; and
- (b) an EDP operator may not have a reporting obligation in relation to any supplies made through its EDP in one reporting period, but may have a reporting obligation in relation to some or all of the supplies made through its EDP in a later reporting period (and vice versa).

Compliance cost assessment

47. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (The Office of Impact Assessment reference: OIA24-07073).

Background

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

49. The *Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023* also made in 2023 to provide exemptions for certain transactions that were considered to involve a low risk to the broader taxation revenue base, or which would already be reported to the Commissioner by other EDP operators. These exemptions are broadly replicated in this instrument.

50. However, this instrument contains a broader range of exemptions than the previous instrument, to align with the expansion in the scope of the reporting regime from 1 July 2024.

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

Consultation

52. For this instrument, formal public consultation was undertaken for a period of 4 weeks to 15 April 2024.

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

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

55. 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

56. Changes were made to the draft instrument and explanatory statement following consultation, including as a result of feedback received. The changes were intended to improve the language and clarity of the instrument and explanatory statement. New exemptions for scheduled events, and permanent attractions or experiences, were also added as a result of feedback provided during consultation.

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*.

Certain types of transactions are exempted from the regime to reduce the compliance cost for platform operators, including where those transactions will already be reported by other platform operators, or 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.