

LI 2022/2 - Explanatory statement -



Explanatory Statement

Taxation Administration – Single Touch Payroll – 2021-22 and 2022-23 years Withholding Payer Number Exemption 2021

General outline of instrument

1. This instrument is made under subsection 389-10(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
2. This instrument exempts certain entities that do not have an Australian business number (ABN) but instead have a withholding payer number (WPN) from reporting under Single Touch Payroll (STP) for the 2021-22 and 2022-23 financial years.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. 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

5. This instrument commences on 1 July 2021.
6. The instrument applies retrospectively, which is necessary and appropriate to provide certainty and consistency for entities within this class. It is beneficial to taxpayers because it:
 - ensures they are covered by the exemption from reporting under STP for the entire 2021-22 financial year
 - provides consistency with preceding financial years by continuing to exempt them from reporting via STP
7. Under section 12(2) of the *Legislation Act 2003* this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth.
8. This instrument is repealed on 1 October 2023. The inclusion of an automatic repeal provision reflects the duration of the exemption being the 2021-22 and 2022-23 financial years.

What is the effect of this instrument

9. The effect of this instrument is to repeal *Taxation Administration – Single Touch Payroll – Exemption for Employers with a Withholding Payer Number (F2019L00437)* and *Taxation Administration – Single Touch Payroll – 2020-21 year Withholding Payer Number Exemption 2020 (F2020L00801)* which provided a class exemption to relevant entities for previous financial years, and to replicate the exemption for the 2021-22 and 2022-23 financial years.
10. This instrument provides an exemption to any entity that:
- (a) pays an amount referred to in Column 1 of the table in subsection 389-5(1) of Schedule 1 to the TAA
 - (b) does not have an ABN, and
 - (c) has been assigned by the Australian Taxation Office a WPN for the purposes of pay as you go withholding.
11. Entities within this class will be fully exempt from the requirement to report under section 389-5 of Schedule 1 to the TAA for the 2021-22 and 2022-23 financial years.
12. As a result, the relevant entities will be exempt from section 389-5 of Schedule 1 to the TAA for each financial year from 2018-19 to 2022-23 inclusive.
13. Any entity covered by this exemption may still choose to report under STP in accordance with Division 389 of Schedule 1 to the TAA notwithstanding the exemption provided by this instrument.
14. Schedule 1 of this instrument repeals *Taxation Administration – Single Touch Payroll – Exemption for Employers with a Withholding Payer Number (F2019L00437)* and *Taxation Administration – Single Touch Payroll – 2020-21 year Withholding Payer Number Exemption 2020 (F2020L00801)*.

Compliance cost assessment

15. Minor – there will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

Background

16. Division 389 of Schedule 1 to the TAA establishes STP reporting. Section 389-5 of Schedule 1 to the TAA provides for the reporting of certain amounts by employers to the Commissioner.
17. Subsection 389-10(1) of Schedule 1 to the TAA allows the Commissioner of Taxation to exempt by way of legislative instrument a class of entities from reporting under STP.
18. Subsection 389-5(5) of Schedule 1 to the TAA provides that section 389-5 does not apply to any entity to the extent (if any) that the entity is covered by an exemption under section 389-10 for the year in which the entity's conduct occurs.

Consultation

19. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.
20. For this instrument, broad public consultation was undertaken for a period of 4 weeks to 8 July 2021. 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 they are in an informed position to provide comments and feedback.

21. No comments were received as a result of the consultation.

Legislative references

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

The Commissioner will afford an exemption to entities that have a withholding payer number (WPN) from reporting under Single Touch Payroll (STP) for the 2021-22 and 2022-23 financial years.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because it is of a minor or machinery nature as it provides certain entities with an exemption from a reporting requirement for the 2021-22 and 2022-23 financial years.

Conclusion

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