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EXECUTIVE SUMMARY

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) welcomes the opportunity to make these submissions to the Senate Economics Legislation Committee's (Committee) inquiry into the provisions of the *Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019* (Committee Inquiry) and to the Treasury's consultation on the exposure draft *Taxation Administration (Tax Debt Information Disclosure) Declaration 2019* (Treasury Consultation).

The IGTO provides a single submission on the proposed disclosure of business tax debts measures given the interrelated subject matter of the Committee Inquiry and the Treasury Consultation. It would be difficult to fully appreciate the nature of the disclosure of business tax debts measures without taking a holistic perspective of the *Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019* (Bill No. 1) and the exposure draft *Taxation Administration (Tax Debt Information Disclosure) Declaration 2019* (Exposure Draft Declaration) which gives effect to one of the provisions in Bill No. 1. Whilst the submission is segmented into sections focussed on Bill No. 1 and the Exposure Draft Declaration, cross reference is made where necessary.

The IGTO has also had regard to the Explanatory Memorandum to Bill No. 1 (Explanatory Memorandum) and the Explanatory Statement to the Exposure Draft Declaration (Explanatory Statement) in preparing this submission.

Overall, the IGTO makes 17 recommendations aimed at improving the intended operation of Bill No. 1 and the Exposure Draft Declaration for consideration by the Committee or the Treasury. These may be summarised as follows:

Bill No. 1:

1. section 355-72 should clearly describe the 2-step requirement for the Australian Taxation Office (ATO) to 'confirm' and 'consult' with the IGTO;
2. subsection 355-72(2) notification requirement should include notification to tax practitioner representatives;
3. paragraph 355-72(3)(c) should be amended to require the notice to provide a detailed breakdown of the outstanding debt including amounts of penalties and accruing interest;
4. paragraph 355-72(3)(d) should require the notification to explain that a complaint must be made to the IGTO, not the ATO nor other bodies;
5. subsection 355-72(3) should require the notification to explain how a taxpayer may effectively engage with the ATO and have their debt excluded from the calculation of total debts;
6. paragraph 355-72(3)(e) should require more reliable modes of service;
7. subparagraph 355-72(1)(e)(ii) 21 day notice period for taxpayers to effectively engage is too short in the circumstances and should be extended;

ISSUE 3—PARAGRAPH 355-72(3)(C) SHOULD BE AMENDED TO REQUIRE THE NOTICE TO PROVIDE A DETAILED BREAKDOWN OF THE OUTSTANDING DEBT INCLUDING AMOUNTS OF PENALTIES AND ACCRUING INTEREST

Paragraph 355-72(3)(c) only requires the ATO to provide in the notice of intended disclosure the amount of any tax debts payable by the taxpayer at the time the notice is given by the ATO. We submit that the provision should be amended to require the notice to set out a detailed breakdown of all debts and necessary details for taxpayer to understand the particular debt amounts subject to the intended disclosure, including penalties and interest.

Reasons and explanation

Paragraph 6(1)(b) of the Exposure Draft Declaration provides that the taxpayer must have one or more debts, the total of which is at least \$100,000.

A taxpayer may have multiple primary debts, some of which also may have penalties attached. The situation is compounded where the primary debt and penalty amounts have been outstanding for different periods, each incurring a different amount of interest charges.⁶ In such a situation, it would be difficult for taxpayers to understand how all the primary debts, penalties and accruing interest total to an amount of at least \$100,000. Indeed, such information would be difficult for taxpayers to understand due to the different systems the ATO maintains for income tax and running balance account purposes. It would be of assistance to taxpayers and help them understand their debts which are the subject of the intended disclosure notice to have a detailed breakdown of the total debt amount. For example, it would assist them to determine whether to enter into a payment arrangement, formally dispute specific debts/penalties or lodge a complaint with the IGTO.

Accordingly, the IGTO considers that paragraph 355-72(3)(c) of the Bill No. 1 be amended to require a detailed breakdown of all debts — including primary amounts, penalties and accruing interest amounts on the intended disclosure notice.

Recommendation 3

The IGTO recommends that paragraph 355-72(3)(c) of the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 be amended to require a detailed breakdown of all debts, penalties and accruing interest on the intended disclosure notice.

Subparagraph 352(1)(e)(ii) only requires the ATO to consult with the IGTO on the disclosure. We

Reasons and explanation

Subparagraph 352(1)(e)(ii) only requires the ATO to consult with the IGTO on the disclosure.

The Explanatory Memorandum however, sets out that genuine consultation by the ATO with the IGTO includes:

providing the IGTO with reasonable time to verify any active complaint from the affected taxpayer has been lodged;

that the ATO must have regard to any recommendation made by the IGTO about the disclosure.

