

2009

EXPOSURE DRAFT

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TAX LAWS AMENDMENT (CONFIDENTIALITY OF  
TAXPAYER INFORMATION) BILL 2009

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EXPLANATORY MATERIAL

(Circulated by the authority of the  
Treasurer, the Hon Wayne Swan MP)







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# Glossary

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The following abbreviations and acronyms are used throughout this explanatory material.

| <i>Abbreviation</i> | <i>Definition</i>   |
|---------------------|---|
| ATO                 | Australian Taxation Office                                    |
| ABS                 | Australian Bureau of Statistics                               |
| ABN                 | Australian Business Number                                    |
| ABN Act             | <i>A New Tax System (Australian Business Number Act) 1999</i> |
| ACCC                | Australian Competition and Consumer Commission                |
| APEC                | Asia-Pacific Economic Cooperation                             |
| APRA                | Australian Prudential Regulation Authority                    |
| ASIC                | Australian Securities and Investments Commission              |
| ASIO                | Australian Security Intelligence Organisation                 |
| Commissioner        | Commissioner of Taxation                                      |
| ITAA 1936           | <i>Income Tax Assessment Act 1936</i>                         |
| ITAA 1997           | <i>Income Tax Assessment Act 1997</i>                         |
| OECD                | Organisation for Economic Co-operation and Development        |
| SIS Act             | <i>Superannuation Industry (Supervision) Act 1993</i>         |
| TAA 1953            | <i>Taxation Administration Act 1953</i>                       |

| <i>Abbreviation</i> | <i>Definition</i>   |
|---------------------|---|
| TFN                 | tax file number   |
| the Register        | Australian Business Register                                |
| the Review          | <i>Review of Taxation Secrecy and Disclosure Provisions</i> |

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# ***General outline and financial impact***

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## **Confidentiality of taxpayer information**

This exposure draft proposes to consolidate and standardise the secrecy and disclosure provisions spread over many taxation law Acts into a new framework in Schedule 1 to the *Taxation Administration Act 1953*.

Numerous amendments over the years to the secrecy and disclosure provisions in the tax laws have resulted in inconsistent protection of taxpayer information and increased privacy risks.

The key principle in the new framework is the protection of taxpayer information. In addition, in consolidating and standardising the existing provisions the new framework will provide clarity and certainty to taxpayers, the Australian Taxation Office and users of taxpayer information.

Some minor new disclosures of information are permitted, in instances where privacy concerns are outweighed by the public benefit of those disclosures.

***Date of effect:*** These amendments apply to disclosures of protected information made on or after the day after Royal Assent.

***Proposal announced:*** This measure was announced by the Assistant Treasurer in Media Release No. ... of ..... 2009.

***Financial impact:*** Nil.

***Compliance cost impact:*** Nil.



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# **Chapter 1**

## ***Introduction to the new framework for the protection of taxpayer information***

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### **Outline of chapter**

- 1.1 This chapter:
- outlines the background to the new framework governing the secrecy and disclosure of taxpayer information; and
  - provides an overview of the key elements of the new framework.

### **History and background**

#### **Operation of current provisions**

1.2 In order to maintain taxpayer privacy and confidence, the secrecy provisions in Australia's tax legislation impose strict obligations on taxation officers and others who receive taxpayer information. There is a general rule that 'officers' cannot disclose information that would identify a taxpayer. Serious sanctions are imposed for breaches of these obligations.

1.3 Exceptions to the obligation not to disclose taxpayer information are necessary because information obtained by the Australian Taxation Office (ATO) needs to be used by the ATO to fulfil its role and can often be vital to other arms of government in performing their functions effectively. So, for instance, existing exceptions allow:

- 'officers' to use taxpayer information in the performance of their duties;
- law enforcement agencies to use information obtained by the ATO for certain criminal investigations; and
- other government departments and agencies to use taxpayer information for specific purposes.

1.4 At present, taxation secrecy and disclosure provisions are found across some 19 different taxation law Acts. The taxation law Acts and provisions being amended by this exposure draft are listed in Chapter 8 (along with the provisions in the new framework which replace those provisions being repealed). However, the *A New Tax System (Australian Business Number) Act 1999* (ABN Act) secrecy and disclosure provisions are not being repealed. The reasons for this are explained further in paragraphs 1.19 to 1.22.

### **Problems with the current law**

1.5 Successive ad-hoc amendments have complicated the application of the existing provisions and increased the volume of the taxation laws. In addition, while basic principles have been replicated across the provisions, the use of disparate drafting styles has resulted in inconsistent protection of taxpayer information and uncertainty for taxation officers, other government officers, and taxpayers.

1.6 The existence of taxation law secrecy and disclosure provisions across 19 different taxation law Acts has also contributed to the overall complexity and volume of the taxation laws.

### **The Review of Taxation Secrecy and Disclosure Provisions**

1.7 The *Review of Taxation Secrecy and Disclosure Provisions* (the Review), announced by the former Treasurer on 17 August 2006, examined the operation of the various secrecy and disclosure provisions in Australia's taxation laws. The primary objective of the Review was to investigate the potential for standardising the taxation secrecy and disclosure provisions found across the taxation laws into one piece of legislation, to increase certainty for taxpayers and for users of tax information.

1.8 The Review recommended standardising the various secrecy and disclosure provisions in the taxation laws into a single framework.

1.9 The Review also proposed some new disclosures in areas where the existing secrecy and disclosure rules were impeding a legitimate need to access taxpayer information. The proposed new disclosures were:

- to law enforcement and intelligence agencies;
- to third parties where a duty is owed to them; and
- to agencies such as the Australian Securities and Investments Commission and the Australian Bureau of Statistics which

would otherwise collect the same information directly from the taxpayers concerned.

1.10 Submissions from government agencies, professional associations and the general public were sought in response to the Review. Following consultation, some of the proposed disclosures presented in the Review were not pursued and are therefore not included in the new framework.

## **Key elements of the new framework**

1.11 The new framework will consolidate the existing secrecy and disclosure provisions found in 18 taxation law Acts and standardise the provisions into a single framework.

1.12 Some new disclosures of information will also be introduced in instances where privacy concerns are outweighed by the public benefit of those disclosures.

1.13 The secrecy and disclosure provisions in this exposure draft are divided into five Subdivisions within Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953):

- Subdivision A outlines the objects of the framework and sets out some basic principles to guide the consideration of future proposed disclosure provisions.
- Subdivision B contains the provisions governing the disclosure of taxpayer information by taxation officers.
- Subdivision C contains the provisions governing the disclosure of taxpayer information by non-taxation officers where that information was obtained legally.
- Subdivision D contains the provisions governing the disclosure of taxpayer information by non-taxation officers where that information was obtained unlawfully.
- Subdivision E contains provisions relating to the taking of oaths by taxation officers and provisions relating to injunctions.

1.14 The majority of the provisions refer to both the disclosure and recording of taxpayer information. For the purposes of this explanatory material, a reference to the disclosure of taxpayer information is, where appropriate, to be taken as a reference to the recording of that information.

## Objectives of the new framework

1.15 The primary objective of the new framework is to protect the confidentiality of taxpayer information. The level of compliance with all taxation laws could be adversely affected if taxpayers thought that their information could be readily disclosed. [*Schedule 1, item 1, paragraph 355-10(a)*]

1.16 The new framework gives effect to this primary objective by placing a general prohibition on the disclosure of taxpayer information. However, in recognition of the importance that taxpayer information can play in facilitating efficient and effective government administration and law enforcement, disclosure of taxpayer information are permitted in certain specified circumstances. As a guide for future policy consideration, the disclosure of taxpayer information should be permitted only where the public benefit associated with the disclosure clearly outweighs taxpayer privacy. [*Schedule 1, item 1, section 355-1 and paragraph 355-10(b)*]

1.17 As a general rule for considering future disclosures, the more remote the use of information is from the purpose for which it was originally obtained, the stronger the public benefit needs to be before a disclosure can be justified. This means that where the purpose for the disclosure is quite remote from the reason that a taxpayer provided the information in the first place (e.g., the disclosure of taxpayer information to locate people who are unlawfully in Australia), then the disclosure provision should generally be very closely targeted, allowing for the disclosure of taxpayer information for only a strictly defined purpose. On the other hand, where a disclosure is closely aligned to the purpose for which the Commissioner of Taxation (Commissioner) obtained the information in the first place (e.g., the disclosure of taxpayer information to administer a taxation law), then the disclosure provision can be quite broad.

1.18 While the framework broadly seeks to retain the existing level of disclosures, it has sought to clarify ambiguities in the law. In addition, the standardisation and harmonisation of provisions across the taxation law will necessarily involve some changes to current disclosures. These changes are discussed in further detail in the following chapters.

## **Exclusions from the new framework**

### ***Maintaining the secrecy and disclosure provisions in the A New Tax System (Australian Business Number Act) 1999***

1.19 While there are 19 taxation law Acts containing taxation secrecy and disclosure provisions, the new framework replaces only 18 of these, with the provisions in the ABN Act (section 30) being retained.

1.20 The ABN Act established the Australian Business Register (the Register) on which all Australian Business Numbers (ABNs) are recorded. The Register and ABNs were introduced as a whole-of-government initiative to make it easier for businesses to interact with government agencies across all levels of government. This is reflected in the very broad disclosures that are permitted under the ABN Act.

1.21 While the Commissioner currently oversees the Register and ATO staff administer ABNs, these roles are intended to be quite separate from the roles that the Commissioner and ATO staff fulfil under other taxation laws. As a consequence of this and the fact that the broad disclosures in section 30 of the ABN Act are largely at odds with the more restrictive provisions in other taxation laws, it is appropriate for section 30 of the ABN Act to be retained.

1.22 Taxation officers involved in administering the ABN Act will therefore be able to disclose information as a taxation officer in line with the provisions in the new framework (see Chapter 5) as well as under section 30 of the ABN Act. Note, however, that section 30 of the ABN Act only permits the disclosure of information or documents that are protected within the meaning of that Act. As a result of an amendment being introduced by this exposure draft, this will include both documents and information that were obtained under or for the purposes of the ABN Act. [*Schedule 1, item 3*]

### ***Tax file numbers***

1.23 While the taxation laws include a number of provisions designed to ensure the security of tax file numbers (TFNs) (see Subdivision BA of Division 2 of the TAA 1953) the protection of TFNs does not form part of the framework. This is because TFN offences are drafted very differently from other taxation secrecy and disclosure provisions as a result of the manner in which TFNs are transmitted. Normally taxpayer information is not protected until it comes into the ATO. However, TFNs need to be protected in the hands of employers, banks, superannuation funds, etc, before they reach the ATO. As such, the format of the new framework would not provide an appropriate level of protection for TFNs. As a consequence, TFNs will continue to be protected by the existing

provisions in the taxation laws and through the legally binding guidelines on the use, disclosure and storage of TFNs which are issued by the Office of the Privacy Commissioner.

### **Interaction with other laws**

1.24 This exposure draft complies with Australia's obligations under:

- the Organisation for Economic Co-operation and Development *Guidelines for the Protection of Privacy and Transborder Flows of Personal Data*;
- the Asia-Pacific Economic Cooperation *Privacy Framework*; and
- the United Nations *International Covenant on Civil and Political Rights*.

1.25 While the provisions in the new framework are designed to provide an overarching protection of taxpayer information, that information is also protected in other ways. For instance, personal information is also protected by the *Privacy Act 1988* and the work of the Office of the Privacy Commissioner. The ATO also has its own administrative procedures that restrict access to taxpayer information on a need-to-know basis. Unauthorised access to taxpayer information will also continue to be an offence under section 8XA of the TAA 1953.

1.26 This framework is intended to contain the main circumstances in which taxpayer information may be legally be disclosed. [*Schedule 1, item 1, section 355-1*]

1.27 There are, however, a number of non-taxation Acts which effectively override the secrecy and disclosure provisions contained in the framework. These permit other Commonwealth entities such as the Auditor-General or the Inspector-General of Taxation to obtain taxpayer information, or access such information, in certain clearly defined circumstances. Examples of such Acts and provisions include:

- sections 32 and 33 of the *Auditor-General Act 1997*;
- section 15 of the *Inspector-General of Taxation Act 2003*;
- section 9 of the *Ombudsman Act 1976*;
- section 44 of the *Privacy Act 1988*;
- Schedule 6 to the *Anti-Terrorism Act (No. 2) 2005*; and

- the power of Parliament to compel the production of information under the *Parliamentary Privileges Act 1987* (though note that the new framework does limit the application of Parliamentary privilege).

1.28 Most of these provisions have the effect that, if a taxation officer or another entity in receipt of taxpayer information is compelled to provide taxpayer information, they cannot be prosecuted for any offence contained within the framework.



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## **Chapter 2**

### **Key definitions**

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#### **Outline of chapter**

2.1 The new framework ensures the protection of ‘protected information’ in the hands of ‘taxation officers’ and other entities. ‘Protected information’ is defined to mean, amongst other things, information obtained under a ‘taxation law’.

2.2 This chapter provides detailed information on these three key terms around which the new framework has been structured.

#### **Context of amendments**

#### **Operation of current provisions**

2.3 The current secrecy and disclosure provisions found across the taxation laws adopt different drafting styles in identifying the information that they protect. Some, such as section 16 of *Income Tax Assessment Act 1936* (ITAA 1936) and section 3C of the *Taxation Administration Act 1953*, define both the individual subject to the provisions and the information subject to protection together. Other provisions specifically define what constitutes ‘protected information’ (and, in some cases, ‘protected documents’). However, they all have the same effect of either protecting information obtained by the Australian Taxation Office (ATO) under the particular Act in which the definition is found or protecting a subset of information obtained by the ATO.

2.4 The current provisions apply to ATO officers as well as others who receive taxpayer information from the ATO. While the current provisions have the effect of permitting ATO officers to make a broader range of disclosures than other recipients of taxpayer information, there is generally no clear distinction in the manner in which the two are defined (section 16 of the ITAA 1936, for instance, refers to both collectively as ‘officers’).

## Summary of new law

2.5 In order to consolidate all of the existing taxation secrecy and disclosure provisions into a single framework, a single definition of ‘protected information’ is necessary. The creation of this single definition relies on the definition of a ‘taxation law’.

2.6 As further explained in Chapter 3 of this explanatory material, the new framework will draw a distinction between those individuals working for the ATO who obtain taxpayer information and those who receive the information from the ATO. For this purpose a definition of ‘taxation officer’ is introduced.

2.7 A ‘taxation officer’ is not limited to an individual holding a statutory position within the ATO (such as the Commissioner of Taxation (Commissioner) or public servants employed by the ATO but also extends to other non ATO public servants who have a particular function under a taxation law and non public service entities performing services for or in relation to the ATO, such as contractors.

## Detailed explanation of new law

### Definition of ‘taxation officer’

2.8 A *taxation officer* is defined broadly to mean:

- an individual filling the statutory appointments of Commissioner or Second Commissioner;
- an individual directly engaged under the *Public Service Act 1999*, and performing duties in the ATO;
- an entity engaged to provide services relating to the ATO (such as cleaning firms or IT contractors) and any individual employed or sub-contracted by such an entity; and
- an individual appointed or employed by, or performing services for, the Commonwealth who performs functions or exercises powers under or for the purposes of a taxation law.

[Schedule 1, item 1, subsection 355-25(1)]

### Example 2.1

Ling is employed by the Australian Bureau of Statistics (ABS) but is currently seconded to the ATO. Ling would be considered a taxation officer as she is a Commonwealth public servant and is performing duties in the ATO, even though she is employed by the ABS.

### Example 2.2

Simon works at a private debt collection company that is contracted by the ATO to follow up on outstanding taxpayer debts. Simon's role is to contact taxpayers and attempt to make arrangements for payment. As an entity contracted to provide services to the ATO, the private debt collection company would be a taxation officer. As an individual employed by the private agency to provide these services, Simon would also be considered a taxation officer.

### Example 2.3

The ATO seeks legal advice about a complex case of international tax evasion from a private law firm that specialises in international taxation. The law firm seeks the services of Marcus, a barrister, for an opinion on various matters. The law firm is considered a taxation officer as it is an entity engaged to perform services for the ATO. Marcus is also considered to be a taxation officer as he has been engaged by an entity that has itself been engaged to provide services for the ATO.

2.9 Other individuals working for the Commonwealth who have a particular role or power under a taxation law or perform a function to give effect to a taxation law are also 'taxation officers'. [*Schedule 1, item 1, paragraph 355-25(1)(e)*]

### Example 2.4

Melanie donates a rare artwork to a public Sydney art gallery. The Minister for the Environment, Water, Heritage and the Arts, or a delegate, is required to certify its value for tax purposes as part of the Cultural Bequests Program under section 30-235 of the *Income Tax Assessment Act 1997* (ITAA 1997). When the Minister or delegate certifies the value of the painting for tax purposes, the Minister or delegate is a taxation officer as this particular function is performed under a taxation law.

