

DRAFT EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Taxation Administration Act 1953

Tax Debt Information Disclosure Declaration 2018

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 paragraphs 355-72(1)(c) and 355-72(4)(c) in Schedule 1 to the Act.

The purpose of the *Tax Debt Information Disclosure Declaration 2018* (the Declaration) is to outline the class of entities whose tax debt information may be disclosed to credit reporting bureaus by taxation officers under the exception in subsection 355-72(1) in Schedule 1 to the Act and for the purposes of the exception in subsection 355-72(4) 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 Minister.

Entities that fall within the class of entities declared by the Minister are entities that:

- are registered in the Australian Business Register;
- have a tax debt, of which at least \$10,000 is overdue for more than 90 days;
- are not excluded entities;
- are not effectively engaging to manage their tax debt; and
- the Commissioner of Taxation (the Commissioner) has taken reasonable steps to confirm that the Inspector-General of Taxation (the Inspector-General) does not have an active complaint from the entity that is, or could be, the subject of an investigation by the Inspector-General relating to the Commissioner's intention to disclose the tax debt information of the entity.

See the attachment for an explanation of the provisions in 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.

Explanation of provisions

Sections 1 to 4 of the *Tax Debt Information Disclosure Declaration 2018* (the Declaration) are machinery provisions setting out:

- the name of the Declaration;
- the day the Declaration commenced;
- the authority for the making of the Declaration; and
- definitions to assist with interpreting the Declaration.

Section 5 provides that an expression used in the Declaration has the same meaning as an expression used in Schedule 1 to the *Taxation Administration Act 1953* (the Act). Subsection 3AA(2) of the Act further provides that an expression used in Schedule 1 to the Act has the same meaning as an expression used in the *Income Tax Assessment Act 1997*.

Section 6 provides that the purpose of the Declaration is to declare the class of entities whose tax debt information may be disclosed to credit reporting bureaus by taxation officers.

The Declaration also declares the class of entities for the purposes of subsection 355-72(4) in Schedule 1 to the Act. That subsection provides that it is an exception to the offence in section 355-25 in Schedule 1 to the Act if a taxation officer discloses tax debt information in relation to an entity when that entity no longer falls within the class of entities declared in the Declaration. This will allow taxation officers to instruct a credit reporting bureau to remove the tax debt information of such an entity.

Section 7 sets out the core criteria for determining whether an entity falls within the class of entities for the purposes of paragraphs 355-72(1)(c) and 355-72(4)(c) in Schedule 1 to the Act (the class of entities).

Tax debt information cannot be disclosed to credit reporting bureaus if an entity does not meet these core criteria and fall within the 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 their tax debt information disclosed to allow taxation officers to instruct a credit reporting bureaus to remove the tax debt information of such an entity.

The entity is registered in the Australian Business Register

Section 7 provides that an entity falls within the class of entities if the entity is registered in the Australian Business Register under section 11 of the *A New Tax System (Australian Business Number) Act 1999*.

Section 11 of the *A New Tax System (Australian Business Number) Act 1999* outlines the circumstances by which the Registrar of the Australian Business Register registers an entity under that Act.

To ensure that only the tax debt information of appropriate entities (namely business taxpayers) can be disclosed by a taxation officer, and to provide certainty to entities, only those entities with an Australian Business Number will fall within the class of entities.

The entity has a tax debt, of which at least \$10,000 is overdue for more than 90 days

Section 7 provides that an entity falls within the class of entities if the entity has a tax debt of which at least \$10,000 is overdue for more than 90 days.

An entity's tax debt information cannot be disclosed by a taxation officer to credit reporting bureaus if the entity does not have a tax debt, of which at least \$10,000 is overdue for more than 90 days.

These thresholds ensure that only the entities carrying a significant overdue tax debt may have their tax debt information disclosed to credit reporting bureaus.

The entity is not an excluded entity

Section 7 provides that excluded entities fall outside of the class of entities, and cannot have their tax debt information disclosed to credit reporting bureaus.

Excluded entities are:

- deductible gift recipients;
- not-for-profit entities;
- government entities; and
- complying superannuation 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, or certain research centres, and environmental organisations.

The Australian Charities and Not-for-profits Commission and the Australian Taxation Office both provide guidance on the characteristics and governance of a not-for-profit. Generally, a not-for-profit is an entity that does not operate for the profit, personal gain or other benefit of particular people, such as its members. A not-for-profit entity's governing documents should set out the entity's purpose and not-for-profit character.

Section 995-1 of the *Income Tax Assessment Act 1997* provides that 'government entity' has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*. Section 41 of the *A New Tax System (Australian Business Number) Act 1999* 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 of Statutory Agency within the meaning of the *Public Service Act 1999*.

‘Complying superannuation entity’ is defined in section 995-1 of the *Income Tax Assessment Act 1997*, and means a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust.

These types of entities are excluded from the class of entities as their main purpose and operation is not the carrying on of a business.

The entity is not effectively engaging

Section 7 provides that an entity can only fall within the class of entities if the entity is not effectively engaging to manage their tax debt.

One of the objectives of the amendments proposed in the *Treasury Laws Amendment (Tax Transparency) Bill 2018* was to improve taxpayer compliance in meeting payment obligations by strengthening the incentives for taxpayers to engage to manage their tax debts. This criterion is consistent with that objective and ensures only those entities that are not effectively engaging may have their tax debt information disclosed to credit reporting bureaus.

An entity will not be considered as effectively engaging for the purposes of the Declaration unless any of the following conditions are met:

- the entity has entered into an arrangement with the Commissioner of Taxation (the Commissioner) to pay the relevant tax debt by instalments, and the entity is complying with that arrangement;
- the entity has objected against a taxation decision to which the tax debt relates, in a manner set out by Part IVC of the Act;
- the entity has applied for a review to the Administrative Appeals Tribunal, or appealed to the Federal Court of Australia, against a decision made by the Commissioner to which the tax debt relates.

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, the entity will be considered as effectively engaged. 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 entity will not be considered as effectively engaged until the default is rectified or a new arrangement has been entered into.

An entity is also effectively engaging if it is formally disputing a taxation decision to which the tax debt relates.

The Inspector-General of Taxation does not have an active complaint

Section 7 provides that an entity falls within the class of entities if the Commissioner has taken reasonable steps to confirm that the Inspector-General of Taxation (the Inspector-General) does not have an active complaint from the entity that is, or could be, the subject of an investigation by the Inspector-General relating to the Commissioner's intention to disclose the tax debt information of the entity.

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 has to take reasonable steps to confirm that the Inspector-General does not have an active complaint from the entity 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, that is the information is not simply an update or confirmation of tax debt information previously disclosed, reasonable steps will involve the Commissioner taking one or more active measures to confirm that the Inspector-General does not have an active complaint from the entity. This aligns with the requirement for the Inspector-General to be consulted prior to an initial disclosure taking place (see subparagraph 355-72(1)(e)(i) of Schedule 1 to the Act).

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 with the Inspector-General, and the Commissioner has been made aware of the complaint, until the complaint is resolved.