

# ***PS LA 2005/23 - Disclosing information about a taxpayer's taxation affairs 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 *18 September 2024*



This 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 an instruction to ATO staff.*

### 1. What this Practice Statement is about

Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) contains 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 Secretary of the Department of Treasury (Treasury).

All legislative references in this Practice Statement are to Schedule 1 of the TAA, unless otherwise indicated.

**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, refer to Law Administration Practice Statement PS LA 2004/9 *Disclosing information about the affairs of a taxpayer to Ministers*.

### 2. 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 taxation information does not include the personal identifiers of an entity or information which could be used to ascertain an entity's identity, it is not protected information and Division 355 does not apply. That said, simply removing a taxpayer's name from information does not always mean that the identity of the taxpayer cannot 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.

<sup>1</sup> See [Chief Executive Instruction Security](#) (link available internally only) and related guidelines.

A tax file number (TFN) is not protected information. The exceptions included in this Practice Statement do not permit the disclosure of TFNs. Refer to section 8WB of the TAA for more information regarding the disclosure of a TFN.

**Note:** Protected information under Division 355 is not the same as information that is classified as 'protected' under the Australian Government's [Protective Security Policy Framework](#).<sup>1</sup>

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

Information is available to the public if it is in 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, you can disclose it.<sup>2</sup> However, you need to take care that you do not 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.

Table item 7 of subsection 355-50(2) permits a taxation officer to disclose protected information to Treasury for the purpose of the design or amendment of a taxation law.

Whether or not the disclosure of any particular item of protected information will be for the purposes of the design or amendment of a taxation law 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 Australian business number (ABN) of any entity before

<sup>2</sup> Section 355-45.

disclosing information to Treasury under this exception.

'Contact details' refers to address, phone number, email or similar details. It does not include very broad information such as the state or territory where the entity is located.<sup>3</sup>

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

Table item 7 of table 3 in subsection 355-65(4) allows protected information to be disclosed to Treasury for the purpose of administering the *Foreign Acquisitions and Takeovers Act 1975* (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 (repealed)***

Table item 7 of table 7 in subsection 355-65(8) allows information contained in the former 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***

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

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

<sup>3</sup> Paragraph 5.66 of the Explanatory Memorandum to the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010.

<sup>4</sup> The legislation uses the term 'the Department'. In the context of the TAA and the Takeovers Act, 'the Department' means the Treasury – see section 19A of the *Acts Interpretation Act 1901*.

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

As noted in this Practice Statement, contact details refers to address, phone number, email or similar details. They do not include very broad information such as the state or territory where the entity is located.

#### ***Disclosing protected information to enable or assist Treasury to deal with a breach or suspected breach of an obligation of confidence***

Table item 14 of table 7 in subsection 355-65(8) allows protected information to be disclosed to Treasury about an actual or suspected breach of an obligation of confidence by an entity against the Commonwealth or a Commonwealth entity in certain circumstances.

Disclosures to Treasury are permitted for the purpose of enabling or assisting in the consideration, development or implementation of any measure, or the taking of any action, directed at dealing with the breach or suspected breach.

The obligation of confidence must have arisen in connection with the entity providing advice or other services to a Commonwealth entity either:

- as an entity engaged by the Commonwealth entity for that purpose, or
- as an entity representing a taxpayer.

An obligation of confidence may be contractual or implied in the circumstances.<sup>5</sup>

In this context, advice does not include comments provided by public consultation. It could include but is not limited to information received via private consultations, working groups and roundtables, where participants signed an agreement requiring them to maintain the confidentiality of information they received during the process. Advice does not need to be provided for a fee.<sup>6</sup>

A disclosure under this exception could be made to assist Treasury undertake a range of activities in relation to a breach or suspected breach of confidence. For example, Treasury may develop measures that are broader than directly addressing the breach or may take actions directed at dealing with the specific breach or suspected breach.<sup>7</sup>

<sup>5</sup> Paragraph 4.14 of the Explanatory Memorandum to the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (2023 EM).

<sup>6</sup> Paragraph 4.15 of the 2023 EM.

<sup>7</sup> Paragraph 4.16 of the 2023 EM.

Whether the criteria contained in this exception have been met, including whether a breach or suspected breach of an obligation of confidence has occurred, is a question of fact. This should be considered and determined carefully in each particular case.

The ABN, name, contact details and personal information (within the meaning of the *Privacy Act 1988*) of any entity other than the entity suspected of the breach will generally need to be removed before information is disclosed to Treasury under this exception. The only circumstances where information of this type can be disclosed is where we are satisfied this is necessary to enable or assist Treasury to deal with the breach or suspected breach.

For ATO staff other than the Commissioner, second commissioners and Senior Executive Service (SES) employees (including acting SES employees), a disclosure under this exception must be authorised by:

- the Commissioner of Taxation
- a second commissioner, or
- an SES (including acting SES) employee of the ATO, who is not a direct supervisor of the taxation officer.

For information on the procedure for disclosing information to Treasury under this exception, see [Chief](#)

[Executive Instruction](#) *Providing policy and law design advice to Treasury and other government agencies* (link available internally only).

## 5. More information

For:

- information on the correct procedures for providing information to Treasury, see [Chief Executive Instruction](#) *Providing services to Treasury Portfolio Ministers and Parliament* (link available internally only)
- advice on providing information to Treasury, contact [General Counsel Requests](#).

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## Amendment history

### 18 September 2024

Part	Comment
Section 2	Additional guidance added on what further matters need to be considered in determining whether certain information with minor changes is still protected information. References added to legislative provisions that permit disclosure of tax file numbers.
Section 4	Updates made to reflect the amendments to information sharing laws in Division 355 made by the <i>Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024</i> .
Contact details	Updated.
Throughout	Content updated to ensure legislative and procedural accuracy. Updated in line with current ATO style and accessibility requirements.

### 4 January 2018

Part	Comment
Contact details	Updated.

### 25 February 2016

Part	Comment
All	Updated to new LAPS format and style.

### 8 May 2014

Part	Comment
Contact details	Updated.

### 7 April 2014

Part	Comment
Paragraphs 3, 35 and 36	Updated to reflect changes to the <i>Privacy Act 1988</i> .
Contact details	Updated.

### 4 February 2011

Part	Comment
Throughout	Updated as a result of Division 355 of Schedule 1 of the <i>Taxation Administration Act 1953</i> .

### 7 August 2008

Part	Comment
Contact details	Updated.

## References

<b>Legislative references</b>	TAA 1953 8WB TAA 1953 Sch 1 Div 355 TAA 1953 Sch 1 355-30(1) TAA 1953 Sch 1 355-45 TAA 1953 Sch 1 355-50(2) TAA 1953 Sch 1 355-65(4) TAA 1953 Sch 1 355-65(8) Acts Interpretation Act 1901 19A Foreign Acquisitions and Takeovers Act 1975 Privacy Act 1988 Tax Agent Services Act 2009
<b>Other references</b>	<a href="#">Chief Executive Instruction</a> Providing policy and law design advice to Treasury and other government agencies (link available internally only) <a href="#">Chief Executive Instruction</a> Providing services to Treasury Portfolio Ministers and Parliament (link available internally only) <a href="#">Chief Executive Instruction</a> Security (link available internally only) Department of Home Affairs <a href="#">Protective Security Policy Framework</a> [website] Explanatory Memorandum to the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010 Explanatory Memorandum to the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023
<b>Related Practice Statements</b>	PS LA 2004/9

## ATO references

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