2.10 However, an individual is not performing a function for the purposes of a taxation law where they are involved in the analysis, design, drafting or enactment of a new taxation law. This is because a taxation law, as explained below, incorporates only those laws that are being administered by the Commissioner. Therefore a 'taxation officer' would not include Treasury officers involved in the policy design and

development of new taxation laws, drafters of taxation laws and Members of Parliament (or their staff) who vote to enact new taxation laws.

### Example 2.5

Ron is employed by the Department of the Treasury and, in the course of his duties, analyses the policy behind an existing taxation law, provides advice to the Government as to whether the law needs to be amended and liaises with the Office of Parliamentary Counsel drafters in designing new legislation. Although Ron and the Office of Parliamentary Counsel drafters are assisting with the design of the taxation laws they are not performing functions or exercising powers under or for the purposes of a taxation law. Instead, Ron is merely providing advice to the Government about a potential change to an existing taxation law and, together with the drafters, is working to draft the necessary changes.

### Example 2.6

Ambrosia is a member of the Board of Taxation. The Board of Taxation has been set up by the Government (not under a taxation law) to provide advice on the operation of the taxation laws and their administration. Ambrosia is not a taxation officer because she is assisting the Government with general policy issues affecting the tax system as a whole and is not exercising any function under or for the purposes of an existing taxation law.

### Example 2.7

David works at the Commonwealth Ombudsman's Office as part of a team that investigates taxpayer complaints. He receives a complaint from Linda about how the ATO has handled her tax affairs. Although David liaises with the ATO concerning Linda's complaint he is not a taxation officer. This is because he is not acting under or for the purposes of a taxation law. Instead, he is acting under and for the purposes of the *Ombudsman Act 1976*.

## Definition of 'protected information'

2.11 **Protected information** (referred generally in this explanatory material as 'taxpayer information') is defined to mean information disclosed or obtained under or for the purposes of a taxation law which relates to the affairs of an entity (including but not limited to the entity's tax affairs) and which can identify the entity. [*Schedule 1, item 1, subsection 355-25(2)*]

2.12 Of note, to be protected the information need not necessarily relate to an individual but can relate to a whole range of 'entities' that are

required to interact with the tax system. *Entity* is defined in section 960-100 of the ITAA 1997 to mean, amongst other things:

- an individual;
- a body corporate;
- a body politic;
- a partnership;
- any other unincorporated association or body of persons;
- a trust;
- a superannuation fund; or
- an approved deposit fund.

2.13 These provisions provide much broader protection than the *Privacy Act 1988* which only protects personal information about natural persons (that is, individuals). Taxation secrecy provisions recognise the need to protect information provided by any taxpayer, including information about an individual's annual income, a company's wage bill or a superannuation fund's rate of return.

2.14 To be protected, information must have been obtained under a law that was a taxation law when the information was obtained.  
*[Schedule 1, item 1, paragraph 355-25(2)(a)]*

### **Example 2.8**

Before 2001, the *Child Support (Registration and Collection) Act 1988* was administered by the Commissioner. Information obtained under that law while the Commissioner administered it is protected information. Information obtained under that law since 2001 when the General Manager of the Child Support Agency administered it is not protected information for the purposes of these provisions (although it would still be protected under the secrecy provision in the *Child Support (Registration and Collection) Act 1988*).

2.15 Protected information is information which identifies (or is reasonably capable of being used to identify) an entity. Accordingly, information which in no way identifies an entity will not fall within the scope of the new framework. *[Schedule 1, item 1, paragraph 355(2)(c)]*

### **Example 2.9**

Each year the ATO publishes *Taxation Statistics* — a comprehensive statistical publication which informs the community about what taxpayers have been reporting to the ATO. *Taxation Statistics* is a valuable resource for academics, researchers, scrutineers and the media. Because the information presented in *Taxation Statistics* is in aggregate statistical form, it is not possible to identify any particular taxpayer from the publication. Hence this information is not protected information.

2.16 Information that, at first glance, is incapable of identifying a taxpayer may still be protected information if the identity of the taxpayer can be ascertained by a process of deduction.

### **Example 2.10**

The ATO collects information on the volume of production of haysnorkels in Australia. Because haysnorkel production is a very specialised industry, only three firms manufacture haysnorkels in Australia. One major producer, meeting the needs of most of the Australian market, and two very much smaller boutique producers manufacture only a small number of haysnorkels each year. If the ATO were to disclose information on the aggregate production of haysnorkels in Australia, then it would be possible for anyone with a general knowledge of the haysnorkel market to deduce (with a fair degree of accuracy) how many haysnorkels were being manufactured by each producer. In this case, the disclosure of aggregate production information would, though not explicitly identifying a particular taxpayer, allow a particular haysnorkel producer to be identified. Such aggregate information would therefore be protected information.

2.17 Protected information includes information in the form of written documents, conversations, electronic recordings, transcripts or any other form in which information can be recorded. It includes information obtained directly from a taxpayer or information generated by the ATO (for instance, through the collating, cross referencing or summarising of related information from a variety of different sources).

### **Example 2.11**

The ATO is auditing Ian. The ATO has obtained a variety of information about Ian including information from his annual tax returns and information from the pay as you go withholding statement provided by his employer. The ATO collates a file on Ian that summarises the information from these different sources. Any information summarised on Ian's audit file is protected information.

***Tax file numbers are not ‘protected information’***

2.18 Tax file numbers are not ‘protected information’ within the meaning of the new framework because they cannot of themselves identify a taxpayer. The reasons for not including tax file numbers in the framework are outlined in paragraph 1.23.

***‘Protected information’ under the Excise Act 1901***

2.19 The exposure draft maintains the savings provision that were enacted when the *Taxation Laws Amendment (Excise Arrangements) Act 2001* transferred the administration of excise from the Australian Customs Service to the Commissioner.

2.20 Without the saving provision, information that was obtained under the *Excise Act 1901* prior to the introduction of this change would no longer be protected information. The savings provision ensures the secrecy provisions in section 159 of the *Excise Act 1901* will continue to apply to information obtained before the administrative change, despite section 159 being repealed. [*Schedule 1, item 120*]

2.21 Information obtained by the ATO after the transfer would be protected information for the purposes of these provisions. Information obtained by the Australian Customs Service before the transfer is not protected information. However, that information is still protected under the secrecy provision in the *Excise Act 1901* as in force before its repeal.

**Definition of ‘taxation law’**

2.22 As noted above, whether information is protected depends on whether it was obtained under a taxation law.

2.23 A **taxation law** is currently defined in section 995-1 of the ITAA 1997 as:

- an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act); or
- regulations made under such an Act, including such a part of an Act.

2.24 The exposure draft Bill will introduce a minor amendments to the second tier of this definition by replacing the reference to ‘regulations’ with one to ‘legislative instruments’ to ensure that all legislative instruments (and not just regulations) made under a taxation law Act of

which the Commissioner has the general administration also constitute taxation laws. *[Schedule 1, item 50]*

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# **Chapter 3**

## **Offences**

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### **Outline of chapter**

3.1 This chapter outlines the basic prohibition on the disclosure of information by both taxation officers and non-taxation officers. Specifically, it provides details on the offence provisions that apply to:

- the unauthorised disclosure of taxpayer information by taxation officers (Subdivision 355-B);
- the unauthorised disclosure of taxpayer information by non-taxation officers who receive information lawfully (Subdivision 355- C); and
- the unauthorised disclosure of taxpayer information by non-taxation officers who receive the information as a result of another entity's breach of the new framework (Subdivision 355-D).

### **Context of amendments**

#### **Operation of current provisions**

3.2 Across the 18 taxation law Acts that contain taxation secrecy and disclosure provisions and are the subject of standardisation, there are numerous offence provisions that prohibit the disclosure of taxpayer information. However, these provisions generally do not distinguish between taxation officers and other Commonwealth and State officers who are in receipt of taxpayer information.

3.3 The offence provisions in the various taxation law Acts generally apply to the disclosure of taxpayer information obtained under that particular Act or under a group of tax Acts.

3.4 The current law contains a specific offence provision that prohibits on-disclosure of taxpayer information by non-taxation officers who have received the information as a result of a breach of the law.

3.5 The penalties imposed where a person has committed an offence vary from Act to Act.

3.6 Under the interpretation of the existing law, taxpayer information can always be disclosed to the taxpayer concerned or to their agent.

## **Summary of new law**

3.7 There are three offence provisions in this exposure draft that together protect taxpayer information. Unlike the current law, no distinction is made as to which taxation law Act the information is obtained under. Rather, the offence provisions prohibit the disclosure of all protected information (see Chapter 2 for a further explanation of the definition of ‘protected information’).

3.8 Unlike the current law, the offence provisions in the new framework also draw a distinction between disclosures by taxation officers and disclosures by non-taxation officers (see Chapter 2 for a further explanation of the definition of ‘taxation officer’). The new framework also retains a discrete offence provision for non-taxation officers who have received taxpayer information as a result of another entity’s breach of a taxation law.

3.9 The new framework prohibits:

- the disclosure of taxpayer information by current and former taxation officers who obtained that information as a taxation officer;
- the disclosure of taxpayer information by non-taxation officers who receive the information as a result of a lawful disclosure under one of the exceptions in the new framework; and
- the disclosure of taxpayer information by non-taxation officers who receive the information as a result of a breach of a provision in the new framework.

3.10 Collectively, these offence provisions ensure that all taxpayer information that satisfies the definition of ‘protected information’ is indeed protected. The information will continue to be protected even if it has been disclosed outside of the Australian Taxation Office (ATO) and will continue to be protected notwithstanding that it has been on-disclosed numerous times.

## Comparison of key features of new law and current law

| <i>New law</i>   | <i>Current law</i>   |
|--|--|
| There are separate offence provisions for taxation officers and for non-taxation officers that are in receipt of taxpayer information.                       | Generally, offence provisions apply to 'officers' which includes both taxation officers and other Government officers who are in receipt of taxpayer information from a taxation officer.    |
| It is an offence for <i>all</i> entities who are in receipt of taxpayer information to disclose that information, except in certain specified circumstances. | It is an offence for a Government officer (other than a taxation officer) who is in receipt of taxpayer information to disclose that information, except in certain specified circumstances. |

## Detailed explanation of the new law

3.11 This part provides an explanation of common elements of the offence provisions as well as a guide as to how each of the three offence provisions are intended to operate.

### Common elements of the offence provisions

#### *Offences apply to 'entities'*

3.12 The new framework prohibits the disclosure of protected information by an entity, whether that entity is a taxation officer or not. While a taxation officer will generally be an individual, the definition of 'taxation officer' also includes an 'entity engaged to provide services relating to the ATO' (see Chapter 2).

3.13 The use of the term 'entity' is intended to ensure that the application of the offence provisions is as wide an application as possible. Whilst the offence provision will generally be directed at the individual offender, the entity that the individual is employed or contracted by or otherwise associated with may be prosecuted where the individual's actions were at the behest of that other entity. Indeed, there are specific provisions in the taxation law that permit certain individuals to be prosecuted for an offence committed by an entity in certain circumstances. For example:

- partners can be prosecuted for an offence committed by the partnership (see section 444-30 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953)); and

- members of the Committee of Management of unincorporated associations or bodies can be prosecuted for an offence committed by that association or body (see section 444-5 of Schedule 1 to the TAA 1953).

3.14 As the definition of taxation officer includes both entities engaged to provide services relating to the ATO and individuals employed by those entities, penalties can be imposed upon any legal person involved in any unlawful disclosure of taxpayer information. [*Schedule 1, item 1, paragraphs 355-25 (1)(c) and (d)*]

### **Example 3.1**

Extra Spandy-Clean Cleaning Service Pty Ltd was contracted to undertake cleaning services for the Melbourne branch of the ATO. Michael, one of the cleaners engaged by Extra Spandy-Clean Cleaning Services to clean the Melbourne ATO, had access to some unsecured files and subsequently publicly disclosed a taxpayer's information. As taxation officers, both Extra Spandy-Clean Cleaning Service and Michael can be prosecuted.

### ***Offences relate to the disclosure and the recording of taxpayer information***

3.15 The offence provisions apply not only to the disclosure of taxpayer information, but also to the recording of that information. This recognises that it is important not only to ensure that information is not disclosed unlawfully, but that the information is not recorded in another form that can be readily accessed by others. [*Schedule 1, item 1, subparagraphs 355-20(1)(b)(i) and 355-155(1)(a)(i) and paragraph 355-265(1)(a)*]

### **Example 3.2**

In the course of her duties as a taxation officer, Stacey found herself working with the taxation files of a musical artist whom she very much admired. Stacey copied some details from the taxation files into her private diary. Even though Stacey has not disclosed that information, she has still committed an offence through the recording of the information.

### ***Penalties for breach***

3.16 If an entity breaches an offence provision, a court can impose a penalty of imprisonment of up to two years. For a natural person subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine up to 120 penalty units (currently \$13,200) as well, or instead of, the imprisonment penalty. [*Schedule 1, item 1, sections 355-20, 355-155 and 355-265*]

***Provision of taxpayer information to the taxpayer***

3.17 While it may be an offence for a taxation officer or non-taxation officer in lawful receipt of information to disclose protected information to any other entity (or to any court or tribunal), it is not an offence to disclose information to the taxpayer themselves. [*Schedule 1, item 1, subparagraphs 355-20(1)(b)(ii) and 355-155(a)(ii)*]

**Example 3.3**

Brian rings the ATO seeking assistance with his tax affairs. It is not an offence for the taxation officer addressing Brian's inquiry to make available to Brian, after confirming his identity, any information about Brian's affairs that is on ATO files.

***Provision of taxpayer information to entities representing the taxpayer***

3.18 The existing law has been interpreted to permit the disclosure of taxpayer information to a taxpayer's agent. This is appropriate as there are many circumstances in which the taxpayer cannot deal with their own tax affairs or otherwise wishes to appoint someone to assist them in doing so. This would include professional agents of the taxpayer (such as a legal representative or a tax agent) or a friend or family member appointed by the individual to deal with their taxation affairs. In relation to this latter group, the ATO currently has in place formal procedures to authorise such agents. Currently this is achieved through the completion of an authorisation form or over the telephone.

3.19 The new framework retains the principle that a representative of a taxpayer should be able to access the taxpayer's information. Certainly non-taxation officers who have received information from the ATO lawfully will continue to be able to disclose information to a taxpayer's agent, as defined by the common law. [*Schedule 1, item 1, subparagraph 355-155(a)(ii)*]

3.20 For disclosures by taxation officers, a different approach that does not rely exclusively on the common law concept of agency is being taken. The new framework includes an exhaustive list of entities that represent a taxpayer which are able to access that taxpayer's information. A taxation officer does not commit an offence if they disclose taxpayer information to such an entity. [*Schedule 1, item 1, subparagraph 355-20(1)(b)(ii) and subsection 355-20(2)*]

3.21 The move away from relying on a common law concept of agency is designed to overcome the practical problems of determining whether someone is or is not an entity's agent and what the scope of that agency relationship is. It will also permit disclosures to representatives who might not otherwise be considered an agent under the common law

(but who otherwise might have a legitimate need to access a taxpayer's information in their capacity as a representative of a taxpayer).

*Agents appointed by the taxpayer in the approved form*

3.22 To ensure that there is sufficient flexibility to enable a taxpayer to appoint a range of entities as their agent, the new framework will permit disclosure of information to anyone that the taxpayer has appointed, in an approved form (see section 388-55 of the TAA 1953), to act on their behalf in relation to their information. This could include friends and family or other professional representatives not otherwise specifically provided for. [*Schedule 1, item 1, paragraph 355-20(2)(b)*]

**Example 3.4**

Hans is recovering from an operation at home. He notifies the ATO in the approved form that his son, Frederic, will be completing his tax return for the past financial year. It is not an offence for a taxation officer to provide Frederic with information about Hans which is necessary for Frederic to complete Hans' tax return. However, because Hans has only authorised Frederic to be his agent in completing the past financial year's tax return, it is an offence if a taxation officer provides information about Hans which is not relevant for that tax return.

3.23 It should be noted that, while a taxpayer can appoint anyone to access their information in the approved form, the entity appointed is the taxpayer's agent. This has significant implications. The relationship between a principal (ie, the taxpayer) and an agent is a fiduciary one. Generally, this means that the agent must act in the best interests of the taxpayer and without any conflict of interest and would in most circumstances (ie, in the absence of informed consent) preclude entities or individuals with other vested interests from acting as agents of the taxpayer.

3.24 Under the new framework, a taxpayer's consent to the disclosure of information does not authorise the disclosure of that taxpayer's information. The new framework therefore draws a distinction between providing information to an entity that has been appointed a taxpayer's agent (in which case the disclosure of information would be permitted) and someone who has merely obtained the consent of the taxpayer to access their information (in which case disclosure would not be authorised). This is discussed further in Chapter 4.

