

# ***PS LA 2005/23 - Disclosing information about the affairs of a taxpayer to Treasury***

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⚠ Refer to end of document for amendment history. Prior versions can be requested by emailing [TCNLawPublishingandPolicy@ato.gov.au](mailto:TCNLawPublishingandPolicy@ato.gov.au) if required.

⚠ This document has changed over time. This version was published on *25 February 2016*



# Disclosing information about the affairs of a taxpayer to Treasury

This Law Administration Practice Statement outlines the protocol on disclosing protected information about taxpayers to the Department of Treasury.

*This practice statement is an internal ATO document, and is an instruction to ATO staff.*

*Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

## 1. What this practice statement is about

Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)<sup>1</sup> contains the provisions which provide for taxpayer confidentiality, and sets out the rules that we, as taxation officers, need to abide by when dealing with protected information.

This practice statement explains the exceptions to these rules when disclosing protected information to the Department of Treasury (Treasury).

**Note:** disclosing taxpayer information to Treasury should be distinguished from disclosing taxpayer information to a Minister. For information on disclosure of protected information to either the Treasurer or Assistant Treasurer or any other Minister, please refer to the Law Administration Practice Statement [PS LA 2004/9](#) *Disclosing information about the affairs of a taxpayer to Ministers*.

## 2. What is protected information?

Protected information is defined in subsection 355-30(1) as information that:

- was disclosed or obtained under or for the purposes of a taxation law (other than the *Tax Agent Services Act 2009*)
- relates to the affairs of an entity, and
- identifies, or is reasonably capable of being used to identify, the entity.

When information doesn't identify an entity, and it isn't possible to identify an entity from the information,<sup>2</sup> it is not protected information, and Division 355 does not apply.

<sup>1</sup> All legislative references in this practice statement are to Schedule 1 to the TAA unless otherwise stated.

<sup>2</sup> Simply removing a taxpayer's name from information does not always mean that the identity of the taxpayer cannot still be identified. You need to consider whether the information as a whole still allows the taxpayer's identity to be ascertained, even by a process of deduction.

Tax File Numbers are not protected information. TFNs cannot be disclosed under any of the exceptions in this practice statement.

**Note:** protected information under Division 355 is not the same as information that is classified as 'protected' under the *Australian Government information security management guidelines – Australian Government security classification system*.<sup>3</sup>

## 3. General exception – where the protected information is already available to the public

Information is available to the public if it is open court records, books, newspapers or other sources that are generally available, even if a member of the public has to pay a fee to access it.

Provided the protected information was not made available to the public through a breach of Division 355, it can be disclosed.<sup>4</sup> However, you need to take care that you don't supplement or qualify that information with information from ATO records.

## 4. Specific exceptions relating to disclosures to Treasury

### *Disclosing protected information in performing duties as a taxation officer*

Subsection 355-50(2) contains a non-exhaustive list of disclosures which can lawfully be made by a taxation officer in performing their duties.

Item 7 in that table permits a taxation officer to disclose protected information to Treasury for the purpose of the design or amendment of a taxation law.

<sup>3</sup> See Chief Executive Instruction CEI 2014/06/07 *Security and related guidelines*.

<sup>4</sup> Section 355-45.

Whether or not the disclosure of any particular item of protected information will be for the purposes of taxation law design or amendment is a question of fact. This should be considered and determined carefully in each particular case.

You will need to remove the name, contact details or ABN of any entity before disclosing information to Treasury under this exception.

'Contact details' refers to the address, telephone, email or similar details. It would not refer to very broad information such as the State or Territory of the entity.<sup>5</sup>

#### ***Disclosing protected information for the purpose of the Foreign Acquisitions and Takeovers Act 1975 (Takeovers Act)***

Item 7 of table 3 in subsection 355-65(4) allows protected information to be disclosed to Treasury for the purpose of administering the Takeovers Act.

Whether or not the disclosure of any particular item of protected information will be for the purpose of administering the Takeovers Act is a question of fact. This should be considered and determined carefully in each particular case.

You do not have to remove any data such as name or contact details from information disclosed under this exception.

#### ***Disclosing certain protected information for the purpose of the Register of Foreign Ownership of Agricultural Land Act 2015***

Item 7 of table 7 in section 355-65(8) allows information contained in the Register of Foreign Ownership of Agricultural Land to be disclosed to Secretaries of various departments for the purpose of enabling those departments to assist their Minister in discharging their responsibilities in relation to specific topics. One of those topics is taxation policy, for which Treasury is the responsible Department.

#### ***Disclosing protected information for the purpose of estimating or analysing taxation revenue or estimating the cost of policy proposals***

Item 8 in table 3 in subsection 355-65(4) allows protected information to be disclosed to Treasury for the purpose of Treasury<sup>6</sup>:

- estimating or analysing taxation revenue or

- estimating the cost of a policy proposal (whether it is tax related or not).

You will need to remove the name, contact details or ABN of any entity before disclosing information to Treasury under this exception.

As stated in section 4 of this practice statement, 'contact details' refers to the address, telephone, email or similar details. It would not refer to very broad information such as the State or Territory of the entity.

### **5. More information**

For:

- Information on the correct procedures for providing information to Treasury, see Corporate Executive Instruction CEI 2014/06/09 *Working with Treasury*.
- Advice on providing information to Treasury, contact [General Counsel Requests](#)

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<sup>5</sup> Paragraph 5.66 of the Explanatory Memorandum to the Tax Law Amendment (Confidentiality of Taxpayer Information) Bill 2010.

<sup>6</sup> The legislation uses the term 'the Department'. In the context of the *Taxation Administration Act 1953* and the *Foreign Acquisitions and Takeovers Act 1975*, 'the Department' means the Treasury – see section 19A of *Acts Interpretation Act 1901*.