



INSTITUTE OF
**PUBLIC
ACCOUNTANTS®**

**Disclosure of
Business Tax Debts
August 2019**

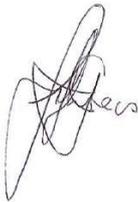
Introduction

The Institute of Public Accountants (IPA) welcomes the opportunity to offer our submission on 'Disclosure of Business Tax Debts'.

The IPA is one of the three professional accounting bodies in Australia, representing more than 37,000 members and students throughout Australia and internationally. The IPA prides itself, in not only representing the interests of accountants, but also small business and their advisors.

We look forward to discussing further and in more detail the IPA's recommendations with the Government and Treasury. Please address all further enquires to Tony Greco +61 3 8665 3134

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Greco', with a stylized flourish at the end.

Tony Greco
General Manager Technical Policy

COPYRIGHT

© Institute of Public Accountants (ABN 81 004 130 643) 2008. All rights reserved.
Save and except for third party content,
all content in these materials is owned or licensed by the Institute of Public
Accountants (ABN 81 004 130 643).

IPA Submission

The Manager
Small Business Entities and Industry Concessions Unit
Treasury
Langton Crescent
PARKES ACT 2600

Email: businessstaxdebts@TREASURY.gov.au

Dear Sir/Madam

Disclosure of Business Tax Debts

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission in relation to legislative instrument which sets out the class of business whose debt information can be disclosed. The legislative instrument only allows the ATO to disclose tax debt information for certain classes of taxpayers, when specific conditions and safeguards are met. The Government has introduced legislation (Treasury Laws Amendment (2019 Tax Integrity and other measures No.1) Bill 2019), which gives the ATO the ability to disclose the tax debt information of businesses who do not pay their debts on time that fall within the class of taxpayers outlined in the legislative instrument, to credit reporting bureaus (CRBs) in certain circumstances. The Institute has members that work with business clients that can be affected by the provisions of the proposed changes to the law. As the Bill, legislative instrument and the ATO administrative approach to the new reporting regime are all interrelated, the submission encompasses all three documents.

While the IPA understands and supports the underlying motivation of the proposed legislation, it is critical that government approaches this matter with some degree of caution. This proposed initiative first surfaced in early 2018 in Treasury Laws Amendment (Tax Transparency) Bill 2018. It was the subject of much consultation back then, and it has been tabled again before Parliament as part of Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.1) Bill 2019. Some of the previously noted concerns have in part been addressed, which is pleasing. The major change is lifting the tax debt threshold for reporting from \$10,000 to \$100,000. This

significantly reduces the number of taxpayers that will be impacted by this new initiative and allows processes to be refined in case there are unexpected consequences which could lead to unfair outcomes on business taxpayers. The higher threshold will remove smaller business taxpayers from the reporting regime allowing the new measures to apply to larger players who are better placed to deal with any potential unintended consequences.

As noted in the explanatory memorandum to the Bill (Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.1) Bill 2019), the consequences for a taxpayer of having their tax debt information disclosed to CRBs can potentially be very serious. For example, such information could lead to difficulty accessing finance, which could have broader ramifications for the business. We are particularly pleased that the Government has moved slowly and through the ATO, conducted extensive consultation to date on this measure. The legislative instrument contains certain conditions and safeguards that must be satisfied which reflects the sensitivity of this measure and community expectations. The underlying purpose of the Bill is to encourage businesses to pay what they owe, and the IPA supports the increase in transparency around tax debt information.

The IPA acknowledges that the tax debt disclosure proposed is aimed at ensuring that those failing to pay their tax debts on time are deprived of any advantages they might have over those complying with their tax obligations on a timely basis. The transparency amendments reduce the incentive for a taxpayer to prioritise the payment of their non-tax debts over their tax debts given both types of debt may affect the taxpayer's credit worthiness. This increases the incentive for taxpayers to pay their tax debts in a timely manner and will reduce the unfair competitive advantage obtained by taxpayers that do not pay their tax debts on time over taxpayers who comply with their tax obligations. It also allows CRBs to provide their customers with more complete information to improve their ability to make informed decisions about the risk of extending credit or terms of trade to a business with unpaid debts. Some credit providers already request tax debt information directly

from the client as part of their normal processes, but other providers may be unaware of existing overdue tax debts.