*Tax agents and BAS agents*

3.25 In many instances taxpayers will appoint a registered tax agent or business activity statement agent to conduct their taxation affairs. As

long as sufficient evidence is provided that indicates their appointment as the taxpayer's agent, disclosures to such agents will not constitute an offence. [*Schedule 1, item 1, paragraph 355-20(2)(a)*]

### **Example 3.5**

After several years of submitting his own tax returns, Joel decides to use a tax agent to prepare and submit his tax return for this financial year. Joel signs a change of details form appointing Jed, a registered tax agent, as his agent to manage all his taxation affairs. Jed submits this to the ATO. Jed contacts the ATO to ask for copies of Joel's previous tax returns, in order to ascertain what deductions Joel had previously claimed. It is not an offence for a taxation officer to provide information about Joel to Jed.

#### *Insolvency practitioners*

3.26 In instances where an insolvency practitioner (which could include a trustee in bankruptcy, a liquidator, a voluntary administrator, a receiver or an administrator of a deed of company arrangement) is appointed to oversee the affairs of a particular taxpayer one of their roles is to investigate the affairs of the entity. For instance, a trustee in bankruptcy has a duty to investigate the bankrupt's financial affairs (section 19AA of the *Bankruptcy Act 1966*). In instances where the records of the taxpayer are not well maintained, the insolvency practitioner may need to access information held by the ATO to fulfil their role. [*Schedule 1, item 1, paragraph 355-20(2)(c) and (d)*]

### **Example 3.6**

Haysnorkels Pty Ltd has become insolvent as a result of a global downturn in haysnorkel demand. Jeremy, a liquidator, is appointed by the Court to wind up the affairs of the company. Jeremy contacts the ATO to request copies of the company's tax returns for the past five years which will enable him to complete his job as a liquidator. The provision of these returns by the ATO is not an offence.

#### *Legal personal representatives and guardians*

3.27 The new framework also allows certain representatives such as a legal personal representative (defined by section 995.1 of the ITAA 1997) or guardian to access a taxpayer's information where that taxpayer is unable to appoint an agent to do so. This includes circumstances where the taxpayer is a minor or otherwise has a mental incapacity rendering them unable, by law, to form an agency relationship or where the taxpayer is deceased, is under a legal disability or has granted a general power of attorney. [*Schedule 1, item 1, paragraphs 355-20(2)(e) and (f)*]

## Specific elements of the offence provisions

### *Relating to taxation officers and former taxation officers*

3.28 It is an offence for a taxation officer or a former taxation officer to disclose taxpayer information if they obtained that information as a taxation officer. *[Schedule 1, item 1, paragraph 355-20(1)(d)]*

#### **Example 3.7**

Olivia is a taxation officer, employed in the ATO library in Adelaide. One weekend, she was discussing with her neighbour, Sally, the financial affairs of Sally's new home business. If Olivia were to disclose the information she learned from Sally, it would not be an offence under these provisions because Olivia obtained the information in a private capacity and not in her capacity as a taxation officer (although it may be a common law breach of confidence).

3.29 There will be entities who obtain taxpayer information as a taxation officer, and who then subsequently cease to be taxation officers. However, regardless of their present status, if they obtained information while working as a taxation officer it is an offence to disclose that information. *[Schedule 1, item 1, paragraph 355-20(1)(d)]*

#### **Example 3.8**

Kate worked at the ATO for a number of years before moving on to a lucrative career in the private sector. If Kate discloses protected information that she obtained as a taxation officer at any time during her life (whether in a work or non-work context) then she is committing an offence unless a relevant exception applies.

### *Relating to non-taxation officers*

3.30 Taxpayer information continues to be protected even when that information has been disclosed to a non-taxation officer. The new framework makes it an offence for a non-taxation officer who has received taxpayer information, either lawfully or unlawfully, to on-disclose that information.

3.31 This does not include non-taxation officers who obtained the protected information while they were a taxation officer. Such people will continue to be subject to the offence provision described above. *[Schedule 1, item 1, paragraphs 355-155(1)(c) and 355-265(1)(c)].*

#### *Non-taxation officers in lawful receipt of taxpayer information*

3.32 It is an offence for a non-taxation officer who has received taxpayer information lawfully (ie, under one of the disclosure provisions

in the new framework) to on-disclose that information (unless a relevant exception applies). [*Schedule 1, item 1, section 355-155*]

### **Example 3.9**

Paul, an employee of the Australian Prudential Regulation Authority, receives taxpayer information from the ATO for the purposes of administering the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Paul discloses the information to a journalist and to another Australian Prudential Regulation Authority employee for a purpose that is unconnected to the administration of the SIS Act. In both cases, the disclosure of the information is an offence.

3.33 The on-disclosure of taxpayer information will continue to be subject to this offence even if that information has been on-disclosed by non-taxation officers on numerous occasions. Regardless of how many on-disclosures there are in the chain, any protected information originally disclosed by a taxation officer remains protected. [*Schedule 1, item 1, paragraph 355-155(b)*]

### **Example 3.10**

Timothy, a taxation officer, discloses information to Jackie, an officer in the Australian Prudential Regulation Authority (APRA) for the purpose of administering the SIS Act. Jackie on-discloses the information to Jim, another APRA officer, also for the purpose of administering the SIS Act. Jim discloses the information to Bob, a barrister, for the purpose of briefing Bob on an upcoming civil proceeding that had arisen under the SIS Act. Though the information has been on-disclosed outside of the ATO a number of times, Jackie, Jim and Bob (as well as Timothy) must all ensure that their disclosure of the information is authorised by the new framework.

#### *Non-taxation officers not in lawful receipt of taxpayer information*

3.34 A distinction is made between non-taxation officers who receive information lawfully (ie, under an exception in the new framework) and those who receive the information unlawfully. This is because what such entities can do with the information is different. While it is not an offence to merely receive information unlawfully (though the person disclosing it would have committed an offence), those non-taxation officers who are in receipt of such information are limited in what they can then do with the information. This is discussed further in Chapter 6.

3.35 It is an offence for a non-taxation officer to on-disclose taxpayer information that they themselves have received as a result of a breach of a taxation law. [*Schedule 1, item 1, paragraph 355-265(1)(b)*]

### **Example 3.11**

Jordan, a taxation officer, discloses taxpayer information relating to the financial affairs of a prominent businessman to Ken, a friend of his who is a journalist. This disclosure is unauthorised. It is an offence for Ken to disclose or record this information (unless a relevant exception applies).

### **Transitional provisions relating to offences**

3.36 The transitional provisions in the exposure draft ensure that any protected information disclosed to an entity under a taxation disclosure provision that is being repealed as a consequence of this exposure draft, will continue to be protected. [*Schedule 1, item 119*]

### **Example 3.12**

In 2007 the ATO provided taxpayer information to the Repatriation Commissioner for the purpose of administering a law of the Commonwealth relating to pensions. Notwithstanding that the original disclosure of the information by the ATO was made before the commencement of the new framework, the information is deemed to have been obtained under the new framework and the Repatriation Commissioner must only disclose or record that information in a manner consistent with the new framework.

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# **Chapter 4**

## ***General qualifications on disclosure provisions***

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### **Outline of chapter**

4.1 This chapter outlines:

- qualifications on the disclosure provisions that permit taxpayer information to be disclosed lawfully; and
- authorised disclosures of information lawfully available to the public,

that are common to both taxation officers and non-taxation officers.

### **Context of amendments**

#### **Operation of current provisions**

4.2 As noted previously, the current disclosure provisions permit both taxation officers and non-taxation officers to disclose taxpayer information in certain specified circumstances. This recognises that there are circumstances in which the public benefit from disclosure outweighs taxpayer privacy.

4.3 Most of the current disclosure provisions contained throughout the taxation laws effectively only apply to taxation officers because they require the disclosure to be made by the Commissioner of Taxation (Commissioner) or a person authorised by the Commissioner. However, because the current provisions do not distinguish between taxation officers and non-taxation officers who are in receipt of taxpayer information, there are certain qualifications on what would otherwise be a lawful disclosure for both taxation officers and non-taxation officers alike.

4.4 The current secrecy and disclosure provisions all provide that taxation officers and other recipients of taxpayer information cannot be compelled to provide taxpayer information to a court unless it is for the purposes of a taxation law.

4.5 In addition, section 16 of the *Income Tax Assessment Act 1936* (ITAA 1936) has been interpreted such that any information obtained by the Australian Taxation Office (ATO) *from a public source* is not caught by section 16. Therefore, if the ATO obtains information from a public source, taxation officers (and those who receive the information from the ATO) are not prevented by the secrecy provisions in section 16 from disclosing that information.

4.6 Section 16 of the ITAA 1936 has also been interpreted such that the consent of the taxpayer to a disclosure does not, in and of itself, authorise the disclosure of taxpayer information.

4.7 All current secrecy and disclosure provisions also contain some prohibition on the disclosure of protected information to ministers (both Commonwealth and State). This recognises the importance of ensuring that taxpayer information is not released in the course of parliamentary proceedings and recognises the separation of the administration of the taxation laws from the Government. However, as a result of the interpretation of the various secrecy provisions, disclosures to ministers are permitted in some circumstances. These circumstances will depend on the type of taxation information involved.

4.8 For instance, under the current provisions, there is a blanket prohibition on the provision of indirect tax information to a minister, while income tax information can be disclosed to a minister where this is done in the course of a taxation officer's duties.

## **Summary of new law**

4.9 The new framework contained in the exposure draft largely retains these existing qualifications on disclosure and seeks to, where appropriate, clarify and resolve any ambiguities in the current law.

4.10 Of note, the new framework removes the requirement that information that is publicly available can only be disclosed where it is sourced from the public. Under the new framework, information that is lawfully available to the public can be disclosed regardless of the source of the information.

4.11 In addition, the new framework confirms that a taxpayer's consent to a disclosure does not, in and of itself, authorise that disclosure.

4.12 The new framework also overcomes ambiguities as to when information can be provided to a minister, by providing an exhaustive list of circumstances where this can lawfully occur.

## Comparison of key features of new law and current law

| <i>New law</i>   | <i>Current law</i>   |
|--|--|
| Consent, of itself, does not operate as an exception to the prohibition on disclosing taxpayer information.  | There is no general provision in the current law allowing a taxpayer to consent to the disclosure of their taxation information.   |
| Taxpayer information already lawfully available to the public may be disclosed regardless of its source.   | Taxpayer information sourced from the public record may be disclosed.  |
| Disclosure to ministers is permitted in certain prescribed circumstances which are the same regardless of the type of taxation information involved. | Whether taxation information can be disclosed to a minister and the extent to which it can be disclosed depends on the type of taxation information involved.                        |
| Parliamentary privilege cannot be used to authorise a disclosure of taxpayer information to a minister.  | Parliamentary privilege can authorise the disclosure of taxpayer information to a minister, notwithstanding that there is no specific provision in the taxation laws to this effect. |

## Detailed explanation of new law

### Qualifications on disclosure

4.13 The following provides an explanation of the new framework's approach to the consent of the taxpayer to disclosure, limitations on disclosure to courts and tribunals and disclosures to ministers and Parliament.

#### *Consent to disclosure not a defence*

4.14 While the new framework recognises that there are legitimate circumstances in which a person representing the taxpayer can access that taxpayer's information (for instance, where the taxpayer has appointed another entity to act as their agent for dealings with the ATO), it is not otherwise a defence that the taxpayer has consented to the record or disclosure. *[Schedule 1, item 1, sections 355-30 and 355-160]*

4.15 This approach avoids issues of whether the consent is informed and voluntary (as opposed to, for instance, being a precondition for a particular good or service). This also recognises the fact that, if any entity requires the taxpayer's information, the taxpayer is able to obtain that information and pass it on. Indeed, there is no prohibition on a taxation

officer or a non-taxation officer in lawful receipt of taxpayer information from disclosing that information to the taxpayer and there are no limits on what a taxpayer may do with their own information. This will ensure that the taxpayer knows precisely what information is being provided.

#### **Example 4.1**

Amy went to her bank seeking a loan to purchase a residential unit. The bank asked for copies of her last three tax returns. Amy says that she is happy for the bank to obtain that information from the ATO. Amy tells the ATO this. It is an offence for a taxation officer to provide Amy's tax returns to the bank even though Amy has consented to the disclosure. However, a taxation officer may provide that information to Amy (if she requests it), and she could pass it on to the bank.

4.16 Disallowing consent as a defence also ensures that the ATO is not treated generally as a central repository of financial information to be accessed for purposes unrelated to the tax system or to government administration.

#### ***Limit on disclosures to courts and tribunals***

4.17 Under the new framework and consistent with the current law, a taxation officer or another recipient of taxpayer information cannot be compelled to provide information to a court or tribunal. This recognises the significant loss of privacy that would result in the release of a taxpayer's information in an open court. [*Schedule 1, item 1, sections 355-95 and 355-190, subsection 355-265(3)*]

4.18 However, as an exception to this, a taxation officer or another recipient of taxpayer information *can* be compelled to disclose taxpayer information to a court or tribunal where it is necessary for the purpose of carrying into effect a provision of a taxation law. Such a disclosure would be closely aligned with the purpose for which the information is given and recognises that in some circumstances a court's powers to compel the production of information should be invoked to give effect to a provision of a taxation law. [*Schedule 1, item 1, sections 355-95 and 355-190, subsection 355-265(3)*]

#### **Example 4.2**

A taxation officer lawfully discloses taxpayer information to a law enforcement agency officer to establish whether a serious offence prescribed by the taxation law has been committed. Both the law enforcement agency officer and the taxation officer can be compelled to disclose that taxpayer information to the court for the prosecution of the serious offence.

### ***Disclosure to ministers and the Parliament***

4.19 The only instances where taxpayer information can be disclosed by taxation officers and other lawful recipients of taxpayer information to ministers, to a House of Parliament or a committee of one or both Houses of Parliament is where the information is publicly available or where the exposure draft otherwise specifically provides for it. As with the current law, this recognises the importance of a separation between the Executive and Legislative arms of government and the administration of the taxation laws and sensitivities associated with the possible release of taxpayer information into a public forum. *[Schedule 1, item 1, subsections 355-60(1) and 355-195(1)]*

4.20 The disclosure of publicly available information is discussed below. The specific permitted disclosures by taxation officers and other recipients of taxpayer information to ministers are discussed further in the following chapters.

4.21 The provisions governing disclosures to ministers and the Parliament alone limit the generality of other provisions in the framework. This means that other provisions such as those authorising a disclosure are subject to the limitations imposed on disclosures to ministers and the Parliament. *[Schedule 1, item 1, sections 355-35 and 355-165]*

4.22 So, for instance, it is an offence for a taxation officer to disclose information to a minister in the performance of their duties as a taxation officer unless that disclosure is explicitly authorised as one that can be made to a minister. *[Schedule 1, item 1, sections 355-55 and 355-60]*

#### **Example 4.3**

An article on the front page of a major Australian newspaper discussed the capital gains tax affairs of Mr John Doe, and insinuated that he had been poorly treated by the ATO. The ATO prepared a briefing for the Treasurer in relation to the article, to assist the Treasurer to respond to any questions about the article. It is not an offence for the ATO to provide general information to the Treasurer about the operation of the capital gains tax law (that does not identify a taxpayer) nor information that is publicly available. However, it is an offence to provide taxpayer information about Mr Doe to the Treasurer, notwithstanding the fact that Mr Doe may have already provided his own tax information to a major newspaper with the expectation that it would be published.

There is no explicit provision allowing for disclosure of taxpayer information to a minister under these circumstances, and in the absence of an explicit provision it is an offence for a taxation officer to make such a disclosure.

4.23 It is important to recognise that a legal person can have a number of different capacities in which the person acts, and in each of these capacities, the person is taken to be a different entity. So a minister may, in some circumstances, be acting in another capacity in which case the limits on disclosures applying to ministers would not apply to them. The exposure draft does not limit disclosures to individuals who are ministers where they are not acting in their capacity as a minister. *[Schedule 1, item 1, subsections 355-60(2) and 355-195(2)]*

#### **Example 4.4**

The Minister for Mines and Orchards completed her own tax return early and her husband asked her to complete his tax return as well. After being nominated in the approved form to act as her husband's agent, the Minister rang the ATO to ask for information about her husband's tax affairs. It is not an offence for a taxation officer to provide taxpayer information to the Minister about her husband's tax affairs because she is acting in her capacity as agent for her husband rather than in her capacity as a minister.

#### *Operation of parliamentary privilege*

4.24 While parliamentary privilege is commonly considered to protect disclosures of information made during parliamentary proceedings, such privilege also protects disclosures of information for the purpose of such proceedings. For instance, under parliamentary privilege the ATO can currently provide taxpayer information to ministers for the purpose of briefing the minister to respond to questions in Parliament (in the form of questions on notice and in question time briefs) and can also provide information to parliamentary committees when requested. However, in recognition of the significant privacy implications for the individual taxpayer of their information being disclosed in a public forum, in practice such information is only disclosed when necessary.

