

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for Consultation) Bill 2023: PwC
response—information sharing**

Commencement information

| Column 1 | Column 2 | Column 3 |
|-------------------|---------------------|---------------------|
| Provisions | Commencement | Date/Details |

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|---------------|---|--|
| 1. Schedule # | The day after this Act receives the Royal Assent. | |
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3.

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Schedule #—Information sharing

1
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Part 1—Amendments

3

Taxation Administration Act 1953

4

1 Subsection 355-65(8) in Schedule 1 (at the end of the Table)

5

6 Add:

7

14 the Secretary of the Department

(a) is of information that concerns:

- (i) a breach of an obligation of confidence by an entity (the *first entity*) against the Commonwealth or a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or
- (ii) if the taxation officer reasonably suspects that such a breach has occurred—the suspected breach;

where the first entity was, at the time the obligation first arose, providing advice, or otherwise providing services, to a Commonwealth entity either:

- (iii) as an entity engaged by the Commonwealth entity for that purpose; or
- (iv) as an entity representing a taxpayer; and

(b) is for the purpose of enabling or assisting in the consideration, development or implementation of any measure, or the taking of any action, directed at dealing with the breach or suspected breach; and

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- (c) does not include:
- (i) the *ABN; or
 - (ii) the name; or
 - (iii) contact details; or
 - (iv) personal information
(within the meaning of the *Privacy Act 1988*);
- of any entity other than the first entity, unless the Commissioner is satisfied that the inclusion of the information is necessary for the purpose mentioned in paragraph (b); and
- (d) if the taxation officer is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—is authorised by:
- (i) the Commissioner; or
 - (ii) a Second Commissioner;
or
 - (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

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| 15 | a professional disciplinary body that is prescribed for the purposes of this table item (a <i>prescribed disciplinary body</i>) | (a) is of information that concerns an entity (the <i>first entity</i>) and an act or omission (or a suspected act or omission) of the first entity that the taxation officer reasonably suspects may constitute a breach by the first entity of the prescribed disciplinary body's code of conduct or professional standards, however described; and |
| | | (b) is for the purpose of enabling or assisting the prescribed disciplinary body to perform one or more of its functions in respect of the first entity; and |
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- (c) does not include:
 - (i) the *ABN; or
 - (ii) the name; or
 - (iii) contact details; or
 - (iv) personal information
(within the meaning of the *Privacy Act 1988*);of any entity other than the first entity, unless the Commissioner is satisfied that the inclusion of the information is necessary for the purpose mentioned in paragraph (b); and
- (d) if the taxation officer is not the Commissioner, a *Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—is authorised by:
 - (i) the Commissioner; or
 - (ii) a Second Commissioner;
or
 - (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

1 **2 After section 355-180 in Schedule 1**

2 Insert:

3 **355-181 Exception—on-disclosure to Ministers in relation to breach**
4 **of confidence and related matters**

5 Section 355-155 does not apply if:

- 6 (a) the entity is the Secretary of the Department or an SES
7 employee of the Department authorised by the Secretary for
8 the purposes of this section (the *first entity*); and
- 9 (b) the information was obtained by the first entity under the
10 exception in subsection 355-65(1) operating in relation to
11 item 14 in the table in subsection 355-65(8); and

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- 1 (c) the record is made for, or the disclosure is to, the Minister or
2 the *Finance Minister; and
- 3 (d) the record or disclosure is for the purpose of providing advice
4 to the Minister or the Finance Minister in relation to:
- 5 (i) a breach, or a suspected breach, of an obligation of
6 confidence by another entity (the *second entity*) against
7 the Commonwealth or a Commonwealth entity (within
8 the meaning of the *Public Governance, Performance
9 and Accountability Act 2013*); or
- 10 (ii) any proposed measure or action directed at dealing with
11 such a breach or suspected breach.

12 Note: A defendant bears an evidential burden in relation to the matters in
13 this section: see subsection 13.3(3) of the *Criminal Code*.

14 3 Section 355-210 in Schedule 1

15 After “355-180”, insert “, 355-181”.

16 *Tax Agent Services Act 2009*

17 4 At the end of section 70-40

18 Add:

19 *Disclosures to the Secretary of the Department*

- 20 (5) Subsection 70-35(1) does not apply if:
- 21 (a) the person (the *first person*) makes the record for, or the
22 disclosure to, the Secretary of the Department; and
- 23 (b) the record or disclosure is of information that concerns:
- 24 (i) a breach of an obligation of confidence by another
25 person (the *second person*) against the Commonwealth
26 or a Commonwealth entity (within the meaning of the
27 *Public Governance, Performance and Accountability
28 Act 2013*); or
- 29 (ii) if the first person reasonably suspects that such a breach
30 has occurred—the suspected breach; and
- 31 (c) the second person is, or was at the time the obligation first
32 arose, providing advice, or otherwise providing services, to a
33 Commonwealth entity either:
- 34 (i) as an entity engaged by the Commonwealth entity for
35 that purpose; or
- 36 (ii) as an entity representing a taxpayer; and

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- 1 (d) the record or disclosure is for the purpose of:
2 (i) enabling or assisting in the consideration, development
3 or implementation of any measure or the taking of any
4 action directed at dealing with the breach or suspected
5 breach; or
6 (ii) enabling or assisting the Secretary or an SES employee
7 of the Department to advise the Minister and the
8 *Finance Minister in relation to the breach or suspected
9 breach; and
10 (e) the record or disclosure is of information that does not
11 include:
12 (i) the *ABN; or
13 (ii) the name; or
14 (iii) contact details; or
15 (iv) personal information (within the meaning of the *Privacy*
16 *Act 1988*);
17 of any person other than the second person, unless the Chair
18 is satisfied that the inclusion of the information is necessary
19 for a purpose mentioned in paragraph (d).

20 Note: A defendant bears an evidential burden in relation to the matters in
21 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

22 *Disclosures to a prescribed professional disciplinary body*

- 23 (6) Subsection 70-35(1) does not apply if:
24 (a) the person (the **first person**) makes the record for, or the
25 disclosure to, a professional disciplinary body that is
26 prescribed by the regulations for the purposes of this
27 subsection (a **prescribed disciplinary body**); and
28 (b) the record or disclosure is of information that concerns
29 another person (the **second person**) and an act or omission
30 (or a suspected act or omission) of the second person that the
31 first person reasonably suspects may constitute a breach by
32 the second person of the prescribed disciplinary body's code
33 of conduct or professional standards, however described; and
34 (c) the record or disclosure is made for the purpose of enabling
35 or assisting the prescribed disciplinary body to perform one
36 or more of its functions in respect of the second person; and
37 (d) the record or disclosure is of information that does not
38 include:
39 (i) the *ABN; or

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- 1 (ii) the name; or
2 (iii) contact details; or
3 (iv) personal information (within the meaning of the *Privacy*
4 *Act 1988*);
5 of any person other than the second person, unless the Chair
6 is satisfied that the inclusion of the information is necessary
7 for the purpose mentioned in paragraph (c).
- 8 Note: A defendant bears an evidential burden in relation to the matters in
9 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

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1 **Part 2—Application of amendments**

2 **5 Application—record or disclosure of information**

3 (1) The amendments of Schedule 1 to the *Taxation Administration Act*
4 *1953* made by this Schedule apply in relation to records and disclosures
5 of information made on or after the commencement of this item,
6 whether the information was obtained before, on or after that
7 commencement.

8 (2) The amendments of the *Tax Agent Services Act 2009* made by this
9 Schedule apply in relation to records and disclosures of information
10 made on or after the commencement of this item, whether the
11 information was obtained before, on or after that commencement.