

9 February 2018

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

By email: Businessstaxdebt@treasury.gov.au

Dear Sir/Madam

Submission in relation to Treasury Laws Amendment (Tax Transparency) Bill 2018

- 1 The Taxation Committee of the Business Law Section of the Law Council of Australia (TC) welcomes the opportunity to provide comments on the Treasury Laws Amendment (Tax Transparency) Bill 2018.
- 2 The TC submits that the draft *Tax Debt Information Disclosure Declaration* 2018 (**Declaration**) should be amended by adding “individuals” to the categories of excluded entities in proposed subsection 7(2).
- 3 Secondly, the TC submits that proposed subsection 7(3) of the draft Declaration is incomplete and defective. It is recommended that:
 - (a) it should at least include (as new paragraph(d)) a situation where an entity has taken legal proceedings to call a debt into question; and
 - (b) a further inclusion should be for a taxation debt in respect of which an entity has filed a defence in recovery proceedings.

This is because some taxation debts are not susceptible to objection, review or appeal, but rather must be called into question in other ways. A simple example is a liability of a director who has been served with a director’s penalty notice.

- 4 Thirdly, the TC submits that the role of the Inspector-General of Taxation (**IGOT**) be defined by this package of measures. In particular:

- (a) the IGOT's office is relatively small;
 - (b) the Law Council suggests that that IGOT's role be better defined and that resources be allocated to that office to deal with this new responsibility; and
 - (c) even if the responsibility to investigate is thought to be the same, in kind, we are concerned that the volume of activity may increase.
- 5 Fourthly, the TC submits that two things should be subject to direct review by the Parliament. The two things are:
- (a) changes to the class of entity at section 7 of the Declaration, and the definition of "credit reporting bureau" (the latter depending only on the Commissioner recognising an entity as such); and
 - (b) the definition of "credit reporting entity". This provides the Commissioner with a way to give potentially sensitive information to strangers. Under the current draft, this is not even subject to disallowance. This is contrary to fundamental legislative principles.
- 6 Fifthly, the Commissioner ought to be obliged to give a notice of disclosure under proposed subsection 355-72(2) if the information that the Commissioner intends to provide to a credit reporting entity, by way of update, correction or confirmation, may be adverse to the interests of the entity. Thus, a "primary entity" might be notified to a credit reporting entity for a relatively small debt, but the Commissioner, on later inspection of his records, might determine that a very large debt is owed. Without notification to the taxpayer, a seriously adverse report could be made without the same level of scrutiny as an initial report.
- 7 We set out more details of our primary submission below.

Details of primary submission

- 8 According to the Mid-Year Economic and Fiscal Outlook 2016-17 (**MYEFO**), the rationale for authorising the disclosure of tax debts to credit reporting bureaus is that businesses that do not pay their tax gain an unfair financial and competitive advantage over those that do.¹ The new measures were therefore to apply only to

¹ MYEFO, p 24.

business taxpayers. The Declaration attempts to implement that policy by targeting taxpayers who have an ABN.

- 9 One class of entities that obtain ABNs are individuals. Although individuals may obtain an ABN, invariably their business activities are subordinate to their personal lives. Nevertheless, any disclosure of a tax debt to a credit-reporting bureau would result in a denial of credit to an individual not only for business finance but also for personal finance, including credit cards, home loans and other personal finance. Consider the following two examples:

Example 1

John has a tax debt of \$20,000 which he is not effectively engaging to manage. John is studying full time but decides to try to make some extra money by working part time as an Uber driver. For this purpose, he obtains an ABN. After John obtains the ABN, the ATO reports his tax debt to a credit-reporting agency. A few weeks later, John's bank cancels his credit cards.

Example 2

Sally is a full-time student. She also has a tax debt of \$20,000, which she is not effectively managing. Sally does not have an ABN. She applies for a new credit card from her bank, which is approved, because the bank is unaware of her tax debt.

- 10 In the above examples, the two students are in identical circumstances, except that one happens to have an ABN because he works part time as an Uber driver. It is inconsistent with the stated policy objective of the legislation that John's personal credit cards are cancelled, because those credit cards are unrelated to his business. In some cases the tax debt in question may not even be related to the business activities of the individual.
- 11 Under subsection 7(2) of the Declaration, deductible gift recipients, not-for-profit entities, government entities and complying superannuation entities are excluded from the credit-reporting measures, because "their main purpose and operation is not the carrying on of a business".² Likewise, an individual's main purpose and

² Draft Explanatory Statement, *Tax Debt Information Disclosure Declaration 2018*, p 5.

operation is not carrying on a business – they carry on business in order to fund their personal expenditure, and their need for credit is likely to extend to such expenditure. It would therefore be consistent with the policy objective of the new legislation for individuals to be excluded from the new measures.

- 12 Many individuals carry on small businesses that require them to obtain an ABN, including doctors, lawyers, farmers, trades persons, cleaners, taxi drivers and even handymen. They will all be at risk of losing access to credit to fund their personal lifestyles if the Declaration is made in its present form.

If you would like to discuss any of the above, please contact Clint Harding on 02 9226 7236 in the first instance.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R Maslen-Stannage', written in a cursive style.

Rebecca Maslen-Stannage
Chair, Business Law Section