4.25 As the exposure draft seeks to provide for the only circumstances in which taxpayer information can be disclosed to ministers and the Parliament, parliamentary privilege the operation of parliamentary privilege is specifically excluded. The circumstances in which taxation officers and non-taxation officers are permitted to disclose information to a minister or to Parliament are outlined in Chapters 5 and 6 respectively. *[Schedule 1, item 1, subsections 355-60(3) and 355-195(3)]*

#### **Example 4.5**

The Treasurer is asked a question about the tax affairs of a particular taxpayer and seeks to obtain this information for the purpose of responding to that question during the sitting of Parliament. In these circumstances, the ATO cannot provide any taxpayer information to

the Treasurer for this purpose, because such disclosures are not permitted by the exposure draft

4.26 One of the powers of the Parliament is to conduct inquiries by *compelling* the attendance of witnesses, the giving of evidence and the production of documents (see *Odgers' Australian Senate Practice 11<sup>th</sup> Edition* at page 57). Since the purpose of the framework is to specify the circumstances in which a taxation officer and non-taxation officer *may* disclose information to a minister or the Parliament and to recognise other powers and laws that can be used to compel the production of information, the framework accordingly does not override Parliament's power to *compel* the production of information. [*Schedule 1, item 1, subsections 355-60(3) and 355-195(3)*]

### General operation of disclosure provisions

4.27 The disclosure provisions in the framework *permit* taxation officers and non-taxation officers to disclose taxpayer information in certain circumstances. However, they do not *require* them to do so. That is, for information to be disclosed it must be an authorised disclosure *and* the entity with the information must exercise their discretion to disclose the information.

4.28 The disclosure provisions described are designed as exceptions to the offence provisions so, in each case, the entity disclosing the information bears the evidential burden in relation to the disclosure. Thus the entity needs to be certain, before they make a disclosure, that all the conditions of the disclosure have been met.

### Disclosure of publicly available information

4.29 It is not an offence for an entity that is or was a taxation officer or is a non-taxation officer who is a lawful recipient of taxpayer information to disclose that information if it is lawfully available to the public. [*Schedule 1, item 1, sections 355-40 and 355-170*]

4.30 A publicly available source would include things such as the electoral roll, open court records, books, the Internet, newspapers and other material that is generally available to the public. The information does not cease to be 'publicly available' if a member of the public has to pay a fee to access that information.

4.31 As noted above, under the current law, information is not protected if it is obtained from a public source. However, information obtained by taxation officers in the course of administering the taxation laws (eg, through the provision of a tax return) is protected,

notwithstanding that the information may also be available from a publicly available source. In practice, this means that taxation officers are able to disclose information obtained from a public source but cannot disclose the same information if it was obtained in the course of administering a taxation law.

4.32 While this new framework recognises that taxpayer privacy is paramount, it also recognises that issues surrounding the privacy of taxpayer information are less significant when that information is available to the public. Given the minimal impact on privacy, the exposure draft removes the arbitrary administrative burden on the ATO to identify the source of information before it is disclosed. This will be particularly useful for the ATO in providing information to professional bodies who have an interest in the successful prosecution of their members under the taxation laws.

4.33 However, entities will not be able to use non-public taxpayer information to supplement or qualify the information that is publicly available.

#### **Example 4.6**

The New South Wales Bar Association has a statutory responsibility under the *Legal Profession Act 2004* (NSW) to satisfy itself that a barrister is a fit and proper person to hold a practicing certificate. It is not an offence for a taxation officer to disclose to the New South Wales Bar Association that a NSW barrister has been convicted of a taxation offence in an open court. However, the ATO would not be able to supplement that information with, say, a copy of the barrister's tax return, which was not available to the public.

#### **Example 4.7**

Brendan works in the ATO Media Liaison Centre and posts a media release on the ATO website detailing a recent successful prosecution of a taxpayer, Tony, for goods and services tax fraud. The media release also insinuates that Tony may have been involved in a tax evasion scheme with respect to which he is being investigated by the ATO. While Brendan can disclose information that is on the court record in relation to the goods and services tax fraud, it is an offence for him to disclose information relating to Tony's alleged involvement in a taxation evasion scheme.

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# **Chapter 5**

## ***Authorised disclosures by taxation officers***

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### **Outline of chapter**

5.1 This Chapter outlines the disclosures that taxation officers are authorised to make under the new framework. These are in addition to disclosures of publicly available information outlined in Chapter 4 and the disclosures able to be made to a taxpayer's representative outlined in Chapter 3.

### **Context of amendments**

#### **Operation of current provisions**

5.2 The current taxation disclosure provisions authorise taxation officers and certain other persons who are recipients of taxpayer information to disclose the information in a range of circumstances. While some of these disclosures are phrased generally so as to apply to both taxation and non-taxation officers, others are more specific in only authorising disclosures by taxation officers (notably, by only permitting the Commissioner of Taxation (Commissioner), Second Commissioner or Deputy Commissioner or a person authorised by them to make the disclosure).

5.3 As noted in the Chapter 4, different taxation laws permit taxation officers to disclose information to ministers in different circumstances and to varying degrees.

5.4 While the various provisions are drafted in a range of different styles, common throughout are provisions authorising officers to disclose taxpayer information in the performance of their duties as an officer. This is a commonly used phrase in Commonwealth laws and has been the subject of judicial consideration.

5.5 The current taxation disclosure provisions also permit a taxation officer who receives taxpayer information under one taxation law to

disclose the information to another taxation officer to perform their duties under a different taxation law.

5.6 Specific disclosures for taxation officers are found across the taxation laws. These generally provide for disclosures to be made by the Australian Taxation Office (ATO) to another Government agency in circumstances in which taxpayer information will be used to enable that other agency to fulfil some aspect of its function more effectively.

## **Summary of new law**

5.7 The new framework largely retains the existing permitted disclosures made by taxation officers, with some amendments.

5.8 Taxation officers will continue to be able to disclose taxpayer information in the performance of their duties as a taxation officer. The new framework clarifies some existing ambiguities as to the breadth of such disclosures by providing a non-exhaustive list of disclosures that fall within the 'performance of duties' exception.

5.9 The new framework also introduces some new disclosures in instances where the public benefit in disclosing information outweighs the loss of taxpayer privacy.

5.10 As noted in Chapter 4, the new framework also removes any uncertainty as to when taxpayer information can be disclosed to a minister or to the Parliament by providing an exhaustive list of circumstances where such disclosures can be made.

## Comparison of key features of new law and current law

| <i>New law</i>   | <i>Current law</i>   |
|--|--|
| Taxation officers may disclose taxpayer information to a law enforcement agency for both the investigation and prosecution of a serious offence.   | Taxation officers may disclose information to a law enforcement agency for establishing whether a serious offence has been committed. However, that information cannot be used in the prosecution of that offence, unless it is a taxation offence.                                |
| Taxpayer information may be disclosed to the Office of Police Integrity Victoria as a law enforcement agency.  | No equivalent.   |
| A 'serious offence' is defined to mean an offence against a law of the Commonwealth, State or Territory that is punishable by more than 12 months imprisonment.  | A 'serious offence' is defined to mean an offence against a law of the Commonwealth, State or Territory that may be dealt with as an indictable offence. What is indictable varies, depending on the jurisdiction.   |
| Taxation officers may disclose taxpayer information to an Australian Government agency to prevent or lessen: <ul style="list-style-type: none"> <li>• a serious threat to an individual's life, health or safety; or</li> <li>• a serious threat to public health or public safety.</li> </ul> | It is not an exception to the prohibition on the disclosure of taxpayer information that such a disclosure would save a life or prevent a threat to public health or safety.   |
| Taxation officers can disclose taxpayer information that is capable of identifying the taxpayer to the Department of the Treasury (Treasury) for the purpose of analysing taxation revenue or costing policies.  | Taxation officers can disclose taxpayer information that is capable of identifying a taxpayer to the Treasury for the purposes of analysing taxation revenue or costing policies that relate to the taxation policies (but not for general budgetary or policy analysis purposes). |
| Taxation officers can disclose information to the Treasury for the purposes of briefing the Treasurer on decisions he may make under the <i>Foreign Acquisitions and Takeovers Act 1975</i> .  | No equivalent.   |
| Taxation officers can disclose taxpayer information to the   | A taxation officer can disclose information to ASIC as a law   |

|   |   |
|---|---|
| Australian Securities and Investments Commission (ASIC) for the purpose of enforcing a law administered by ASIC that is an offence or that imposes a pecuniary penalty.   | enforcement agency if it relates to a serious offence.  |
| Taxation officers can disclose taxpayer information to ASIC for the purposes of the administration of the <i>Superannuation Industry (Supervision) Act 1993</i> as well as those parts of the <i>Corporations Act 2001</i> and the <i>Australian Securities and Investment Commission Act 2001</i> which under which ASIC has powers to regulate the Superannuation industry. | Taxation officers can disclose taxpayer information to ASIC for the purposes of the administration of the <i>Superannuation Industry (Supervision) Act 1993</i> |

## Detailed explanation of new law

5.11 The following explanation provides detail on disclosures that taxation officers can make in the performance of their duties, disclosures that can be made to ministers and Parliament as well as other disclosures that taxation officers can make to government agencies. The explanation is focused on areas where the new framework differs from the existing law or where there is a need to clarify any current ambiguity as to how the law operates.

### Disclosures in the performance of a taxation officer's duties

5.12 Disclosure of taxpayer information by a taxation officer is permitted where the disclosure is made in the course of the taxation officer's duties. Generally, such disclosures facilitate an officer to perform their responsibilities. The new framework provides a non-exhaustive list of disclosures that fall within the scope of such a disclosure. These are further described below. [*Schedule 1, item 1, section 355-45*]

5.13 These disclosures are only relevant to current taxation officers. As they are no longer performing duties as a taxation officer, former taxation officers cannot disclose information that they obtained as a taxation officer in the 'performance of their duties'.

5.14 As part of the standardisation process, and to reduce the volume of the taxation laws, some specific disclosure provisions that are in the taxation laws but which could otherwise be made in the performance of a taxation officer's duties have been removed. Examples of this include

subparagraphs 159(3)(c)(iia) and 159(3)(d)(iia) and subsection 159(3A) of the *Excise Act 1901*. In some cases, this will remove an arbitrary distinction on the types of information that can be disclosed.

### ***Administering a taxation law***

5.15 It is not an offence for a taxation officer to disclose taxpayer information for the purpose of administering a taxation law. Taxpayers provide information to taxation officers in order to meet their obligations under taxation laws. It is therefore important that taxpayer information be made available to relevant officers to enable them to administer those taxation laws. [*Schedule 1, item 1, subsection 355-45(2), table item 1*]

5.16 Information that a taxpayer provides for the purposes of one taxation law can be used to administer another taxation law (or another part of the same law). This ensures that taxpayers are not required to provide the same information multiple times and it also enables taxation officers to effectively utilise data from different sources.

5.17 Of course, taxpayer information may also need to be disclosed by a taxation officer to non-taxation officers for the purposes of administering a taxation law.

### **Example 5.1**

Leo contacts the ATO in relation to his unclaimed superannuation. He fills out the appropriate forms, which include his name, address, date of birth and details relating to his superannuation, and provides these to the ATO. Megan, a taxation officer working in the superannuation area, provides these forms to the superannuation fund holding Leo's unclaimed money. Megan does this for the purpose of reuniting Leo with his unclaimed money, which is one of the objects of the *Superannuation (Unclaimed Moneys and Lost Members) Act 1999*.

### ***Proceeds of crime order related to a taxation law***

5.18 It is not an offence for a taxation officer to disclose taxpayer information where it is for the purpose of the making, or possible making, of an order under the *Proceeds of Crime Act 2002* that is related to a taxation law. [*Schedule 1, item 1, subsection 355-45(2), table item 2, and section 355-70*]

5.19 This would include circumstances such as where the ATO provides the Australian Federal Police with information necessary to prevent an individual from profiting from an offence committed under a taxation law. In addition, given that the ATO is an enforcement agency for the purposes of the *Proceeds of Crime Act 2002* (under the *Proceeds of Crime Regulations 2002*) this would also permit taxation officers to

disclose information in accordance with this role where this is related to a taxation law.

***Judicial and administrative proceedings related to a taxation law***

5.20 It is not an offence for a taxation officer to disclose taxpayer information for the purposes of proceedings related to a taxation law. This would extend to disclosures to Courts, external legal advisers and to the Commonwealth Director of Public Prosecutions in relation to proceedings that are directly or indirectly related to a taxation law. [Schedule 1, item 1, subsection 355-45(2), table item 3]

**Example 5.2**

An individual knowingly provides an incorrect tax return. The ATO decides to prosecute the individual under an offence provision in the *Taxation Administration Act 1953* (TAA 1953) and commences an action in the Supreme Court of New South Wales. The disclosure of taxpayer information in the course of these proceedings is not an offence as it is for the purpose of criminal proceedings related to a taxation law.

**Example 5.3**

Instead of prosecuting the individual for an offence under the TAA 1953, the ATO decides to refer the matter to the CDPP for prosecution under a more generic offence provision in the *Criminal Code Act 1995*. It is not an offence for the ATO to disclose information to the CDPP even though the offence provision is not in a taxation law, because the proceedings relate to such a law.

**Example 5.4**

In a case between the Commissioner and Mr Doe, Mr Doe's legal team undertook a process of discovery, and sought to obtain information about Mr Doe from the ATO. It is not an offence for a taxation officer to disclose information to Mr Doe's legal team if the proceedings are related to a taxation law.

***Providing a statement of reasons under the Administrative Appeals (Judicial Review) Act 1977 (ADJR) Act***

5.21 In some instances, a taxation officer will be authorised to disclose taxpayer information in the performance of their duties, even where such a disclosure is not directly contemplated by a provision in a taxation law. For instance, it is not an offence for a taxation officer to disclose taxpayer information in response to a request for a statement of reasons by the *Administrative Appeals (Judicial Review) Act 1977* (ADJR Act). [Schedule 1, item 1, subsection 355-45(2), table item 4]

### Example 5.5

In the course of an audit of a taxpayer (in their capacity as an individual) a taxation officer issues an information-gathering notice under section 264 of the *Income Tax Assessment Act 1936* (ITAA 1936) to obtain information relevant to the audit. The taxpayer applies, under section 13 of the ADJR Act, for a copy of the statement of reasons for this decision. The statement of reasons contains information relating to both the taxpayer as an individual and also a company of which the taxpayer is a shareholder. In providing this information relating to the company, the taxation officer is not committing an offence because, although the information is requested under an Act that is not a taxation law, the taxation officer is merely fulfilling a statutory obligation that exists because of their position as a taxation officer.

### *Ex-gratia payments*

5.22 Ex-gratia payments are a discretionary compensation mechanism available to the Australian Government under section 61 of the Australian Constitution. Such payments can be used, usually in the absence of any existing legislative compensation scheme, to compensate individuals for a particular loss. While a decision to make such a payment rests with the Prime Minister and Cabinet (see disclosures to ministers below), taxation officers may be required to analyse and administer payments that are sufficiently connected to the taxation law. While disclosures made by a taxation officer fulfilling this function are not strictly for the purpose of administering a taxation law, they are still within that taxation officer's duties. [*Schedule 1, item 1, subsection 355-45(2), table item 5*]

### Example 5.6

The Cabinet meets to decide whether or not to provide an ex-gratia payment to taxpayers that were inadvertently affected by a change in an income definition in a taxation law. In the course of preparing a brief for Cabinet to provide advice on such a payment, a taxation officer discloses information to the Department of the Prime Minister and Cabinet. It is not an offence for a taxation officer to make such a disclosure.

### *Compliance with obligations under a taxation law*

5.23 The new framework recognises that in some circumstances, for a taxpayer to fulfil or to understand their tax obligations, they may require the information of another taxpayer. It is not an offence for a taxation officer to disclose taxpayer information in these circumstances. [*Schedule 1, item 1, subsection 355-45(2), table item 6*]

5.24 It is important to note that a taxation officer may only disclose information where that information is *required* by a taxpayer to meet their taxation obligations. It is not sufficient that the information may be of interest to a taxpayer or would be useful for them.

**Example 5.7**

Tanisha and Ben are joint trustees and are jointly liable for a debt of \$10,000 owed to the ATO. Tanisha makes a payment of \$3,000 without informing Ben. Ben contacts the ATO to settle the debt. The ATO can inform Ben that Tanisha has paid part of the debt, and the remaining balance is \$7,000 as this allows him to understand the extent of his tax obligation (ie, how much is owed) and to satisfy it.

**Example 5.8**

Anthony and Linda are married. Anthony pays for all the living costs and also supports Linda while she is studying. Anthony wants to claim the dependent spouse offset and for this, requires Linda's income. Linda is overseas and cannot be contacted and has not appointed Anthony as her agent in the approved form. It is not an offence for a taxation officer to provide Linda's income to Anthony as Anthony requires this information to claim the offset.