It is also appropriate however, that the legislative framework maintains a degree of protection for the taxpayer given the potential consequences. The draft explanatory memorandum notes that it is expected that confirmed tax debt amounts will be disclosed to CRBs. Moreover, tax debt amounts that are subject to dispute will not be disclosed. This would ensure a degree of procedural fairness in the system that becomes critical when information related to debts is made available to those purchasing credit reports. The proposals also allow the tax office to defer disclosing business tax debts where there is a genuine difficulty for a taxpayer to pay the debt. Such circumstances include *natural disasters inter alia* which are general safeguards supported by the IPA.

Business tax information in 'private hands'

Information relating to the tax affairs of a business taxpayer is usually kept within the confines of government agencies. The proposed legislative framework provides for information regarding the tax affairs of a business to appear in the records of credit reporting agencies or bureaus. These proposals will place what is ordinarily considered *sensitive information*, into the hands of individuals that are not employed in the public service and moreover, that may have the right to sell this information to organisations such as financial institutions.

A valid concern exists here as to how this information is communicated and dealt with outside the government network. This includes the security protocols that each credit reporting agency has for the receipt, storage, updating and ultimate removal of information related to businesses or individuals and their credit ratings.

The oversight of the credit reporting agencies has been left to the ATO to administer. The ATO has now published for consultation its administrative approach to the disclosure of tax debt information to CRBs. Included in this document, will be the strict protocols contained in the terms and conditions that CRBs must comply with in order

to be allowed to participate in the reporting arrangements. Any non-adherence by CRBs can lead to termination of the information sharing arrangement. We suspect that the number of CRBs who will be registered with the ATO will be less than ten, so it should not be administratively difficult to monitor compliance with the strict reporting terms for registration. The ATO already use debt collection agencies as part of their debt recovery processes, so they are already allowing taxpayer information to be provided to external agencies.

As stated earlier, the ATO is responsible for adherence to stated policies by the CRBs. If CRBs do not adhere to the reporting standards, the ATO can terminate their registration which should act as a strong deterrent for any nonperformance on their part. Notwithstanding, given the dire consequences on a business taxpayer, we believe that the legislative framework is the appropriate place to enshrine some of the important safeguards the ATO will try and enforce. In addition, penalties and compensation should also be part of the legislative framework in the event that a taxpayer is unduly impacted.

The ATO administrative approach states that if an entity no longer meets the criteria for reporting, CRBs will be instructed to remove tax debt information within two business days of ATO notification, and to cease showing or using the data in an entity's credit report or credit history. While this addresses a key concern, no detail is given on the ATO's reporting terms or the penalties which will be imposed in the event of non-compliance. There needs to be legally enforceable obligation to remove tax debt information by CRBs. Compensation should also be made available to any affected taxpayer in the case of misuse of information.

Safeguards and conditions around measure

As mentioned above, some of the safeguards around the transparency of debt information regime are not contained within the Bill or Legislative Instrument. Instead they have been embodied within the consultation paper titled "ATO's approach to disclosure of business debts" (to be referred to 'Consultation Paper')

The ATO has undertaken extensive consultation around this measure in preparing this Consultation Paper. This document outlines how the Commissioner of Taxation (the Commissioner) intends to administer the Government's announced Improved Transparency of Taxation Debts measure. The ATO intends to implement the measure gradually which is commendable. As part of the gradual implementation, the initial phase will focus on raising community awareness of the measure and its implications. During this time, the ATO will build awareness of the measure through communication activities such as newsletters, articles, and forums. Under the ATO's phased implementation approach, only companies that meet certain criteria will initially be reported. This will provide additional time for other entities to become aware of the new measure, recognising the impact of reporting on business activities and personal affairs. Gradually, implementation will be expanded to other entity types such as partnerships, trusts and sole traders. The IPA is supportive of the incremental implementation approach.

Removal of information once debt is paid

Disclosure of an unpaid tax debt to CRBs may be acceptable while that debt exists. An organisation external to a government agency cannot necessarily be policed or monitored for their timely maintenance of data files. In this respect, the IPA has some concerns as to how checks and balances can be put in place within the proposed laws to ensure that credit bureaus and private agencies update taxpayer records as and when circumstances change (particularly when a tax debt is paid or arrangements have been entered into with the ATO for settlement of the debt). These measures would ensure that taxpayers, who have either paid the debt due or have made arrangements for settlement to the satisfaction of the ATO, are given an opportunity to be able to secure finance for their business in the future. This concern is addressed by the ATO in how it intends to administer the debt transparency regime, but these safeguards are not part of the legislative framework for this debt transparency measure. We would like to see a legally enforceable obligation to remove tax debt information by CRBs. To build confidence in the measure, approved CRBs must be required to expunge any tax debt information.

