



INSTITUTE OF
**PUBLIC
ACCOUNTANTS®**

**Transparency of
Business Tax Debts
February 2018**

Introduction

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

The IPA is one of the three professional accounting bodies in Australia, representing more than 35,000 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.

The IPA's submission has been prepared with the assistance of Deakin University through its SME Research Partnership and its dedicated IPA-Deakin SME Research Centre

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 or Vicki Stylianou +61 3 8665 3100

Yours sincerely

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

Tony Greco
General Manager Technical Policy, Public Affairs

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IPA Submission

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

Dear Sir/Madam

Transparency of Business Tax Debts

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission on Treasury Laws Amendment (Tax Transparency) Bill 2018. The Institute has members that work with business clients that can be affected by the provisions of the proposed changes to the law.

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. As noted in the explanatory memorandum to the Bill, the consequences for a taxpayer of having their tax debt information disclosed to credit reporting bureaus 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 on this measure. The legislative framework contains certain conditions and safeguards that must be satisfied which reflect the sensitivity of this measure and community expectations. The underlying purpose of the Bill is to encourage businesses to pay what they owe. There are some issues of principle that the IPA believes should be considered prior to the legislation being presented to parliament for debate.

The IPA acknowledges that the regime proposed in this consultation is also 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 credit reporting bureaus 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 for a particular taxpayer. The draft explanatory memorandum notes that it is expected that confirmed tax debt amounts will be disclosed to credit reporting bureaus. 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 legislation 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.

Commentators have reflected on privacy laws in Australia and have warned companies that certain practices will fail to meet the Privacy Commissioners' expectations in relation to them taking reasonable steps to ensure that information is secured. Entities need to remember that reasonable steps are not defined by external benchmarks. The Privacy Commissioner does not regard best industry practice nor the fact that an entity has engaged an external consultant to provide it with advice on privacy matters, as being adequate. If sensitive tax information is being provided to these entities, the government must be assured in some formal manner that the disclosed tax information (ie unpaid tax debts) will be treated appropriately and in accordance with the privacy legislation. As stated earlier, the ATO is responsible for adherence to stated policies by the credit reporting agencies. These important safeguards are not part of the legislative framework for the debt transparency regime.

Currency of information

An additional concern is the care and maintenance of information when it is given to an agency that sits outside the circle of government activity. While it may be expected that government bodies will keep their databases up to date, stakeholders need to be assured in some manner that the information will continue to be current and that it will be properly maintained.

Removal of information once debt is paid

Disclosure of an unpaid tax debt to credit reporting bureaus may be acceptable while that debt exists. Credit reporting agencies should be required to remove information relating to a debt once that debt has been paid by a business. The IPA is concerned that credit reporting bureaus will keep outdated information relating to business debts to the tax office, and that information if it continues to be shown as current,

notwithstanding that it has been paid, will jeopardise the ability of a business to seek further finance.

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.

Safeguards and conditions around measure

Many of the safeguards around the transparency of debt information regime are not contained within the proposed legislation framework. The ATO has undertaken extensive consultation around this measure which is contained in their consultation paper titled “Consultation paper: The ATO's administrative approach to the disclosure of tax debt information to credit reporting bureaus”. This document outlines how the Commissioner of Taxation (the Commissioner) intends to administer the Government’s announced Improve 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, forums and speeches.

Under the ATO’s phased implementation approach, only companies that meet the criteria below 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.

We are concerned however, that some of the following important safeguards are not included as part of the proposed legislative framework for reporting of tax debt information:

- As an additional safeguard for entities not yet reported, the ATO will look at an entity's tax debts for the past 14 days as a proportion of its total overdue tax debts. The ATO will delay the reporting of an entity with a large recent increase in its tax debts. This is designed to give the entity additional time to respond to the sudden increase and pay the debt or enter into a payment plan
- The agreement between the ATO and each CRB will provide that an entity's tax debt information must be removed from its credit report when the entity no longer meets the reporting criteria. Ordinarily, this will be when the entity has paid its tax debt or entered into a payment plan. If an entity no longer meets the criteria for reporting, the ATO will instruct the CRB to remove its tax debt information from public access and credit reports. The CRB must remove the tax debt information within 2 business days of receiving the ATO instruction. Once this information is removed, CRBs will not be able to show or use this data in an entity's credit report or credit history. This is different to the standard credit reporting industry approach where defaulted debts remain visible on a credit report for a much longer period (generally 5 years).

These important safeguards should be embodied within the legislative framework rather than delegating them to the ATO as part of their administrative authority. There should also be a service standards imposed on the ATO on the timely reporting of information to CRBs. There should also be some KPI's around how the ATO monitors CRBs adherence to agreed policies.

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.

We look forward to discussing further and in more detail, the IPA's recommendations 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 stylized flourish at the end.

Tony Greco

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