**Example 5.9**

Paul is licensed under the *Excise Act 1901* to manufacture spirits. Tim has an approval issued under section 77FD of the *Excise Act 1901* to use spirits for fortifying Australian wine. Tim wants to buy 1,000 litres of spirit from Paul. Paul can enter the spirit for home consumption to item 3.5 in the Schedule to the *Excise Tariff Act 1921* if it is in accordance with an approval under section 77FD. Item 3.5 has a free rate of duty. Without an approval the duty is \$66.67 per litre of alcohol. Paul contacts the ATO to check that Tim's approval allows for 1,000 litres of spirit and that it is still current. The taxation officer is permitted to divulge details of Tim's approval to Paul to allow Paul to fulfil his obligations under the *Excise Act 1901*.

***Design or amendment of a taxation law***

5.25 It is not an offence for a taxation officer to disclose taxpayer information for the purpose of designing or amending a taxation law. This reflects the fact that, under current administrative arrangements, the Government has determined that other agencies (notably the Treasury) are to have the design and amendment responsibilities with respect to taxation laws. While the information provided by the ATO to the Treasury would usually be in an aggregated statistical form, there may be some circumstances in which the information is reasonably capable of

identifying a particular taxpayer. [*Schedule 1, item 1, subsection 355-45(2), table item 7*]

#### **Example 5.10**

The Government has announced a new taxation law that will only apply to a particular class of chicken pluckers. Treasury requires additional information about the people in that class of chicken pluckers in order to prepare drafting instruction for the Office of Parliamentary Counsel. Because there are so few people in Australia who are in that class of chicken pluckers, it is reasonably possible that information about individual chicken pluckers could be ascertained from any data provided by the ATO. It is not an offence for a taxation officer to disclose information for the purpose of providing drafting instructions for the new legislation, even though that information could identify individual taxpayers.

#### ***Boards performing a function or exercising a power under a taxation law***

5.26 Where a board is performing a function or exercising a power under a taxation law, it is not an offence for a taxation officer to disclose taxpayer information to that board (or any member of that board) so that the board can perform that function. This does not enable the disclosure of *any* information to such a board as it only permits the disclosure of that information for the board to perform its functions or exercise its powers (as prescribed in the relevant taxation law). [*Schedule 1, item 1, subsection 355-45(2), table item 8*]

#### **Example 5.11**

The NSW Tax Agent's Board is established under Part VIIA of the ITAA 1936 and is charged, with the responsibility of regulating tax agents in NSW. It is not an offence for a taxation officer to provide information to the NSW Tax Agent's Board in order for it to perform its functions and exercise its powers under the ITAA 1936.

#### ***Exchange of information under an international tax agreement***

5.27 It is not an offence for a taxation officer to disclose taxpayer information for the purpose of meeting the Commissioner's obligations to exchange information under an international agreement. [*Schedule 1, item 1, section 355-45(2), table item 9*]

#### **Example 5.12**

The New Zealand Inland Revenue Department lodges a request with the ATO for income tax information relating to a New Zealand resident (for tax purposes), currently working in Australia. The

request is for the purpose of determining how much income tax the resident should pay in New Zealand. Under the agreement with New Zealand, the Commissioner is required to provide this information. It is not an offence to provide the requested information as it is required to meet the Commissioner's obligations under the treaty with New Zealand.

## **Disclosures to ministers and committees of Parliament**

5.28 As noted in the Chapter 4, there are particular sensitivities associated with allowing ministers and the Parliament to access a taxpayer's taxation information and, accordingly, disclosure of taxpayer information to ministers and the Parliament is limited under the new framework.

5.29 In addition to information that is publicly available being able to be provided, the new framework also provides for an exhaustive list of circumstances in which a taxation officer is able to disclose information to a minister or a committee of Parliament. *[Schedule 1, item 1, section 355-55 and subsection 355-60(1)]*

### ***Ministers performing functions under a taxation law***

5.30 It is not an offence for a taxation officer to provide taxpayer information to a minister for the purpose of enabling the minister to exercise a power or perform a function under a taxation law. In the majority of cases, the Treasurer will be the minister with specified powers under a taxation law (however there may be other ministers either within or outside the Treasury portfolio with a function under a taxation law). *[Schedule 1, item 1, subsection 355-55(1), table item 1]*

### **Example 5.13**

Subdivision CB of Division 3 of the ITAA 1936 provides that the Treasurer may determine that a company is a regional headquarters company and thereby is eligible to claim a tax deduction for certain expenditures incurred. It is not an offence for a taxation officer to provide information about a company to the Treasurer to enable him to determine whether or not that company is a regional headquarters company.

### **Example 5.14**

Under subsection 14(2) of the ITAA 1936 the Minister has the function of tabling a copy of the Commissioner's annual report outlining the operation of that Act. This report may include taxpayer information relating to any breaches of the Act over the course of the year (see subsection 14(1)). It is not an offence for the Commissioner to disclose taxpayer information in the annual report to the Minister as

the Minister has the function under a taxation law of tabling that report in each House of the Parliament.

### ***Ministerial correspondence***

5.31 Taxpayers who want assistance or clarification in relation to their taxation affairs often write to the Treasurer, or to their local member (who usually forward such letters to the Treasurer). It is not an offence for a taxation officer to provide information to enable the Treasurer to respond to these taxpayer requests. This may be either in writing or where the Treasurer meets in person with such a taxpayer. [*Schedule 1, item 1, subsection 355-55(1), table item 2*]

### **Example 5.15**

Fred writes to his local member (who is also the Minister for Defence) saying that the ATO has charged him a penalty for late payment, when his payment was only slightly overdue and for a very good reason. His local member forwards the letter to the Treasurer. It is not an offence for a taxation officer to provide information about Fred's tax affairs to the Treasurer to enable the Treasurer to respond to Fred's concerns.

Note that Fred's taxpayer information cannot be provided to his local member. A letter may be provided to Fred's local member noting that the Treasurer has responded directly to Fred, provided that letter does not disclose any taxpayer information about Fred.

### ***Compensation for Detriment Caused by Defective Administration scheme***

5.32 The Compensation for Detriment Caused by Defective Administration scheme allows Government portfolio ministers to compensate individuals or other bodies who have experienced losses caused by agencies' maladministration (though in practice these this power is often delegated to relevant departments). It is not an offence for a taxation officer to provide taxpayer information to the Treasurer to inform decisions the Treasurer makes under the Compensation for Detriment Caused by Defective Administration scheme. [*Schedule 1, item 1, subsection 355-55(1), table item 3*]

### ***Disclosures to the Finance Minister***

5.33 The *Financial Management and Accountability Act 1997* (FMA Act) allows the Finance Minister, currently the Minister for Finance and Deregulation to make 'act of grace' payments, or waive debts owed to the Commonwealth. An 'act of grace' payment is usually a one-off or periodic payment made, for instance, where an entity has suffered a loss that was unintended as a result of an Australian Government action.

Similarly, debts owed to the Commonwealth are waived in circumstances where the debt has been inappropriately imposed or in cases of extreme financial hardship.

5.34 In instances where the Finance Minister is considering making an act of grace payment to compensate an entity that has incurred a loss as a result of the administration of a taxation law or where the Minister is considering waiving a taxation debt, taxation officers will need to provide the taxpayer's information to the Minister. It is not an offence for them to do so. [*Schedule 1, item 1, subsection 355-55(1), table item 4*]

5.35 This provision does not allow the disclosure of taxpayer information to assist the Finance Minister in making decisions in relation to non-tax debts to the Commonwealth. Nor does it allow the disclosure of taxpayer information to assist with act of grace payments which are unrelated to the administration of a taxation law.

#### **Example 5.16**

In a particular instance, the application of a taxation law had an unintended effect on a small group of taxpayers, resulting in economic losses for those taxpayers. The Government amended the legislation on a prospective basis. The Minister for Finance and Deregulation decided to make an act of grace payment under section 33 of the *Financial Management and Accountability Act 1997* to those taxpayers who had suffered a loss. It is not an offence for a taxation officer to provide information to the Minister for Finance and Deregulation identifying who the affected taxpayers were and the extent of their losses.

#### ***Ex-gratia payments***

5.36 If the Prime Minister or Cabinet is considering whether an entity should be entitled to an ex-gratia payment, it is not an offence for a taxation officer to provide them with information about that entity in order to assist in their decision-making. Similarly, if the Prime Minister or Cabinet decides that an entity should be entitled to an ex-gratia payment, then it is not an offence for a taxation officer to provide information about that entity to the relevant minister in order to facilitate the delivery of the ex-gratia payment. [*Schedule 1, item 1, subsection 355-55(1), table item 5*]

#### ***Parliamentary Committees***

5.37 The new framework recognises that there may be circumstances where taxpayer information may be necessary for a Committee of Parliament to conduct its inquiry. The new framework therefore permits taxation officers and former taxation officers to disclose taxpayer information as a result of a direct request from that committee. Unlike the

‘performance of duties’ and ‘disclosures to ministers’ exceptions above, this exception recognises that there may be circumstances where the taxpayer information obtained by a *former* taxation officer would be relevant to a committee’s proceedings. [*Schedule 1, item 1, subsection 355-55(2)*]

### **Example 5.17**

In the course of an inquiry into the ATO treatment of a particular type of scheme, a Parliamentary Committee hears evidence from John and Mary Smith about their interactions with the ATO. Taxation officers are subsequently called to testify before the Parliamentary Committee. It is an offence for a taxation officer to provide information about ATO interactions with John and Mary Smith, unless specifically requested to do so by the Committee.

### **Example 5.18**

A Parliamentary Committee is undertaking an inquiry into ATO decision-making processes. The Committee requests a retired Commissioner to explain how the Commissioner’s discretion was exercised in relation to the affairs of a particular taxpayer. The retired Commissioner is legally able to provide information relating to the taxpayer to the Committee in response to its request.

5.38 A taxation officer and former taxation officer have a discretion as to whether to disclose taxpayer information (and, often, general information about the operation of the tax system may be sufficient).

5.39 However, the Parliament retains its power to compel the production of information. [*Schedule 1, item 1, subsection 355-60(3)*]

## **Disclosures to Treasury for estimation and analysis**

5.40 As noted above, a taxation officer can disclose information to Treasury where this is relevant to the design or amendment of a taxation law. In addition, to fulfil its broader role to Government, Treasury can obtain data from the ATO to analyse and predict revenue flows and cost policy proposals (eg, proposals that do not necessarily result in the creation of a new taxation law).

5.41 Such data is non-identified (eg, the average income of a class of taxpayers) and, as a consequence, the identity of taxpayers generally cannot be gleaned from the data and can be disclosed without offending a secrecy provision. However in some circumstances this data is of such a nature that Treasury may be able to infer the identity of certain taxpayers. This arises in relation to industries with few participants, such as the

mining or telecommunications industries. Often this information is extremely important in Treasury carrying out its functions.

5.42 The new framework permits the ATO to provide information to Treasury for the purpose of analysing and predicting revenue flows and costing policy proposals, even where there is the chance of deducing the identity of the taxpayer. [*Schedule 1, item 1, section 355-50*]

## Disclosures for the purpose of other Australian laws

### *Retention of existing disclosure provisions*

5.43 While taxpayer information is primarily used by taxation officers for purposes connected with the administration of the taxation laws, such information is also useful for other Government agencies in administering their laws. Over time, various taxation laws have specified a range of circumstances in which taxpayer information may be disclosed to assist with the administration of such laws. Such disclosures are usually limited to a particular purpose and reflect situations where Parliament believes that the loss to taxpayer privacy is outweighed by the public benefit resulting from the disclosure.

5.44 These disclosure provisions have now been combined in a single provision enabling them to be easily found and clearly understood by all relevant stakeholders. [*Schedule 1, item 1, section 355-65*]

5.45 To make it easier to identify where provisions in the existing law have been translated into the new framework, Chapter 8 (Finding Tables) provides a comprehensive list of all provisions in the existing law and their corresponding provision in the new framework.

5.46 In moving these disclosure provisions from 18 different taxation law Acts into one provision, there has been some level of harmonisation and standardisation of the disclosures. For instance, under existing taxation secrecy and disclosure provisions, taxation officers are permitted to disclose taxpayer information relating to businesses, employers, indirect tax, superannuation and product grants to the Australian Bureau of Statistics (ABS), for purposes associated with the *Census and Statistics Act 1905*. These have all now been combined into a single provision which permits all taxpayer information to be provided to the ABS for the administration of the *Census and Statistics Act 1905*. [*Schedule 1, item 1, subsection 355-65(1), table 7, item 1*]

5.47 The above also provides a good example of where the benefit of disclosure outweighs the impact on taxpayer privacy. By allowing the ABS to access all taxpayer information, the ABS will be able to more effectively produce aggregate statistics that are of relevance and use to

policy makers and researchers, particularly if taxpayer data is coupled with existing ABS data. Examples of such statistics include regional estimates of income of older Australians, by income and age ranges. Longitudinal studies useful for policy development will also be possible, such as income patterns over time for particular groups. Moreover, by allowing more taxpayer information to be provided to the ABS, the ABS will be able to reduce the amount of duplicate information it currently collects from Australian individuals and entities.

5.48 Balanced against this, of course, is the impact on an entity's privacy. However, in this instance, the impact is minimal. The ABS has strict mechanisms in place for the protection of information it receives in the course of its duties (see section 19 of the *Census and Statistics Act 1905*). Indeed, it cannot publish statistics that are likely to identify an entity (see subsection 12(2) of the *Census and Statistics Act 1905*).

5.49 In contrast to the ABS example, in standardising the disclosure provisions in some circumstances it is appropriate to obtain the restriction on the type of information that can be disclosed. This is particularly the case where the purpose of the disclosure is broad and it is appropriate to maintain the limitation on the type of information which may be accessed. For instance, section 38 of the *Superannuation (Unclaimed Moneys and Lost Members Act) 1999* (SIS Act) permits information obtained under that Act to be disclosed to a range of agencies (for instance the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC)) to help them perform their functions. Given the breadth of the purpose of the disclosure, it is appropriate to maintain the limitation that the information be obtained under that Act. [*Schedule 1, item 1, subsection 355-65(1), table 2 item 3 and table 3 item 2*].

### ***New Disclosure Provisions***

5.50 The new framework also includes some clearly targeted disclosure provisions which are not contained in the current legislation. These reflect circumstances in which the public benefit of disclosure outweighs taxpayer privacy.

#### *Disclosure to Australian Securities and Investment Commission (ASIC) in relation to administering superannuation funds*

5.51 Under the current taxation secrecy and disclosure provisions and in recognition of the role that the ASIC has in regulating superannuation entities, taxation officers are permitted to disclose relevant taxpayer information to ASIC for the purposes of its administration of the SIS Act. Since the enactment of this provision, however, part of ASIC's role in regulating superannuation entities has shifted to other Acts — notably the

*Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001.*

5.52 In recognition of this legislative shift in ASIC's role in relation to superannuation entities, under the new framework, it is not an offence for a taxation officer to provide taxpayer information to ASIC for the purposes of administering Chapter 7 of the *Corporations Act 2001* (relating to financial services and markets) or Part 2 of Division 2 of the *Australian Securities and Investments Commission Act 2001* (relating to unconscionable conduct and consumer protection in relation to financial services) 1. [*Schedule 1, item 1, subsection 355-65(1), item 3 in table 3*]

*Disclosure to Australian Securities and Investment Commission ASIC to pursue breaches of Australian Securities and Investment Commission ASIC-administered legislation*

5.53 Under the current taxation secrecy provisions, ASIC is able to obtain taxpayer information to fulfil its role as a law enforcement agency for the purpose of establishing whether a serious offence has taken place or for the making of a proceeds of crime order in relation to a serious offence (see below for further information). The new framework expands the disclosures that can be made to ASIC in order for it to fulfil its law enforcement role. Disclosures will be permitted to ASIC for the enforcement of a law administered by ASIC which is a criminal law or which imposes a monetary penalty. [*Schedule 1, item 1, subsection 355-65(1), item 1 in table 3*]

5.54 Enforcing a law includes investigating any breaches of that law, prosecuting any offences committed under that law and gathering information to support these investigation and prosecution functions.

5.55 This additional disclosure recognises that the role of ASIC in regulating companies and financial services is integral to maintaining and protecting the integrity of the market. The ability of ASIC to recognise and penalise breaches of corporate law discourages corporate mismanagement and significant financial losses to investors and consumers. This allows the ATO to provide information to ASIC where it is apparent that breaches of ASIC-administered legislation are occurring. Examples of breaches include trading while insolvent, misleading and deceptive conduct and market misconduct such as insider trading.

*Disclosures for the purposes of the Foreign Acquisition and Takeovers Act 1975*

5.56 The *Foreign Acquisition and Takeovers Act 1975* gives the Treasurer powers in relation to certain foreign investment proposals. These powers include prohibiting a proposal on the basis that it is not in the national interest (sections 18, 19, 20, 21 and 21A) or to impose

conditions on a proposal to remove any national interest issues (section 25). It also permits the Treasurer to make orders for foreign persons to divest shares, assets or interests in urban land where the acquisition is decided to be contrary to the national interest. What the Treasurer can take into account in determining the 'national interest' is broad.