The above elements as to what constitutes genuine consultation by the ATO with the IGTO, however, are not included in the provision. Accordingly, we submit that greater clarity could be provided if subparagraph 352(1)(e)(ii) was amended to specifically include the explanatory memorandum as genuine consultation elements.

Recommendation

The IGTO recommends that subparagraph 352(1)(e)(ii) of the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 be amended to specifically include the elements of genuine consultation set out in the Explanatory Memorandum.

Neither the Bill No. 1 nor *Inspector-General of Taxation Act 2003* (IGT Act) permit the IGTO to independently verify information disclosed outside of an active complaint investigation. We submit that the Bill No. 1 and the IGT Act be amended to allow the IGTO to access ATO systems or seek information from the ATO outside of an investigation to independently verify information and the basis for the ATO proposed disclosure before the ATO discloses it to CRBs.

Reasons and explanation

The community would expect, as part of the ATO confirmation with the IGTO, that the IGTO independently assures itself that the ATO is not erroneously sending notices to taxpayers who are not within the declared class of entities. However, a situation of information asymmetry exists between the IGTO and the ATO as the IGTO does not have an existing legislative power to access ATO information or systems in these circumstances — that is, outside of an investigation.

Indeed, without such access, it would be difficult for the IGTO to provide independent assurance.

For example, even if the ABR is to serve as *prima facie* evidence of the fact that a taxpayer is a registered entity, as recommended under Issue 14, the online public ABR itself would not provide complete or accurate information for the IGTO to independently verify the criteria set out in subparagraphs 6(1)(a)(i) to (a)(iv) of the Exposure Draft Declaration. Accordingly, further information would be required and, at present, the IGT Act does not empower the IGTO to access ATO systems or request ATO information absent an investigation.¹⁹

Similar difficulty would arise in respect of the IGTO's ability to independently verify the debt and time thresholds set out in paragraph 6(1)(b) of the Exposure Draft Declaration as well as whether the taxpayer is effectively engaging with the ATO per subsection 6(2) of the Exposure Draft Declaration (e.g. the status of any payment arrangement or dispute).

At present, the IGTO would be unable to independently verify that the taxpayer falls within the declared class of entities if the taxpayer has not lodged a complaint with the IGTO. The IGTO considers that such an approach diminishes the role of the IGTO as an independent check and balance in the process and that this outcome would not align with the community's expectations. The IGTO considers the Bill No. 1 and the IGT Act include express provision for the IGTO to request information and/or directly access ATO systems for the purposes of independently verifying that the taxpayer meets the criteria for the declared class of entity.

Recommendation 10

The IGTO recommends that the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 and the Inspector-General of Taxation Act 2003 be amended to include an express provision for the IGTO to request information from the ATO and/or directly access ATO systems for the purposes of independently verifying that a taxpayer meets the criteria for the declared class of entities — including at a time prior to the taxpayer lodging a complaint with the IGTO.

ISSUE 11—THE BILL NO. 1 AND THE EXPOSURE DRAFT DECLARATION SHOULD PREVENT ATO AUTOMATED AND BULK CONFIRMATION AND CONSULTATION PROCESSES WITH THE IGTO

The Bill No. 1 and the Exposure Draft Declaration leave open the possibility that the ATO may use automated and bulk confirmation and consultation processes with the IGTO. We submit that the Bill No. 1 and the Exposure Draft Declaration be amended to require the ATO to undertake confirmation and consultation processes with the IGTO on a case-by-case basis in relation to potential disclosures to CRBs.

Reasons and explanation

The IGTO notes that the debt threshold in paragraph 6(1)(b) of the Exposure Draft Declaration was increased from \$10,000 to \$100,000 for taxpayers to be within the declared class of entities.

Whilst the ATO has not published the potential numbers of taxpayers who have debts over \$100,000, some estimates and inferences may be drawn from the statistics presented in the IGTO's *Review into the ATO's use of Garnishee Notices*. For example, during the last part of the 2016-17 financial year, the ATO focussed its debt collection work towards taxpayers with debts of \$100,000 or more. Over May and June 2017, ATO staff issued 8,357 garnishee notices in approximately 38,000 cases that were considered for such action.²⁰

Without ATO confirmation of the number of taxpayers with debts exceeding \$100,000, the above figures may only be a fraction of the potential candidate pool for tax debt disclosures.

