

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Taxation Administration Act 1953

Taxation Administration (Tax Debt Information Disclosure) Declaration 2019

Subsection 355-72(5) in Schedule 1 to the *Taxation Administration Act 1953* (the Act) provides that the Minister may declare classes of entities for the purposes of section 355-72 in Schedule 1 to the Act.

The purpose of the *Taxation Administration (Tax Debt Information Disclosure) Declaration 2019* (the Declaration) is to declare a class of entities whose tax debt information may be disclosed to credit reporting bureaus by taxation officers under subsection 355-72(1) in Schedule 1 to the Act.

Section 355-25 in Schedule 1 to the Act provides that it is an offence for a taxation officer to record or disclose protected information that has been acquired by them as a taxation officer. The exception to the offence in section 355-72 in Schedule 1 to the Act permits taxation officers to disclose the tax debt information of an entity to credit reporting bureaus, to enable those credit reporting bureaus to prepare, update or issue credit worthiness reports in relation to the entity. However, the exception only applies to tax debt information of an entity that is in the class of entities declared by the Treasurer.

Entities that fall within the declared class of entities under the Declaration are entities that:

- are registered in the Australian Business Register, other than as deductible gift recipients, complying superannuation funds, registered charities or government entities; and
- have one or more tax debts, the total of which is at least \$100,000, that have been overdue for more than 90 days; and
- after taking reasonable steps, the Commissioner of Taxation (the Commissioner) has been able to confirm with the Inspector-General of Taxation that no complaint remains active by the entity concerning the disclosure of tax debt information of the entity that is, or could be, the subject of an investigation under paragraph 7(1)(a) of the *Inspector-General of Taxation Act 2003*.

If an entity is effectively engaging with the Commissioner to manage a tax debt or taking action in accordance with the law to dispute the debt, that tax debt will not be taken into account when working out whether the entity has a total tax debt of at least \$100,000 that has been overdue for more than 90 days.

Details of the legislative instrument are set out in the Attachment.

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As required by the Act, the Treasurer has consulted with the Information Commissioner in relation to privacy matters that would be affected by the Declaration.

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Declaration commenced on the day after it was registered on the Federal Register of Legislation.

The Declaration is expected to result in minimal ongoing compliance costs for those businesses already not engaging to manage their tax debts.

Details of the Taxation Administration (Tax Debt Information Disclosure) Declaration 2019

This Attachment sets out further details of the *Taxation Administration (Tax Debt Information Disclosure) Declaration 2019* (the Declaration).

Section 1 – Name

This section specifies that the name of the Declaration is the *Taxation Administration (Tax Debt Information Disclosure) Declaration 2019*.

Section 2 – Commencement

This section prescribes that the Declaration commences the day after the Declaration is registered.

Section 3 – Authority

This section provides that the Declaration is made under the *Taxation Administration Act 1953*.

Section 4 – Definitions

This section provides definitions for the purposes of the Declaration.

Sections 5 – Interpretation

Section 5 provides that an expression used in the Declaration (other than those defined in section 4) have the same meaning as an expression used in the *Income Tax Assessment Act 1997*.

Section 6 – Declared class of entities—taxpayers carrying on a business or similar venture with total tax debts exceeding \$100,000 for more than 90 days and who fail to effectively engage with the Commissioner

The purpose of the Declaration is to declare a class of entities whose tax debt information may be disclosed to credit reporting bureaus by taxation officers.

Section 6 sets out the core criteria for determining whether an entity falls within the class of entities for the purposes of section 355-72 in Schedule 1 to the Act.

Tax debt information cannot be disclosed to credit reporting bureaus if an entity does not fall within the declared class of entities for which disclosure of tax debt information is permitted. An entity that no longer falls within the class of entities declared in the Declaration may have information disclosed to allow taxation officers to instruct credit reporting bureaus to remove the tax debt information of such an entity.

Only an entity for which all of the following apply will fall within the declared class of entities:

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- the entity is registered in the Australian Business Register;
- the entity has one or more tax debts, the total of which is at least \$100,000, that have been overdue for more than 90 days; and
- after taking reasonable steps, the Commissioner has been able to confirm with the Inspector General of Taxation that no complaint remains active by the entity concerning the disclosure of tax debt information of the entity that is, or could be, the subject of an investigation under paragraph 7(1)(a) of the *Inspector General of Taxation Act 2003*.

Certain entities registered in the Australian Business Register

Section 6 provides that an entity falls within the declared class of entities only if (in addition to meeting the other requirements) the entity is registered in the Australian Business Register under the *A New Tax System (Australian Business Number) Act 1999*. Despite being eligible for registration in the Australian Business Register, the following entities do not fall within the declared class, as their main purpose and operation is not the carrying on of a business or similar venture:

- deductible gift recipients;
- complying superannuation funds;
- registered charities; and
- government entities.

‘Deductible gift recipient’ is defined in section 30-227 of the *Income Tax Assessment Act 1997* and includes entities such as a public library, museum or art gallery in Australia, a national trust of a state or territory, a public hospital, a public university, certain research centres, and environmental organisations.

‘Complying superannuation fund’ has the meaning given by section 45 of the *Superannuation Industry (Supervision) Act 1993* (section 995-1 of the *Income Tax Assessment Act 1997* refers). A fund will be a complying superannuation fund if it has been given a notice from the Regulator to that effect and has not subsequently received a notice that it is not a complying fund under section 40 of the *Superannuation Industry (Supervision) Act 1993*.

‘Registered charity’ refers to an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012* as a charity (section 995-1 of the *Income Tax Assessment Act 1997* refers).