5.57 Currently, in briefing the Treasurer to make a decision under the *Foreign Acquisition and Takeovers Act 1975*, Treasury forwards foreign investment applications to key Government agencies for comment. While the ATO is one such agency, because of the operation of taxation secrecy provisions the ATO cannot provide any identifiable information that may be of relevance to the Treasurer's decision. This could include revenue impacts of a particular proposal. Impacts on the Government revenue was specifically included as one factor to be included in assessing 'national interest' as outlined in 'Guidelines for foreign government investment proposals' released by the Treasurer in Media Release No. 009 of 17 February 2008.

5.58 To overcome these problems, this framework introduces a new disclosure provision which will permit the disclosure of taxpayer information to the Treasurer for the purposes of briefing the Treasurer in relation to decisions the Treasurer is empowered to make under the *Foreign Acquisition and Takeovers Act 1975*. [Schedule 1, item 1, subsection 355-65(1), item 8 in table 3]

## Disclosures to law enforcement agencies

5.59 This exposure draft translates into the new framework the current provisions that permit disclosure of information to certain prescribed law enforcement agencies, with some changes.

5.60 Under the existing law, taxpayer information can be disclosed by the Commissioner or an authorised taxation officer to the head of prescribed law enforcement agencies or similarly authorised officers. This can be done for the purpose of establishing whether a serious offence has been or is being committed or for the making of or proposed or possible making of a proceeds of crime order. A 'serious offence' is defined to be an indictable offence and a 'proceeds of crime order' must relate to the commission of a serious offence.

5.61 Moreover, under the existing provisions a law enforcement agency which receives taxpayer information for the purposes of investigating a serious offence cannot then use that information for the prosecution of that offence (unless it is a taxation offence).

5.62 The new framework will continue to ensure that such disclosures can only be made by the Commissioner or taxation officers authorised by

the Commissioner and that the disclosure can only be made to the head of a law enforcement agency or a similarly authorised officer of that agency. This greater control on the disclosure of and access to the information, as compared to the other disclosures in the new framework, recognises that information relating to a serious offence is likely to be particularly sensitive. [Schedule 1, item 1, subsections 355-70(1) and (2)]

5.63 One significant change being proposed by the new framework is removing the limitation on the law enforcement agencies' use of taxpayer information. Under the new framework law enforcement agencies will be able to access taxpayer information for the enforcement of serious offence provisions in the law. As noted in paragraph 5.54, the enforcement of a law captures investigating any breaches of that law, prosecuting any offences committed under that law and gathering information to support these investigation and prosecution functions. [Schedule 1, item 1, subparagraph 355-70(1)(c)(i)]

5.64 This reflects a situation where the public interest in the disclosure of information outweighs any corresponding loss of taxpayer privacy. Taxpayer information has proved to be a valuable source of intelligence information for the investigation of activities such as money laundering and social security fraud. Such information would also be invaluable for and could form the basis of related prosecutions. This broadening of the disclosure also recognises the changing nature of crime and the need for flexible, whole-of-government responses. It will also ensure that law enforcement agencies can rely on the best evidence in prosecution.

5.65 The new framework also amends the definition of 'serious offence'. Under the new framework, a *serious offence* will mean an offence that is punishable by more than twelve months' imprisonment (consistent with the Commonwealth definition of an indictable offence). This is a departure from the current definition of serious offence which is based on whether or not an offence is indictable. Whether an offence is indictable changes between jurisdictions and the move to a definition based on a term or imprisonment ensures greater consistency.

5.66 The new framework also expands the list of law enforcement agencies that are able to access taxpayer information to include the Office of Police Integrity Victoria (OPIV). OPIV plays an important role in detecting, investigating and preventing police corruption and misconduct in Victoria. Access to taxation information will provide a significant resource for the OPI to investigate and prosecute serious criminal offences. .

5.67 The new framework also amends the definition of 'authorised law enforcement agency officer' to overcome problems associated with

only permitting ‘officers’ to be authorised. The use of the term ‘officer’ has been interpreted to mean only those individuals employed formally under a public service Act, such as the Commonwealth *Public Service Act 1999*. However, there may be instances where individuals not employed formally under such Acts may need to be authorised. For instance, section 4 of the *Australian Federal Police Act 1979* defines ‘commissioned police officer’ to mean ‘any member in respect of whom a declaration under s 40D (of the *Australian Federal Police Act 1979*) is in force’. However, not all commissioned Australian Federal Police officers are appointed under the *Public Service Act 1999*. [Schedule 1, item 1, paragraph 355-70(4)(b)]

5.68 It should also be noted that there is ostensibly some overlap in the disclosure provisions that relate to ASIC in its law enforcement role and a different manner in which that information can be disclosed (see paragraphs 5.51 to 5.53). However, in instances where ASIC obtains information relating to a serious offence as a prescribed law enforcement agency, the information *must* be disclosed by and to authorised officers (or the head of the agency).

### **Disclosures to intelligence agencies**

5.69 The new framework contains the existing provisions relating to the disclosure of information by the ATO to an authorised Australian Security Intelligence Organisation (ASIO) officer (section 3EA of the TAA 1953). The Commissioner, or a taxation officer authorised by the Commissioner, can disclose taxpayer information to an authorised ASIO officer for the purpose of enabling ASIO’s functions (listed under subsection 17(1) of the *Australian Security Intelligence Organisation Act 1979*) to be performed. [Schedule 1, item 1, subsection 355-70(2)]

### **Disclosure to Project Wickenby Taskforce and other prescribed taskforces**

5.70 In 2007, amendments were made to the secrecy and disclosure provisions in the TAA 1953 to allow the Commissioner to disclose taxpayer information to Project Wickenby Taskforce officers and to officers in other taskforces that may be established in the future to protect public finances in Australia.

5.71 Project Wickenby is a multi-agency taskforce addressing tax avoidance and evasion involving the use of offshore entities. These amendments allowed the Commissioner to share information with other government agencies in limited circumstances, in order to facilitate concerted enforcement of Australia’s laws.

5.72 These 2007 amendments are replicated in the new framework. For a detailed explanation of these provisions refer to the explanatory memorandum accompanying the Tax Laws Amendment (2007 Measures No. 1) Bill 2007. [*Schedule 1, item 1, sections 355-75 and 355-80*]

5.73 It is worth noting that both the Project Wickenby and ‘other taskforce’ disclosures rely on subordinate legislation (at least to some extent). The Project Wickenby disclosure allows agencies to be added to the Project Wickenby taskforce by regulation, thereby allowing officers of those agencies to be given access to taxpayer information. In addition, the ‘other taskforce’ disclosure required the purposes and agencies of that taskforce to be prescribed.

5.74 When these provisions were first enacted in 2007, the reliance on subordinate legislation in this manner was designed to enable the Government to respond more quickly to possible future developments by ensuring that taxation secrecy provisions do not impede whole-of-government initiatives to address issues relating to the public revenue.

## **Disclosures to Royal Commissions**

5.75 The existing taxation law secrecy and disclosure provisions permit the disclosure of taxpayer information to both Commonwealth Royal Commissions and prescribed State Royal Commissions (as well as prescribed state boards and commissions of inquiry). There are two provisions in the existing law which provide this. Section 16(4)(k) of the ITAA 1936 permits disclosure to Commonwealth Royal Commissions for the purpose of assisting them in the conduct of their inquiry and section 3E of the TAA 1953 permits disclosures to both Commonwealth and State Royal Commissions on the same basis as law enforcement agencies (see paragraph 5.70 above).

5.76 The disclosures are replicated in the new framework. [*Schedule 1, item 1, section 355-85*]

5.77 Note, however, that some changes have been made to what such Royal Commissions can do with taxpayer information. This is considered in Chapter 6.

5.78 Note also that the disclosures to the Fitzgerald Inquiry that were previously contained in section 16A of the ITAA 1936 are proposed to be repealed by this exposure draft. This is because the inquiry is no longer active. [*Schedule 1, item 33*]

## Disclosures to prevent or lessen serious threats

5.79 The new framework recognises that, where the disclosure of taxpayer information by a taxation officer to another Commonwealth or State government agency would enable that agency to identify and better address a serious threat, such a disclosure should not be prevented.  
[Schedule 1, item 1, section 355-90]

5.80 This new disclosure recognises that the public interest in allowing government agencies to use information where this would prevent harm to an individual or to the public more generally outweighs any loss of privacy. This disclosure is based on paragraph 1(c) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988* and on a similar provision in Information Privacy Principle 2.1(d) in Schedule 1 to the *Information Privacy Principle Act 2000* (Vic).

5.81 One distinction between the approach in the *Privacy Act 1988* and the new framework is that there is no requirement of the threat to an individual to be imminent. This approach has been taken in the *Privacy Act 1988* because, if the threat is not imminent, then the consent of the individual concerned can always be obtained to authorise the disclosure of their information. As consent is specifically excluded from this framework, it is appropriate to remove the requirement that the threat be imminent.

5.82 The fact that there is a threat is not enough. The disclosure of the information must be necessary to prevent or lessen the threat. A taxation officer must therefore consider whether the disclosure will have any real impact on the threat or whether there are any alternatives, other than the disclosure of taxpayer information, that could achieve the same result.

5.83 A threat to life or health includes threats to safety and would include bushfires, industrial accidents and direct threats to individuals or groups. Health includes mental as well as physical health, although a threat of stress or anxiety would generally not be sufficient.

5.84 What is a 'serious' threat will depend on the particular circumstances of the case but would certainly include a threat of murder or assault.

### Example 5.19

Aaron, who works in an ATO call centre, receives a call from a disgruntled taxpayer who is angry at the ATO and a number of government agencies at the perceived injustices he has suffered. The taxpayer tells Aaron that he is going to go down to the nearest Centrelink office with a baseball bat to 'settle the score'. The threat is

serious as it is a threat to attack another individual and from the conversation Aaron judges that the taxpayer is about to carry out the threat. It is not an offence for Aaron to pass on the details of the taxpayer to the Australian Federal Police and Centrelink.

5.85 Threats to public health or safety are those that have the potential to affect the public (both in Australia and overseas) more generally rather than just a specific individual or group of individuals. A possible outbreak of an infectious disease is one such example, and an example of where a threat to the public health or safety would be serious.

**Example 5.20**

Michael, a taxation officer working in the excise area, obtains information about possible fuel tampering that could pose a serious safety risk if the fuel is used in machinery. While it is not clear that the threat is imminent, as it is a serious threat to public health, Michael can disclose the information to the relevant State and/or Commonwealth authorities.

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# **Chapter 6**

## ***Authorised on-disclosures by recipients of taxpayer information***

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### **Outline of chapter**

6.1 This Chapter outlines what recipients of taxpayer information who are not taxation officers can do with the information that they receive.

6.2 This includes both:

- non-taxation officers in lawful receipt of taxpayer information; and
- non-taxation officers who receive taxpayer information as a result of a breach of a taxation law.

### **Context of Amendments**

#### **Operation of current provisions**

6.3 Under the current law, taxation secrecy provisions generally continue to control the use and disclosure of taxpayer information, even where this information is disclosed outside of the Australian Taxation Office (ATO).

6.4 In governing the on-disclosure of information by non-taxation officers, the current law contains a variety of rules. Some provisions permit on-disclosure in a wide range of circumstances (for instance, subsection 16(2A) of the *Income Tax Assessment Act 1936* (ITAA 1936) allows a Commonwealth or State officer who is in receipt of taxpayer information to on-disclose information in the performance of their duties as an officer). In contrast, some provisions detail to whom and in what circumstances on-disclosures are allowed (for instance, permitted on-disclosures by Royal Commissions are specified in subsections 16(4A) through to 16(4JC) of the ITAA 1936).

6.5 The current law also recognises that entities that acquire information as a result of a breach of a taxation law, should only be able to disclose that information in limited circumstances.

## Summary of new law

6.6 The new framework continues to recognise that the taxation secrecy and disclosure provisions should apply to and limit disclosures of taxpayer information even when that information has been disclosed outside of the ATO.

6.7 In distinguishing between taxation officers and non-taxation officers, the framework also recognises that where taxpayer information is disclosed to a non-taxation officer, such an entity should be able to on-disclose that information for the purpose for which the information was originally disclosed by a taxation officer or for a connected purpose. This is consistent with one of the objectives of the framework as outlined in Chapter 1, which is to facilitate effective and efficient Government administration and law enforcement.

6.8 The new framework also recognises that in some limited circumstances a non-taxation officer should be able to on-disclose taxpayer information for a purpose that is unconnected to the purpose for which information was disclosed by a taxation officer.

6.9 Consistent with the current law, the new framework also provides that where an entity receives taxpayer information in breach of a taxation law, the circumstances in which they can disclose that information should be limited.

## Comparison of key features of current law and new law

| <i>New law</i>   | <i>Current law</i>  |
|--|---|
| Anyone (other than a taxation officer) who lawfully obtains taxpayer information under an exception in the new framework may disclose that information for, or in connection with, the original purpose for which the information was disclosed by a taxation officer. | Under a number of taxation secrecy provisions, an 'officer' who lawfully obtains taxpayer information may disclose that information in the performance of their duties as an officer. |

| <i>New law</i>   | <i>Current law</i>  |
|--|---|
| Commonwealth Royal Commissions, in addition to being able to use information for the purpose of or in connection with the conduct of their inquiries, will also be able to on-disclose taxpayer information in accordance with their own secrecy provisions. | The on-disclosure of taxpayer information obtained by a Royal Commission is prescribed in detail. |

## Detailed explanation of new law

### Non-taxation officers who are in lawful receipt of the information

6.10 The explanation below provides guidance on the restrictions placed on the on-disclosure of information provided by the ATO to a non-taxation officer. While most non-taxation officers are limited to only on-disclosing information for the purpose for which the information was originally disclosed (or a connected purpose), in limited circumstances the on-disclosure is not limited to the original purpose.

#### *On-disclosures for original or connected purpose*

6.11 Under the new framework, where taxpayer information is disclosed by a taxation officer to another entity (a non-taxation officer) for a particular purpose then it is not an offence for that entity to on-disclose that information for, or in connection with, the original purpose.  
*[Schedule 1, item 1, subsection 355-175(1)]*

6.12 Non-taxation officers may on-disclose information obtained from a taxation officer (or from a non-taxation officer), provided each on-disclosure is for the same purpose as, or a connected purpose to, the purpose for which the information was originally disclosed by the taxation officer.

#### **Example 6.1**

A taxation officer lawfully disclosed taxpayer information to the Child Support Registrar for the purpose of administering the *Child Support Assessment Act 1989*. It is not an offence for the Registrar to on-disclose that taxpayer information to the Secretary of the Department of Human Services (for the same or a connected purpose), or for the Secretary to on-disclose the information to a General Manager (for the same or a connected purpose), or for the General Manager to on-disclose the information to a policy officer (for the same or a connected purpose) who deals with the administration of the

*Child Support Assessment Act 1989*. All of these on-disclosures are authorised disclosures as they are related to the original purpose for the disclosure.

#### *Original purpose*

6.13 The relevant original purpose includes the purpose for which the information was disclosed by the taxation officer under an exception in Subdivision 355-B. [*Schedule 1, item 1, paragraph 355-175(1)(a)*]

#### **Example 6.2**

Ari, an ATO officer, discloses information to Waleed, an officer of the Australian Securities and Investment Commission (ASIC) for the purpose of enforcing a law that ASIC administers that imposes a pecuniary penalty. Waleed can on-disclose the information he receives from Ari, also for the purpose of the enforcement of a law that ASIC administers that imposes a pecuniary penalty.

6.14 In recognition that non-taxation officers are, in some circumstances, permitted to disclose taxpayer information for a purpose unconnected with the purpose for which information was disclosed by a taxation officer, *original purpose* also includes any purposes that are *specified* in Subdivision C (see below for a description of these purposes).

#### **Example 6.3**

Steve, an ATO officer, discloses taxpayer information under Subdivision 355-B to Alex, an authorised ASIO officer, for the purpose of performing ASIO's functions under the *Australian Security Intelligence Organisation Act 1979*. Alex on-discloses this information, in accordance with Subdivision 355-C, to the Inspector-General of Intelligence and Security for the purpose of assisting the Inspector-General to perform his duties in relation to ASIO. Notwithstanding that the original purpose of the disclosure by the taxation officer was to facilitate the performance of ASIO's duties under its Act, the original purpose in this case would also include the purpose of facilitating the Inspector-General's duties in relation to ASIO. Therefore the Inspector-General can on-disclose information for this purpose, as it is an original purpose.

#### *Connected purpose*

6.15 A 'connected purpose' is one that relates to the original purpose and is incidental to or arises as a consequence of any action taken in pursuance of the original purpose.

#### Example 6.4

A taxation officer lawfully disclosed taxpayer information to the Development Allowance Authority for the purpose of administering the *Development Allowance Authority Act 1992*. It is not an offence for an officer of the officer with the delegated responsibilities of the Development Allowance Authority to on-disclose that information for the purpose of administering any regulations associated with the *Development Allowance Authority Act 1992* as this is connected to the original purpose for which the information was disclosed by the taxation officer.

