




PS LA 2005/23 - The disclosure of information respecting the affairs of a taxpayer to the Commonwealth Department of Treasury (Treasury).

 This cover sheet is provided for information only. It does not form part of *PS LA 2005/23 - The disclosure of information respecting the affairs of a taxpayer to the Commonwealth Department of Treasury (Treasury)*.

 This Practice Statement is being updated to reflect changes to the taxation law secrecy provisions. A new version will appear shortly.

If you are making a disclosure of taxpayer information to Treasury there is a [detailed overview](#) (internal link only) of the new law you must review before making the disclosure. If you have any questions regarding the new provisions please email the [General Counsel Unit](#).

 This document has changed over time. This version was published on *21 November 2005*



Practice Statement Law Administration

PS LA 2005/23

FOI status: may be released

This practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax office staff unless doing so creates unintended consequences. Where this occurs Tax office staff must follow their Business Line's escalation process.

SUBJECT: **The disclosure of information respecting the affairs of a taxpayer to the Commonwealth Department of Treasury (Treasury).**

PURPOSE: **To explain Tax Office policy concerning disclosure of taxpayer information to Treasury.**

STATEMENT

1. The Commissioner is bound by secrecy provisions in the Acts he administers. His ability to provide taxpayer information to the Department of Treasury without breaching the various secrecy provisions depends on the purpose for disclosing the information.
2. The secrecy provisions will not apply to a disclosure of information to Treasury if the identity of any taxpayer is neither apparent nor ascertainable.
3. The secrecy provisions will apply to a disclosure of information to Treasury if any taxpayer is identified by name or their identity is otherwise ascertainable. Such information can only be provided to Treasury by a Tax Officer where to do so is within the performance of the officer's duties (see paragraph 9 for further details).
4. For example, information may be provided where it is necessary for the purpose of Treasury's tax law design function, but not where the information is requested for general budgetary purposes that are not related to the administration of tax laws.
5. Disclosure of taxpayer information to Treasury should be distinguished from disclosing taxpayer information to a Minister. For information on disclosure of taxpayer information to the Treasurer or Minister for Revenue and Assistant Treasurer or any Minister please refer to the Law Administration Practice Statement [PS LA 2004/9](#): Disclosure to Ministers of information about the affairs of taxpayers.

6. For the purposes of this Practice Statement, the secrecy provision contained in section 16 of the *Income Tax Assessment Act 1936* (ITAA 1936) is used as an example of the operation of the secrecy provisions generally. The issues considered in the discussion of section 16 of the ITAA 1936 apply equally to secrecy provisions contained in other Acts administered by the Commissioner.

EXPLANATION

Information which does not identify a taxpayer

7. Section 16 of the ITAA 1936 imposes strict limits on the disclosure of any information which identifies a taxpayer or from which a taxpayer's identity is ascertainable.
8. However, the Tax Office considers that if it is not possible to identify a taxpayer from the information disclosed, then the disclosure is not limited by section 16. It should be noted that simply removing a taxpayer's name from the information may not be enough to prevent the taxpayer being identified. In particular, if there is something distinctive about a taxpayer, such as being part of an industry with only a small number of operators, or you can otherwise ascertain that the taxpayer is one of a very limited class, it is considered that the secrecy provisions would apply to limit disclosure of the information.

When disclosures will be within the performance of duties

9. Tax officers are able to disclose identifiable taxpayer information where it is in the performance of their duties. The meaning of the 'performance of duties' has received considerable judicial consideration. The courts have determined that actions performed in the course of an officer's duties include all that is incidental to the carrying out of the duties of an officer's employment. However, there must generally be a tangible link with the administration of the relevant tax laws.
10. The Tax Office's role in administering tax legislation includes considering the operation of tax laws in particular circumstances and whether Treasury needs to be advised on policy and legislative issues that arise through that administration.

Examples

11. It would be within the performance of an officer's duties to disclose information to Treasury if:
 - Treasury is seeking the information in the course of performing a function related to the development of tax policy or the design of tax law. This may include consideration and/or determination of:
 - how a future law will be administered
 - how a future law will be interpreted

- the revenue implications of a policy or law proposal (that is, a costing); or
 - how compliance with a future law will be achieved, monitored or enforced.
- The information to be disclosed relates to the performance of the Tax Office's function of assisting Treasury in the administration of tax laws, including policy development and law design issues arising out of the operation of existing tax laws.
12. While information can be disclosed in the above circumstances, officers should take care only to disclose information to the extent it is necessary for the performance of the particular function. Accordingly, in all cases, steps should be taken to ensure that the detail of the information transferred, and the persons to whom disclosure is made, is kept to the minimum necessary to achieve the desired purpose. It should also be noted, that Treasury officers, are considered 'officers' for the purpose of the secrecy provisions and will be bound by those provisions when they receive information from the Tax Office.
 13. Disclosure of this limited type is considered by the Tax Office to be permitted by Information Privacy Principle 11.1(e) (as set out in section 14 of the *Privacy Act 1988*) as the disclosure 'is reasonably necessary for the protection of the public revenue.' Whether or not the disclosure will be 'reasonably necessary for the purposes of the relevant law design process' is a question of fact and degree and should be carefully considered prior to any disclosure of taxpayer information being made.
 14. Note that formal Tax Office advice on matters of taxation policy and law design is generally provided to Treasury by way of a formal Minute. For further information on the correct procedures for providing information to Treasury please refer to Corporate Management Practice Statement [PS CM 2003/14 \(CGR\)](#): Provision of Formal ATO Advice to Treasury.
 15. When taxpayer information is provided to Treasury, the information will continue to be protected by section 16 of the ITAA 1936. This is because section 16 applies to 'officers' which includes 'any person who has been appointed or employed by the Commonwealth' not just tax officers.

When disclosure would not be in the performance of duties

16. It is not considered to be within the performance of duties to disclose identifiable taxpayer information to Treasury for general budgetary purposes. This means that information cannot be provided for the performance of any of Treasury's general budgetary functions which are not related to the development of tax policy and design of tax laws.
17. If a request is made for these purposes, officers should ensure that only de-identified information, – such as general statistical information – is provided and that no individual taxpayer can be identified.

18. However note that identifiable taxpayer information may be provided for the purposes of determining the revenue implications of a tax policy or law proposal (see paragraph 11) because these purpose are related to the administration of tax laws.

Questions about disclosure

19. If an officer is concerned about providing certain information to Treasury, they are advised to consult their Manager or the Policy Management Division in first instance. Further advice may also be obtained from the National Manager, Government Law and Practice, Legal Services Branch.

<i>Subject references</i>	taxpayer information
	privacy
	disclosure of taxpayer information
	performance of duties
	secrecy
<i>Legislative references</i>	<i>Income Tax Assessment Act 1936</i> section 16
	<i>Income Tax Assessment Act 1936</i> subsection 16(1)
	<i>Income Tax Assessment Act 1936</i> subsection 16(2)
	<i>Privacy Act 1988</i> section 14
<i>Related practice statements</i>	Law Administration Practice Statement, PS LA 2004/9 – Disclosure to Ministers of information about the affairs of taxpayers Corporate Management Practice Statement, PS CM 2003/13 (CGR) – Provision of Services to the Treasurer and Minister for Revenue and Assistant Treasurer
<i>Other references</i>	ATO/Treasury Protocol
<i>File references</i>	2003/14658

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