

# Nowhere to hide from tax debt disclosure



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**The ATO is about to up the ante on tax debt disclosure. As taxpayers we are expected to pay our tax debts in a timely manner. Unfortunately, there is a sizeable amount of tax debt outstanding, mainly owed by small businesses. This can create an unfair advantage for businesses that do not pay their tax on time. This puts unjust pressure on operators that comply with their obligations. Currently, the ATO does not report such information to credit reporting agencies. However, it is not uncommon for lenders to request a copy of a client's integrated tax account with the ATO as part of their internal credit application processes. Otherwise tax debt information can go unnoticed.**

In an effort to improve the growing outstanding debt scenario, the federal government has proposed new legislation to allow the ATO to disclose to credit reporting bureaus (CRB) the tax debt information of non-compliant businesses. This refers to businesses with debts outstanding beyond the designated time period and the taxpayer has not effectively engaged with the ATO in managing those debts. It is the centerpiece of an effort to claim the \$19 billion of overdue tax owed to the ATO. Small businesses with turnover of \$2 million or less each year owe around two-thirds of the total, which is around \$12.7 billion.

This new initiative first surfaced late last year as part of the "2016-17 Mid-Year Economic and Fiscal Outlook". The specific circumstances and exceptions for disclosure have yet to be finalised and will be subject to public consultation and confirmed through the passage of law. Thus far only the broad parameters of this initiative have been disclosed. It is reasonably certain the ATO will only disclose tax debt information of a business to a CRB if the business meets all of the following criteria:

- it has an Australian business number (ABN),
- it has a tax debt of at least \$10,000 that is overdue by more than 90 days, and
- it has not effectively engaged with the ATO to manage its tax debt.

The initiative will not apply to non-business taxpayers and more importantly to those businesses who have already engaged with the ATO in a plan to pay off the debt.

Businesses that effectively engage with the ATO to manage their tax debts will not have their tax

debt information reported to CRBs. The definition of effective engagement will be subject to public consultation, but it is expected to include businesses that have established a payment plan or are disputing their tax-related liabilities before a court or tribunal.

The tax office will notify a business if they meet the reporting criteria, advising that they have 21 days to respond before their tax debt information is reported to CRBs.

The ATO will negotiate and establish agreements with CRBs to establish the appropriate protocols and governance arrangements. A frequently asked question is: how long does the tax debt information remain visible on the CRB's reporting? The intention is to remove tax debt information once a business no longer satisfies the criteria for disclosure, such as when the debt is subsequently paid, is subject to a dispute or under a payment plan. The standard industry approach for defaulted debts to remain visible in credit reporting is generally five years. Once the debt no longer meets the above criteria, it will be removed as soon as possible.

In conjunction with Treasury, the ATO is consulting with the community, including business, industry groups and associations, including the Australian Small Business and Family Enterprise Ombudsman, to ensure the measure is implemented and administered effectively.

This proposed tax debt reporting may have significant consequences for certain taxpayers who rely on credit providers to finance their business activities. It is important credit providers are provided with this information in order to properly assess the credit record of people to whom they may be extending credit.

While we are broadly supportive of this initiative, the practicalities of implementing such a system will not be without challenge. It is imperative advisers start talking to their clients to get them to actively engage with the ATO before the measure is introduced, especially if access to credit impacts on the viability of the business. This initiative is squarely targeted to those businesses that have not cooperated with the ATO. Addressing the underlying issue behind the tax debt should also be part of the exercise. Time will tell whether the increased disclosure will encourage small businesses to pay taxation debts in a more timely manner to avoid affecting their credit rating. ▼