As stated, CRBs will be instructed to remove tax debt information within two business days of ATO notification, and to cease showing or using the data in an entity's credit report or credit history.

These important safeguards should be embodied within the legislative framework rather than delegating them to the ATO as part of their administrative authority.

Lastly, the transparency of debt information, once up and running, may encourage some entities to stop lodging activity statements, income tax returns and other lodgement obligations. The proposed debt transparency reporting regime will only address overdue known debts, so it will be more imperative that lodgement obligations are followed up, particularly for entities with overdue tax debts.

Other concerns with the proposed reporting regime are as follows:

Notification of intended disclosure– The Bill only requires that taxpayers be notified that their information may be disclosed to CRBs. We recommend that notification to the taxpayer's representative where relevant should also be performed. Where taxpayers have engaged the services of a tax practitioner representative which is normally the case for business taxpayers, the representative may be unaware of the intended disclosure. The representative may be unaware that they could assist their client or otherwise have their client or the client's debt excluded from the declared class of entities, by assisting their client to enter into a payment arrangement. Therefore, it is important that any taxpayer representatives are also notified of the intended disclosure of their client's tax debt information to CRBs.

Detailed breakdown of the outstanding debt – The Bill only requires the ATO to provide in the notice of intended disclosure, the amount of any tax debts payable by the taxpayer at the time the notice is given. It would be helpful to require the notice to set out a detailed breakdown of all debts, including penalties and interest.

Taxpayers need to understand how all the primary debts, penalties and accruing interest total to an amount of at least \$100,000. It would be of assistance to taxpayers to have a detailed breakdown of the total debt amount.

Method of notification - The Bill only requires the notice of intended disclosure to be served on taxpayers by regular post. Given the potential consequences on the taxpayer we recommend that the notification require service by registered post. This should help to minimize taxpayers being unaware of the impending disclosure of their tax debt information to CRBs. Without a taxpayer being informed, one of the main policy aims of ‘strengthening the incentives for businesses to pay their debts in a timely manner and effectively engage with the ATO’, would may be achieved.

21 Day notice period - We believe the notice period of 21 days to effectively engage is too short and should be extended especially if ordinary post is used to communicate intention to disclose tax debt information. Not involving notification of a taxpayers representative exasperates the short notice period.

Taxpayer Compensation – There is no compensation in the event that a taxpayer suffers harm as a result of inaccurate or inappropriate disclosure. Neither the Bill nor the legislative instrument, provides access to compensation where taxpayers suffer adverse financial impacts as a result of an inappropriate disclosure to CRBs. What happens if the ATO disclosure happens to be erroneous or inaccurate?

In addition, errors on the CRB side may also result in erroneous or inaccurate taxpayer credit records. The deed between the ATO and the CRBs does provide for rectification of records, should errors arise. Taxpayers affected can undertake legal action to sue for damages. Alternatively, they can seek compensation under the Scheme for Compensation for Detriment Caused by Defective Administration (CDDA Scheme). Both options are problematic and costly. The CDDA Scheme, whilst a less formal process for seeking compensation, is discretionary in nature and the taxpayer needs to demonstrate ‘defective administration’ which is problematic.

Removal Notice notification – Affected business taxpayers should also be given notice regarding removal of tax debt information. Legislation should require that the ATO notifies the taxpayer when they have instructed the CRB to remove their tax debt information.

Post Implementation Review - We recommend a post implementation review of the new tax debt reporting regime be undertaken if the proposed reporting is passed into law. If the tax debt reporting threshold is to be lowered in future, it will be even more imperative to have undertaken a post implementation review. A post implementation review is recommended to ensure the policy objectives are been achieved and to ensure unintended consequence are not systemic.

We look forward to discussing further and in more detail, the IPA's submission with the Government and Treasury. If you have any queries or wish to discuss our submission in greater detail, then please do not hesitate to contact Tony Greco: (tony.greco@publicaccountants.org.au or telephone +613 8665 3134).

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Greco', with a large, stylized flourish above the name.

Tony Greco

IPA Head Office

Level 6, 555 Lonsdale Street

Melbourne Victoria 3000

Australia

Tel : 61 3 8665 3100

Fax: 61 3 8665 3130

Email : headoffice@publicaccountants.org.au

Website: www.publicaccountants.org.au/

IPA Divisional Offices are located in the following cities:

Melbourne

Sydney

Brisbane

Adelaide

Hobart

Perth

Canberra