Moreover as disclosure of tax debt information may have material consequences for taxpayers, it would not be possible, or desirable, for the ATO to adopt an automated or bulk approach in relation to its confirmation and consultation process with the IGTO. Such an approach could not be practically implemented with the IGTO's current resources and ICT platforms. Furthermore, the potential for bulk consultations exponentially heightens the risks of errors that would adversely impact taxpayers. For example, the commercial consequences could include:

- default on borrowing covenants;
- diminished available working capital and credit;
- reputational issues with suppliers, employees and credit providers; or
- cash flow implications.

The consequences for the taxpayer are significant and accordingly appropriate safeguards are warranted to prevent robotic notices.

Accordingly, in the IGTO's view, the Bill No. 1 and the Exposure Draft Declaration should make clear that any confirmation and consultation undertaken by the ATO with the IGTO be taken on a case-by-case basis only, for the foreseeable future.

Absent a legislative amendment, it is the IGTO's intention to negotiate a process with the ATO that would not allow for bulk consultations or automated processes for the foreseeable future. However, the IGTO's preference is for legislative clarity.

Recommendation 11

The IGTO recommends that the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 and the Tax Administration (Tax Debt Information Disclosure) Declaration 2019 be amended to make it clear that confirmation and consultation between the Commissioner of Taxation and the IGTO occur on a case-by-case basis only.

ISSUE 12— THE BILL NO. 1 DOES NOT PROVIDE FOR SPECIFIC TAXPAYER COMPENSATION IN THE EVENT OF HARM AS A RESULT OF INACCURATE OR INAPPROPRIATE DISCLOSURE BY THE ATO

The Bill No. 1 does not provide redress or compensation where taxpayers suffer adverse financial impacts as a result of an inappropriate disclosure to CRBs — for example, disclosure which is erroneous, inaccurate or otherwise inappropriate. We submit that the Bill No. 1 include provisions for specific compensation to taxpayers who are adversely affected by erroneous, inaccurate or inappropriate disclosures to CRBs.

Reasons and explanation

The Bill No. 1 does not provide redress or compensation where taxpayers suffer adverse financial impacts as a result of an inappropriate disclosure to CRBs — for example, disclosure which is erroneous, inaccurate or otherwise inappropriate.

While each CRB will report information provided by the ATO differently in calculating their credit scores and ratings, it is clear that ageing payables information, especially from a trusted source such as the ATO, would be the strongest indicators of default and delinquency to anyone examining the record. However, despite best efforts by the ATO to ensure that its data are free from errors, it would not be possible to guarantee that no erroneous, inaccurate or inappropriate reports would be made to CRBs. Furthermore, errors on the CRB side may also result in erroneous, inaccurate or inappropriate records.

The IGTO expects that contracts or memoranda of understanding between the ATO and the CRBs would include provisions for rectification and remedy, should any errors arise. However, as the taxpayer is a third party to that contract, it is unlikely that any remedy provisions would extend to cover the adverse financial impacts that apply to them.

At present, taxpayers affected by erroneous, inaccurate or inappropriate CRB disclosures could potentially take two courses of action, namely launching legal action to sue for damages or seeking compensation under the Scheme for Compensation for Detriment Caused by Defective Administration (CDDA Scheme).

Both courses of action present difficulties for the taxpayer. In relation to suing for damages, the taxpayer would need to identify an appropriate cause of action and prove their case. Such actions may be lengthy and costly. The CDDA Scheme presents a less formal process for seeking compensation, but given the purely discretionary nature of the scheme and the need to demonstrate ‘defective administration’, the burden of proof for taxpayers may be too high.

In the IGTO’s *Change Program* report, recommendation was made for the ATO to institute specific dedicated compensation schemes to address impacts arising out of the ATO’s enterprise-wide systems upgrade.²¹ Similar commentary was also made in the IGTO’s *Taxpayers’ Charter and Taxpayer Protections* review.²²

In the IGTO’s view, taxpayer confidence in the program would be enhanced if there were specific provisions or processes for compensation and redress in instances where errors adversely impact the financial standing of the taxpayer. Such remedies may include specific compensation schemes or empowering the IGTO, who is tasked with being a check and balance in this process, to award compensation up to specific limits in appropriate circumstances. The IGTO notes the power would be analogous to that exercised by the Australian Information Commissioner for certain breaches of the *Privacy Act 1988*.

Recommendation 12

The IGTO recommends that the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.1) Bill 2019 be amended to include provisions for specific compensation to taxpayers who are adversely affected by erroneous, inaccurate or inappropriate disclosures to CRBs.