6.16 The new framework provides an indication (non-exhaustive) of the types of disclosures which are allowable under this exception. *[Schedule 1, item 1, subsection 355-175(2)]*

6.17 A connected purpose includes one which is for the purpose of criminal, civil or administrative proceedings related to the original purpose. This extends to disclosures to Courts, external legal advisers or to the Commonwealth Director of Public Prosecutions in relation to proceedings that arise in connection with the original purpose. *[Schedule 1, item 1, subsection 355-175(2), table item 1]*

6.18 It is not an offence to on-disclose taxpayer information to a minister who has a statutory power or function in relation to the original purpose where that on-disclosure is to enable the minister to exercise the power or perform the function (or to decide whether to exercise the power or perform the function). *[Schedule 1, item 1, subsection 355-175(2), table item 2]*

6.19 As noted in Chapter 3, a non-taxation officer in lawful receipt of taxpayer information can only on-disclose that information to a minister (or to a House of the Parliament) in certain prescribed circumstances. Disclosures to Ministers who have a statutory function or power in connection with the original purpose of the disclosure is one such circumstance. The other circumstance relates to disclosures by Royal Commissions and is further described in paragraphs 6.23 and 6.24 below. *[Schedule 1, item 1, section 355-195]*

#### *Multiple purposes*

6.20 In addition to being able to disclose taxpayer information for or in connection with *the* original purpose for which it was disclosed by a taxation officer, a non-taxation officer can on-disclose the information for any of the purposes for which they *could* have obtained the information from the taxation officer. There are three circumstances in the framework which allow a non-taxation officer to disclose taxpayer information to a particular entity (or set of entities) for a purpose listed in Subdivision 355-B but which is different to the purpose for which they received the information. *[Schedule 1, item 1, subsection 355-175(3)].*

6.21 These are:

- An authorised law enforcement agency officer or intelligence agency officer (or a State Royal Commission or member of such a Commission) may on-disclose taxpayer information received for the purpose of the enforcement of a law, the contravention of which is a serious offence, or for the making, or proposed or possible making, of a proceeds of crime order for either of those purposes [*Schedule 1, item 1, section 355-70, subsection 355-85(2)*];
- A Project Wickenby officer may on-disclose taxpayer information received for a particular purpose of the Project Wickenby taskforce for any of those purposes [*Schedule 1, item 1, section 355-75*]; and
- A taskforce officer of a prescribed taskforce may on-disclose taxpayer information received for a particular purpose of taskforce taskforce for any of those purposes [*Schedule 1, item 1, section 355-80*].

#### **Example 6.1**

A taxation officer lawfully discloses taxpayer information to a Project Wickenby officer for the purpose of detecting the promotion of an international tax avoidance arrangement. It is not an offence for that Project Wickenby officer to on-disclose that information for the purpose of investigating an international money laundering arrangement even though that is a different Project Wickenby purpose.

#### ***On-disclosures not limited by original or connected purpose***

6.22 In addition to the more general on-disclosure provision for the original or a connected purpose, the new framework also permits, in certain limited circumstances, the on-disclosure of taxpayer information for a purpose that may be unconnected to the purpose for which the taxation officer provided the information.

#### ***Australian Security Intelligence Organisation***

6.23 Where an authorised Australian Security Intelligence Organisation (ASIO) officer has lawfully obtained taxpayer information under the new framework, the officer is able to on-disclose that information to the Inspector-General of Intelligence and Security (or a member of their staff) for the purpose of the Inspector-General's duties in relation to ASIO (or in relation to ASIO officers and employees). This replicates an on-disclosure provision in the law (section 3EA of the Taxation Administration Act 1953 (TAA 1953)) which would not

necessarily fall within the general on-disclosure provision. [*Schedule 1, item 1, section 355-180*]

#### *Commonwealth Royal Commissions*

6.24 Currently, information that is disclosed to Commonwealth Royal Commissions is subject to very prescriptive on-disclosure provisions. Generally, however, these provisions permit such Commissions to disclose taxpayer information to a range of entities listed in section 6P of the *Royal Commissions Act 1902*. These include a variety of agencies and officers involved in law enforcement, such as the Attorney-General, the Australian Federal Police, the Australian Crime Commission and the Law Enforcement Integrity Commissioner. To substantially simplify these provisions, and to ensure that all information that a Commonwealth Royal Commission receives in the course of its inquiry can be disclosed in the same manner, the new framework specifically allows such Royal Commissions to on-disclose taxpayer information in accordance with section 6P. [*Schedule 1, item 1, section 355-185*]

6.25 This change will involve a broadening of what Commonwealth Royal Commissions can do with taxpayer information. However, again, this is a case where the public interest outweighs the impact on a taxpayer's privacy. Royal Commissions occupy a unique place in Australia's system of government, being the highest form of inquiry available to executive government. Royal Commissions are traditionally reserved for rare matters of national significance. As noted above entities who receive protected information from a Commonwealth Royal Commission will receive that information to assist in law enforcement activities against relevant individuals or corporations. Information is expected to be on-disclosed in rare instances, at the discretion of the Royal Commission, where public interest in on-disclosure outweighs the entity's privacy.

### **Non-taxation officers who are not in lawful receipt of the information**

6.26 Non-taxation officers who receive taxpayer information as a result of a breach of a taxation law are much more limited in what they can do with that information. This recognises the importance of ensuring that the chain of lawful disclosures is maintained.

6.27 There are only two circumstances in which it is not an offence to on disclose information received in breach of a taxation law.

6.28 Firstly, it is not an offence for an entity to disclose taxpayer information that has been unlawfully obtained if that disclosure is required or permitted by a taxation law or is reasonably necessary in order to

comply with an obligation imposed under a taxation law. [*Schedule 1, item 1, paragraph 355-265(2)(a)*]

6.29 This exception recognises the fact that the use of the taxpayer information (though unlawfully obtained) in these circumstances is consistent with the reason for which the information was obtained by the taxpayer in the first instance.

6.30 Secondly, it is not an offence for an entity that has unlawfully obtained the information to provide that information to a taxation officer for the purpose of administering a taxation law. This exception facilitates the return of information that has been unlawfully disclosed back to the ATO and can alert the ATO to the fact that information has been unlawfully disclosed, thereby enabling it to take action accordingly. [*Schedule 1, item 1, paragraph 355-265(2)(b)*]

### **Example 6.2**

Tuan, a journalist, receives taxpayer information as a result of a breach of a taxation law. Being aware that the information has been unlawfully disclosed to him, Tuan decides not to publish the information and instead returns it to the ATO. It is not an offence to on-disclose taxpayer information to the ATO in these circumstances, notwithstanding that it has been unlawfully obtained

If Tuan was to disclose the information to a non-taxation officer, eg to a journalist for media publication, this would be an offence..

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# **Chapter 7**

## **Other matters**

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### **Outline of chapter**

7.1 This chapter outlines the provisions in the new framework that relate to:

- oaths and affirmations relating to taxpayer information to be taken by taxation officers; and
- injunctions that can be sought to prevent the disclosure of taxpayer information.

7.2 This chapter also provides information on the application and transitional provisions.

### **Context of amendments**

#### **Operation of current provisions**

7.3 Under the current law, taxation officers can be required to take oaths or make affirmations relating to the protection of taxpayer information.

7.4 There are also provisions in the current law that permit the Commissioner of Taxation (Commissioner) to seek an injunction in the Federal Court of Australia to prevent an unauthorised disclosure of taxpayer information.

### **Summary of new law**

7.5 The new framework translates the existing provisions relating to oaths, affirmations and injunctions.

## Comparison of key features of new law and current law

### Detailed explanation of new law

#### Oaths and affirmations

7.6 The Commissioner of Taxation (Commissioner) has the power to require a taxation officer to make an oath or affirmation to protect information in accordance with the secrecy and disclosure rules. The form of this oath or affirmation is determined by the Commissioner in writing. [Schedule 1, item 1, section 355-325]

7.7 The oath or affirmation plays an important role in reminding taxation officers of the importance of maintaining the appropriate confidentiality of an entity's information. As it can be required by the Commissioner as a condition of employment, it ensures that all taxation officers are given the opportunity to understand the serious consequences of any breach of a taxation secrecy provision.

#### Injunctions

7.8 If an entity has engaged, is engaging or is proposing to engage in a breach of the new framework, the Commissioner can apply to the Federal Court for an injunction. The Federal Court may grant an injunction restraining the entity from engaging in a breach of the new framework, or compelling the entity to do a particular thing. [Schedule 1, item 1, subsection 355-330(1)]

##### Example 7.1

Jerome, a journalist, unlawfully obtains information regarding the financial affairs of a prominent businessman and decides to include that information in his newspaper the following day. The Commissioner, who has become aware of this impending unlawful disclosure of taxpayer information, applies to the Federal Court for an injunction. The Federal Court issues an injunction against Jerome preventing him from publishing that information and also compelling him to return the information to the Australian Taxation Office (ATO).

7.9 The circumstances in which an injunction can be sought replicate the injunction provisions in section 98 of the *Privacy Act 1988*. The tests for the award of an injunction in both the new framework and in the *Privacy Act 1988* are materially identical and ensure a consistent approach to the manner in which taxpayer information under the new

framework and personal information under the *Privacy Act 1988* are protected through application of an injunction.

7.10 The Federal Court can issue an interim injunction, pending the determination of the Commissioner's application for an injunction. *[Schedule 1, item 1, subsections 355-330(2) and (3)]*

7.11 The Federal Court also has the power to discharge or vary an injunction previously awarded. *[Schedule 1, item 1, subsections 355-330(2) and (3)]*

7.12 The Federal Court must not require the Commissioner (or any other entity) to give any undertakings as to damages as a condition of the granting of an interim injunction. *[Schedule 1, item 1, subsection 355-330(6)]*

## **Application and transitional provisions**

7.13 The secrecy and disclosure provisions contained in this exposure draft apply to records and disclosures of taxpayer information after the commencement of this exposure draft, irrespective of when that information was obtained. *[Schedule 1, item 118]*

7.14 To ensure that all on-disclosures of taxpayer information obtained by non-taxation officers, irrespective of when the information was obtained, are governed by the on-disclosure provisions, information obtained before the commencement of the new framework is taken to be information obtained in accordance with the disclosure provisions. *[Schedule 1, item 119]*

7.15 Until 2001, the *Excise Act 1901* was administered by the Chief Executive Officer of Customs. It was therefore not administered by the Commissioner and was, consequently, not a taxation law. Therefore, but for this transitional provision, information obtained under that Act before the administrative responsibility for the *Excise Act 1901* changed would not be subject to any secrecy and disclosure provisions. It is therefore necessary for the secrecy provisions in the *Excise Act 1901* (section 159) to continue to operate with respect to such information. *[Schedule 1, item 120]*

7.16 A similar result is achieved with respect to the *Superannuation Industry (Supervision) Act 1993* (SIS Act). When the Commissioner took over responsibility for the regulation of self-managed superannuation funds, section 252C of the SIS Act was introduced to protect information provided to the Commissioner in the course of performing this function and also to other officers who received this information from the Commissioner. While information disclosed after the enactment of

section 252C would be considered taxpayer information within the definition in the new framework (as it was disclosed under section 252C which is a taxation law) and would therefore be covered by item 119, section 252C also included within its own definition of 'taxpayer information' information that was obtained or disclosed prior to the commencement of section 252C. Such information would not have been obtained or disclosed under a taxation law (as the Commissioner did not have administration of SIS Act provisions at that time) and it is therefore necessary for section 252C to continue to operate with respect to such information. *[Schedule 1, item 121]*

7.17 In making the numerous amendments required under the new framework, any transitional provisions that become necessary to ensure a smooth transition and which have not been included in the new framework can be made following enactment. This will ensure that there is as little disruption as possible in the transition to the new regime by ensuring that any unforeseen circumstances that require transitional provisions not contemplated in this exposure draft can be addressed. *[Schedule 1, item 122]*

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# Chapter 8

## Finding tables

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### Outline of chapter

8.1 This chapter contains the finding tables.

### Finding table

8.2 The following tables list existing secrecy provisions and disclosure provisions, by Act, and the provisions in the new framework to be contained in Schedule 1 to the *Taxation Administration Act 1953* by which they are proposed to be replaced. Note that while there are 19 different taxation laws that contain secrecy and disclosure provisions, only 18 have been amended and are listed below. This is because this framework does not include the *A New Tax System (Australian Business Number) Act 1999* provisions for reasons outlined in Chapter 1.

8.3 Also, it is important to note that the tables and the exposure draft only reflect secrecy and disclosure provisions as enacted in the law as at the commencement of 2009. Provisions currently being considered by Parliament (that is, they have been introduced) but not yet enacted, will be reflected in the final version of any Bill.

8.4 While the secrecy and disclosure provisions in the various taxation law Acts listed below generally have their own definition sections, these are generally not listed below (though they will be repealed as a consequence of this exposure draft). This is because many of the definitions are no longer necessary as a consequence of the new framework and have therefore not been replicated. Of note however, many of the provisions listed below refer to both ‘protected information’ and ‘protected documents.’ These have now been amalgamated into a single definition of ‘protected information’ found at subsection 355-25(2) of the exposure draft (see paragraphs 2.11 to 2.20 above).

8.5 In addition, the definitions of ‘officer’ and ‘persons to whom this section applies’ (and other such definitions that identify which persons are subject to the secrecy provisions) have not been listed below. These have been replaced with definitions of taxation officer (section 355-25(1)) and the use of the term ‘entity’ in section 355-155.

**Table 8.1 Excise Act 1901**

| <i>New law</i>                 | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-20 and 355-155             | 159(2)             |
| 355-45                         | 159(3)(a)          |
| 355-45 (for taxation officers) | 159(3)(b)          |
| 355-65 (table 7 item 2)        | 159(3)(c)(i)       |
| 355-65 (table 7 item 1)        | 159(3)(c)(ii)      |
| 355-45                         | 159(3)(c)(ia)      |
| 355-45                         | 159(3)(c)(iii)     |
| 355-45                         | 159(3)(c)(iv)      |
| 355-65 (table 1 item 1)        | 159(3)(c)(v)       |
| 355-65 (table 1 item 1)        | 159(3)(c)(vi)      |
| 355-65 (table 7 item 2)        | 159(3)(d)(i)       |
| 355-65 (table 7 item 1)        | 159(3)(d)(ii)      |
| 355-45                         | 159(3)(d)(ia)      |
| 355-45                         | 159(3)(d)(iii)     |
| 355-65 (table 1 item 1)        | 159(3)(d)(iv)      |
| 355-65 (table 1 item 1)        | 159(3)(d)(v)       |
| 355-45                         | 159(3A)            |
| 355-25(2)                      | 159(3B)            |
| 355-60(1) and 355-195(1)       | 159(4)             |
| 355-95 and 355-190             | 159(5)             |

**Table 8.2 First Home Saver Accounts Act 2008**

| <i>New law</i>                                     | <i>Current law</i> |
|--|--------------------|
| 355-20, 355-155 and 355-45 (for taxation officers) | 70(2)              |
| 355-45   | 70(3)              |
| 355-60(1) and 355-195(1)                           | 70(4)              |
| 355-95 and 355-190                                 | 70(5)              |
| 355-45   | 70(6)              |
| 355-45   | 70(7)              |
| 355-65 (table 2 item 6 and table 3 item 5)         | 70(7A)             |
| 355-325  | 70(8)              |

**Table 8.3 Fringe Benefits Tax Assessment Act 1986**

| <i>New law</i>                 | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-25 (for taxation officers) | 5(2)               |
| 355-20 and 355-155             | 5(3)               |
| 355-45                         | 5(3A)              |
| 355-95 and 355-190             | 5(4)               |
| 355-45                         | 5(5)(a)            |
| 355-45                         | 5(5)(b)            |
| 355-65 (table 1 item 1)        | 5(5)(c)            |
| 355-65 (table 1 item 1)        | 5(5)(d)            |
| 355-60(1) and 355-195(1)       | 5(6)               |
| 355-325                        | 5(7)               |