‘Government entity’ has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999* (section 995-1 of the *Income Tax Assessment Act 1997* refers). This definition provides that ‘government entity’ includes a Department of State of the Commonwealth, a Department of State of a State or Territory, a Department of the Parliament established under the *Parliamentary Service Act 1999*, and an Executive Agency or Statutory Agency within the meaning of the *Public Service Act 1999*.

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Entities with a tax debt, of which at least \$100,000 is overdue for more than 90 days

Section 6 provides that an entity falls within the class of entities if (in addition to meeting the other requirements) the entity has one or more tax debts, of which at least \$100,000 is overdue for more than 90 days.

This threshold ensures that only the entities carrying a significant overdue tax debt may have their tax debt information disclosed to credit reporting bureaus.

For the purposes of working out whether an entity has one or more tax debts meeting this tax debt threshold criterion, certain tax debts are to be disregarded. Generally, the tax debts that will not contribute to meeting this criterion are those for which the entity is effectively engaging with the Commissioner to manage or is taking action in accordance with the law to dispute.

Entering into and complying with payment arrangement

A tax debt will not contribute to meeting the tax debt threshold criterion to the extent that the entity has entered into an arrangement with the Commissioner to pay the relevant tax debt by instalments, and the entity is complying with that arrangement as agreed.

Section 255-15 in Schedule 1 to the Act permits an entity to pay a tax-related liability by instalments under an arrangement between the entity and the Commissioner. The terms of the arrangement might require, for example, an entity to pay a certain amount at a certain frequency. If an entity enters into an arrangement of this kind and complies with the terms of the arrangement, those tax debts subject to the arrangement will not contribute to meeting the tax debt threshold criterion. If for example, an entity defaults on the terms of the arrangement with the Commissioner, such as by failing to make a payment by a certain time, or of a certain amount, the tax debt will contribute to the entity meeting the tax debt threshold criterion until the default is rectified or a new arrangement has been entered into.

Active dispute relating to the tax debt

A tax debt will also not contribute to meeting the tax debt threshold criterion to the extent the entity is formally disputing a decision in relation to the debt.

Only an active dispute will result in the tax debt not contributing to meeting the tax debt threshold criterion. For example, where proceedings reviewing a decision relating to the tax debt have concluded or where an application for review has been withdrawn or refused, the dispute will not be considered to be active.

An entity could be formally disputing a decision in relation to the tax debt by:

- lodging a taxation objection with the Commissioner (which the Commissioner must respond to by making an objection decision); or
- applying for a review of an objection decision with the Administrative Appeals Tribunal or appealing to the Federal Court of Australia against an objection decision; or

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- requesting a reconsideration of a reviewable decision which may affect the quantum of a superannuation fund's tax debt with the relevant regulator; or
- applying for a review of a reviewable decision which may affect the quantum of a superannuation fund's tax debt with the Administrative Appeals Tribunal; or
- making a complaint to the Inspector-General of Taxation that is, or could be, the subject of an investigation under paragraph 7(1)(a) of the *Inspector-General of Taxation Act 2003*.

Under paragraph 7(1)(a) of the *Inspector-General of Taxation Act 2003*, the Inspector-General can investigate action affecting an entity that is taken by a tax official, that relates to administrative matters under a taxation law, and that is the subject of a complaint by that entity to the Inspector-General. The Commissioner must take reasonable steps to confirm whether or not the Inspector-General has an active complaint from the entity relating to the tax debt that is, or could be, investigated. Generally, where an entity has made a complaint to the Inspector-General, and the Inspector-General is investigating, or could investigate, the complaint, the Commissioner will not disclose the entity's tax debt information to credit reporting bureaus.

If the Commissioner's proposed disclosure of an entity's tax debt information is an initial disclosure, reasonable steps will involve the Commissioner taking one or more active measures to confirm with the Inspector-General whether or not there is an active complaint from the entity. An initial disclosure is one that is not simply an update, correction or confirmation of tax debt information previously disclosed.

However, where the proposed disclosure is for the purpose of updating, correcting or confirming information previously disclosed, reasonable steps would be satisfied by a more streamlined process. For example, reasonable steps would constitute the development of an administrative process to facilitate the Inspector-General notifying the Commissioner where the Inspector-General has subsequently received a complaint from the entity.

This criterion ensures that a taxation officer cannot disclose the tax debt information of an entity to credit reporting bureaus if that entity has lodged a complaint relating to their tax debt with the Inspector-General, and the Commissioner has been made aware of the complaint, until the complaint is resolved.

Active complaint with Inspector-General of Taxation relating to proposed disclosure

Section 6 provides that an entity falls within the declared class of entities only if (in addition to meeting the other requirements) after taking reasonable steps, the Commissioner has been able to confirm with the Inspector General of Taxation that no complaint remains active by the entity concerning the disclosure of tax debt information of the entity that is, or could be, the subject of an investigation under paragraph 7(1)(a) of the *Inspector General of Taxation Act 2003*.

This will have the effect of preventing taxation officers from disclosing the tax debt information of an entity to credit reporting bureaus if the Commissioner is aware of an

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active complaint made by that entity to the Inspector-General about the disclosure of their tax debt information.

The Commissioner must take reasonable steps to confirm whether or not the Inspector-General has an active complaint of this kind from the entity. Consistent with the process for complaints relating to the tax debt itself, what constitutes reasonable steps will depend on whether the disclosure is an initial disclosure or is a disclosure made to update, correct or confirm information previously disclosed.