**Table 8.4 Income Tax Assessment Act 1936**

| <i>New law</i>                 | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-25(1)                      | 16(1A)             |
| 355-20 and 355-155             | 16(2)              |
| 355-45 (for taxation officers) | 16(2A)             |
| 355-95 and 355-190             | 16(3)              |
| 355-45                         | 16(4)(a)           |
| 355-45                         | 16(4)(b)           |
| 355-45                         | 16(4)(c)           |
| 355-65 (table 1 item 3)        | 16(4)(d)           |
| 355-65 (table 1 item 1)        | 16(4)(e)           |
| 355-65 (table 1 item 4)        | 16(4)(ea)          |
| 355-65 (table 1 item 1)        | 16(4)(eb)          |
| 355-65 (table 1 item 2)        | 16(4)(f)           |
| Nil. No longer necessary       | 16(4)(fa)          |
| 355-65 (table 1 item 8)        | 16(4)(fb)          |
| 355-65 (table 1 item 6)        | 16(4)(fc)          |
| 355-65 (table 5 item 1)        | 16(4)(fd)          |
| 355-65 (table 5 item 1)        | 16(4)(g)           |
| 355-65 (table 5 item 1)        | 16(4)(gaa)         |
| 355-65 (table 7 item 1)        | 16(4)(ga)          |
| 355-65 (table 7 item 1)        | 16(4)(gb)          |
| 355-65 (table 5 item 2)        | 16(4)(h)           |
| Nil. No longer necessary       | 16(4)(ha)          |
| 355-65 (table 1 item 5)        | 16(4)(hb)          |

| <i>New law</i>   | <i>Current law</i> |
|--|--------------------|
| 355-65 (table 4 item 3)  | 16(4)(hba)         |
| Nil. No equivalent   | 16(4)(hc)          |
| 355-65 (table 2 item 4 and table 3 item 3)   | 16(4)(hca)         |
| 355-65 (table 2 item 6 and table 3 item 5)   | 16(4)(hcaa)        |
| 355-65 (table 2 item 4)  | 16(4)(hcb)         |
| 355-65 (table 7 item 3)  | 16(4)(hd)          |
| Nil. No longer necessary   | 16(4)(j)           |
| 355-65 (table 1 item 7)  | 16(4)(ja)          |
| 355-85   | 16(4)(k)           |
| 355-55 (item 1)  | 16(4)(l)           |
| 355-65 (table 3 item 6)  | 16(4)(m)           |
| On disclosure of information obtained by a Commonwealth Royal Commission governed by 355-175 and 355-185 | 16(4AA) to 16(4JC) |
| 355-155  | 16(5)              |
| 355-60(1) and 355-195(1)   | 16(5A)             |
| 355-45 (other than to Minister)  | 16(5B)             |
| Nil. No equivalent   | 16(5BA)            |
| 355-155 and 355-195(1)   | 16(5C)             |
| 355-45 (for taxation officers)   | 16(5CA)            |
| 355-95 and 355-190   | 16(5D)             |
| 355-325  | 16(6)              |
| Nil. No longer necessary.  | 16A                |

**Table 8.5 *Income Tax Assessment Act 1997***

| <i>New law</i>                                  | <i>Current law</i> |
|---|--------------------|
| 355-45  | 30-229(5)          |
| 355-45 (table item 1) and 355-55 (table item 1) | 396-95(1)          |
| 355-20 and 355-155                              | 396-95(2)          |
| Nil. No longer necessary                        | 396-100            |

**Table 8.6 *International Tax Agreements Act 1953***

| <i>New law</i> | <i>Current law</i> |
|----------------|--------------------|
| 355-45         | 23(2)              |

**Table 8.7 Petroleum Resource Rent Tax Assessment Act 1987**

| <i>New law</i>           | <i>Current law</i> |
|--------------------------|--------------------|
| 355-20 and 355-155       | 17(3)              |
| 355-45                   | 17(3A)             |
| 355-95 and 355-190       | 17(4)              |
| 355-45                   | 17(5)(a)           |
| 355-45                   | 17(5)(b)           |
| 355-60(1) and 355-195(1) | 17(6)              |
| 355-325                  | 17(7)              |
| Nil. No equivalent       | 18(1)              |
| 355-45, 355-55           | 18(2)              |
| 355-20                   | 18(3)              |

**Table 8.8 Product Grants and Benefits Administration Act 2000**

| <i>New law</i>                 | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-20 and 355-155             | 47(2)              |
| 355-45                         | 47(3)(a)           |
| 355-45 (for taxation officers) | 47(3)(b)           |
| 355-65(1) (table 7 item 1)     | 47(3)(c)(i)        |
| 355-65(1) (table 3 item 7)     | 47(3)(c)(ia)       |
| 355-65(1) (table 6 item 2)     | 47(3)(c)(ib)       |
| 355-65(1) (table 6 item 1)     | 47(3)(c)(ic)       |
| 355-45                         | 47(3)(c)(ii)       |
| 355-45                         | 47(3)(c)(iii)      |
| 355-65 (table 1 item 1)        | 47(3)(c)(iv)       |
| 355-65 (table 1 item 1)        | 47(3)(c)(v)        |
| 355-65(table 7 item 1)         | 47(3)(d)(i)        |
| 355-65 (table 3 item 7)        | 47(3)(d)(ia)       |
| 355-65 (table 6 item 2)        | 47(3)(d)(ib)       |
| 355-65(1) (table 6 item 1)     | 47(3)(d)(ic)       |
| 355-45                         | 47(3)(d)(ii)       |
| 355-65 (table 1 item 1)        | 47(3)(d)(iii)      |
| 355-65 (table 1 item 1)        | 47(3)(d)(iv)       |
| 355-60(1) and @355-195(1)      | 47(4)              |

**Table 8.9 Superannuation Contributions Tax (Assessment and Collection) Act 1997**

| <i>New law</i>                                     | <i>Current law</i> |
|--|--------------------|
| 355-20, 355-155 and 355-45 (for taxation officers) | 32(2)              |
| 355-45   | 32(3)              |
| 355-60(1) and 355-195(1)                           | 32(4)              |
| 355-95 and 355-190                                 | 32(5)              |
| 355-45   | 32(6)              |
| 355-45   | 32(7)              |
| 355-65 (table 2 item 4 and table 3 item 3)         | 32(8)              |
| 355-325  | 32(9)              |

**Table 8.10 Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997**

| <i>New law</i>                                     | <i>Current law</i> |
|--|--------------------|
| 355-20, 355-155 and 355-45 (for taxation officers) | 28(2)              |
| 355-45   | 28(3)              |
| 355-60(1) and 355-195(1)                           | 28(4)              |
| 355-95 and 355-190                                 | 28(5)              |
| 355-45   | 28(6)              |
| 355-45   | 28(7)              |
| 355-65 (table 2 item 4 and table 3 item 3)         | 28(8)              |
| 355-325  | 28(9)              |

**Table 8.11 Superannuation (Government Co-contributions for Low Income Earners) Act 2003**

| <i>New law</i>                                     | <i>Current law</i> |
|--|--------------------|
| 355-20, 355-155 and 355-45 (for taxation officers) | 53(2)              |
| 355-45   | 53(3)              |
| 355-60(1) and 355-195(1)                           | 53(4)              |
| 355-95 and 355-190                                 | 53(5)              |
| 355-45   | 53(6)              |
| 355-45   | 53(7)              |
| 355-65 (table 2 item 4 and table 3                 | 53(8)              |

| <i>New law</i> | <i>Current law</i> |
|----------------|--------------------|
| item 3)        |                    |
| 355-325        | 53(9)              |

**Table 8.12 Superannuation Guarantee (Administration) Act 1992**

| <i>New law</i>                 | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-20, 355-155                | 45(2)              |
| 355-45 (for taxation officers) | 45(2A)             |
| 355-45                         | 45(3)              |
| 355-60(1) and 355-195(1)       | 45(4)              |
| 355-95 and 355-190             | 45(5)              |
| 355-45                         | 45(6)              |
| 355-45                         | 45(7)              |
| 355-325                        | 45(8)              |
| 355-65 (table 2 item 7)        | 45A                |

**Table 8.13 Superannuation Industry (Supervision) Act 1993**

| <i>New law</i>                   | <i>Current law</i> |
|----------------------------------|--------------------|
| 355-20 and 355-155               | 252C(2)            |
| 355-45                           | 252C(3)            |
| 355-20(b)(ii) and 355-155(a)(ii) | 252C(4)(a)         |
| Nil. No equivalent.              | 252C(4)(b)         |
| 355-65 (table 2 item 2)          | 252C(5)(a)         |
| Nil. No equivalent               | 252C(5)(b)         |
| 355-45                           | 252C(6)            |
| 355-25(2)(c)                     | 252C(7)            |
| 355-65 (table 2 item 8)          | 252C(7A)           |
| 355-45                           | 252C(7B)           |
| 355-95 and 355-190               | 252C(8)            |
| Nil. No equivalent               | 252C(9)            |
| Nil. No equivalent               | 252C(10)           |
| Consequential (Part 2), item 27  | 252C(11)           |

**Table 8.14 Superannuation (Unclaimed Money and Lost Members) Act 1999**

| <i>New law</i>                                     | <i>Current law</i> |
|--|--------------------|
| 355-325  | 31(2) and (3)      |
| 355-20, 355-155 and 355-45 (for taxation officers) | 32                 |

|  |       |
|--|-------|
| 355-95 and 355-190                     | 33    |
| 355-45                                 | 34    |
| 355-45                                 | 35    |
| 355-45                                 | 36    |
| 355-45 (though no consent requirement) | 37    |
| 355-65 (table 2 item 5)                | 38(a) |
| 355-45 and 355- 55 (table item 1)      | 38(b) |
| 355-65 table 2 item 3                  | 38(c) |
| 355-65 (table 3 item 2)                | 38(d) |
| 355-65 (table 2 item 1)                | 38(e) |
| 355-65 table 7 item 1                  | 38(f) |
| 355-175                                | 39    |

**Table 8.15 Taxation Administration Act 1953**

| <i>New law</i>        | <i>Current law</i> |
|-----------------------|--------------------|
| Nil. Not replicated   | 3C(1AB)            |
| 355-25(1)(e)(i)       | 3C(1A)             |
| 355-20 and 355-155    | 3C(2)              |
| 355-45                | 3C(2A)             |
| 355-95 and 355-190    | 3C(3)              |
| 355-45                | 3C(4)              |
| 355-60(1) and 355-195 | 3C(5)              |
| 355-325               | 3C(6)              |
| 355-25                | 3C(7)              |
| Nil. No equivalent.   | 3C(8)              |
| Nil. No equivalent.   | 3C(9)              |
| 355-45                | 3D(1)              |
| 355-185               | 3D(2)(a)           |
| Nil. No equivalent    | 3D(2)(b)           |
| 355-175               | 3D(4) to (10)      |
| 355-25(2)(i)          | 3D(11)(ba)         |
| 355-25(2)(i)          | 3D(11)(c)          |
| 355-175               | 3D(11)(ca)         |
| 355-175               | 3D(11)(d)          |
| 355-175               | 3D(11)(e)          |
| 355-175               | 3D(11)(f)          |
| 355-155               | 3D(11)(g) and (h)  |

| <i>New law</i>   | <i>Current law</i> |
|--|--------------------|
| 355-175 and 355-155  | 3D(11)(j)(i)       |
| 355-155 and 355-155  | 3D(11)(j)(ii)      |
| 355-155(a)(ii)   | 3D(12)(a)          |
| 355-155(a)(ii)   | 3D(12)(b)(i)       |
| 355-155(a)(ii)   | 3D(12)(b)(ii)      |
| 355-155(a)(ii)   | 3D(12)(c)          |
| 355-155(a)(ii)   | 3D(13)             |
| 355-155  | 3D(14)             |
| 355-155  | 3D(15)             |
| Nil No equivalent.   | 3D(15A)            |
| Nil No equivalent.   | 3D(15B)            |
| 355-175  | 3D(16)             |
| 355-155  | 3D(17)             |
| Ni. No equivalent.   | 3D(18)             |
| 355-190  | 3D(19)             |
| 355-70(1) and 355-85   | 3E(1)              |
| 355-155  | 3E(2)              |
| 355-175  | 3E(2A)             |
| 355-155  | 3E(2B)             |
| 355-175  | 3E(2C)             |
| 355-190  | 3E(3)              |
| 355-175  | 3E(4)(a)           |
| 355-175 and 355-190  | 3E(4)(b)           |
| 355-155  | 3E(5)              |
| 355-175  | 3E(5A)             |
| 355-190  | 3E(6)              |
| On-disclosures by Commonwealth Royal Commissions governed by section 355-175 and 355-185. On-disclosures by State Royal Commissions governed by 355-175. | 3E(6A) to (3E(6D)  |
| 355-20 and 355-155   | 3E(7)              |
| Nil. No equivalent   | 3E(8)              |
| 355-175  | 3E(9)              |
| Nil. No equivalent   | 3E(10)             |
| 355-70(2)  | 3EA(1)             |
| 355-155  | 3EA(2)             |
| 355-175  | 3EA(3)(a)          |

| <i>New law</i>          | <i>Current law</i> |
|-------------------------|--------------------|
| 355-175                 | 3EA(3)(b)          |
| 355-175                 | 3EA(3)(c)          |
| 355-180                 | 3EA(3)(d)          |
| 355-175                 | 3EA(3)(e)          |
| 355-190 and 355-155     | 3EA(4)             |
| Nil. No equivalent      | 3EA(5)             |
| 355-155                 | 3EB(1)             |
| 355-175                 | 3EB(2)             |
| 355-190                 | 3EB(3)             |
| 355-155                 | 3EC(1)             |
| 355-175                 | 3EC(2)(a) and (b)  |
| 355-175                 | 3EC(2)(c)          |
| 355-190 and 355-155     | 3EC(3)             |
| 355-65 (table 7 item 2) | 3F(1)              |
| Nil. No equivalent      | 3F(2)              |
| 355-75(1)               | 3G(1)              |
| 355-75(2)               | 3G(2)              |
| 355-75(3)               | 3G(3)              |
| 355-75(4)               | 3G(4)              |
| 355-75(5)               | 3G(5)              |
| 355-155                 | 3G(6)              |
| 355-175                 | 3G(7)              |
| 355-175                 | 3G(8)              |
| 355-155                 | 3G(9)              |
| 355-175                 | 3G(10)             |
| 355-190                 | 3G(11)             |
| Nil. No equivalent      | 3G(12)             |
| 355-80(1)               | 3H(1)              |
| 355-80(2)               | 3H(2)              |
| 355-80(3)               | 3H(3)              |
| 355-80(4)               | 3H(4)              |
| 355-155                 | 3H(5)              |
| 355-175                 | 3H(6)              |
| 355-175                 | 3H(7)              |
| 355-155                 | 3H(8)              |
| 355-175                 | 3H(9)              |
| 355-190                 | 3H(10)             |

| <i>New law</i>           | <i>Current law</i>         |
|--------------------------|----------------------------|
| Nil. No equivalent       | 3H(11)                     |
| 355-265(1)               | 8XB(1)                     |
| 355-265(2)(a)            | 8XB(1A)                    |
| Nil. No equivalent       | 8XB(2)                     |
| 355-265(2)(b)            | 8XB(3)                     |
| 355-265(3)               | 8XB(4)                     |
| 355-20 & 355-155         | 13H(1)                     |
| 355-175 and 355-45       | 13H(1A)                    |
| 355-95 and 355-190       | 13H(2)                     |
| 355-60(1) and 355-195(1) | 13H(3)                     |
| 355-65 (table 4 item 1)  | 13J(1)                     |
| 355-155                  | 13J(2)                     |
| 355-175                  | 13J(2A)                    |
| 355-190                  | 13J(3)                     |
| 355-195(1)               | 13J(4)                     |
| Nil. No equivalent       | 13J(5)                     |
| Ni. No equivalent.       | 13J(8)                     |
| 355-65 (table 4 item 2)  | 13J(9)                     |
| Nil. No equivalent       | 355-5(1) of Schedule 1     |
| 355-20 and 355-155       | 355-5(2)                   |
| Nil. No equivalent       | 355-5(3)                   |
| 355-45                   | 355-(4)                    |
| 355-45                   | 355-5(5) (Item 1 in table) |
| 355-45 (table item 3)    | 355-5(5) (Item 2 in table) |
| 355-65 (table 7 item 1)  | 355-5(5) (Item 3 in table) |
| 355-65 (table 1 item 1)  | 355-5(5) (Item 4 in table) |
| 355-65 (table 7 item 2)  | 355-5(5) (Item 5 in table) |
| 355-65 (table 1 item 1)  | 355-5(5) (Item 6 in table) |
| 355-65 (table 4 item 4)  | 355-5(5) (Item 7 in table) |
| 355-95 & 355-190         | 355-5(6)                   |

**Table 8.16 Taxation (Interest on Overpayments and Early Payments) Act 1983**

| <i>New law</i>     | <i>Current law</i> |
|--------------------|--------------------|
| 355-20 and 355-155 | 8(2)               |
| 355-45             | 8(2A)              |
| 355-95 and 355-190 | 8(3)               |

|                          |      |
|--------------------------|------|
| 355-45                   | 8(4) |
| 355-60(1) and 355-195(1) | 8(5) |
| 355-325                  | 8(6) |

**Table 8.17 Termination Payments Tax (Assessment and Collection) Act 1997**

| <i>New law</i>                                     | <i>Current law</i> |
|--|--------------------|
| 355-20, 355-155 and 355-45 (for taxation officers) | 23(2)              |
| 344-45   | 23(3)              |
| 355-60(1) and 355-195(1)                           | 23(4)              |
| 355-95 and 355-190                                 | 23(5)              |
| 355-45   | 23(6)              |
| 355-45   | 23(7)              |
| 355-325  | 23(8)              |

**Table 8.18 A New Tax System (Bonuses for older Australians) Act 1999**

| <i>New law</i>                             | <i>Current law</i> |
|--|--------------------|
| This Act is being repealed in its entirety | Section 54         |