SECTION B—*TAX ADMINISTRATION (TAX DEBT INFORMATION DISCLOSURE) DECLARATION 2019*

ISSUE 13—SECTION 6 HEADING REFERENCE TO ‘TAXPAYERS CARRYING ON A BUSINESS OR SIMILAR VENTURE’ IS NOT A REQUIREMENT IN THE SECTION

The heading in section 6 of the Exposure Draft Declaration refers to a declared class of entities being ‘taxpayers carrying on a business or similar venture’.

We submit that this section should be more appropriately headed – for example, ‘Entities registered in the ABR. The question as to whether a taxpayer is or is not carrying on a business is a hard question of fact and not a bright line test. This is also not a requirement in the section. The terminology ‘or similar venture’ is not consistent with tax and related laws. This is also not a requirement in the section.

Headings to a section generally form part of the test for the purposes of statutory interpretation.²³

A clearer heading could be framed by relying upon the first requirement in the section – that the entity is registered in the ABR.

Reasons and explanation

The heading in section 6 of the Exposure Draft Declaration should ideally make reference to at least one of the underlying criteria set out in the section. Paragraph 6(1)(a) which prescribes that ‘the entity is registered in the Australian Business Register’ appears closest to the current description. Accordingly, the heading in section 6 should be aligned with this criteria.

It is appreciated that the concept of ‘carrying on a business’ is a longstanding feature of the income tax law and is relevant to various provisions of general and specific application.²⁴ However, the concept does not feature in the criteria in section 6 of the Exposure Draft Declaration. It is also not currently used for the purposes of an entitlement to an Australian Business Number (ABN) and registration in the ABR under the *A New Tax System (Australian Business Number) Act 1999* (ABN Act). Therefore, it may cause confusion and should not be used in the heading of section 6.

Moreover, reference to ‘similar venture’ in the section 6 heading also does not feature in the criteria in the section – including paragraph 6(1)(a) of the Exposure Draft Declaration or used for the purposes of registration in the ABR under the ABN Act. Similarly, this phrase should not be used and may also cause confusion with the scope of the provision, for example, whether a hobby activity could fall within the declared class of entities.

Recommendation 13

The IGTO recommends the heading of section 6 of the exposure draft Tax Administration (Tax Debt Information Disclosure) Declaration 2019 be amended to refer to ‘entities registered in the Australian Business Register’.

ISSUE 14—PARAGRAPH 6(1)(A) IS UNCLEAR WHETHER REGISTRATION IN THE ABR IS PRIMA FACIE EVIDENCE THAT A TAXPAYER IS ENTITLED TO BE A REGISTERED ENTITY

Paragraph 6(1)(a) of the Exposure Draft Declaration is unclear as to what evidence is needed to meet the requirement of the provision. For example, whether the provision only requires an entity to be registered in the ABR or whether one must have regard to whether an entity is entitled to have an ABN and be registered in the ABR under the ABN Act. We submit that paragraph 6(1)(a) of the Exposure Draft Declaration be amended to provide a bright line test and only require entities to be registered in the ABR.

Reasons and explanation

The criteria in paragraph 6(1)(a) refers to registration under the ABN Act. Entitlement to an ABN and registration in the ABR requires entities to be ‘carrying on an enterprise’.²⁵ The concept of ‘enterprise’ for the purposes of the ABN Act refers to the definition articulated in section 9-20 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

The question as to whether a taxpayer is or is not carrying on an enterprise is a hard question of fact and is not a bright line test. Indeed, the ATO’s Miscellaneous Taxation Ruling MT 2006/1 explains that,

Entitlement to be registered for an ABN is not restricted to entities carrying on a business. Some entities such as Corporations Act companies, superannuation funds and government entities are entitled to an ABN. For other entities the entry threshold chosen for the ABN regime is an enterprise test. This test is defined in the legislation and covers a wide range of activities including leasing, and activities done by charities. Activities done by particular entities are included in the definition of enterprise so that those entities can become registered for ABN and GST purposes and to potentially allow them to obtain input tax credits.²⁶

A clearer approach would be to rely upon the first requirement in paragraph 6(1)(a) – that the entity is registered in the ABR – as it would create a bright line test. Practical issues with the IGTO providing independent community assurance before a notice of intended disclosure is issued by the ATO, including verifying if an entity is registered in the ABR, is considered under Issue 10.

Recommendation 14

The IGTO recommends paragraph 6(1)(a) of the exposure draft Tax Administration (Tax Debt Information Disclosure) Declaration 2019 be amended to require the registration of an entity in the Australian Business Register.

ISSUE 15—PARAGRAPH 6(1)(B) INTERACTION BETWEEN ‘ONE OR MORE TAX DEBTS TOTTALLING \$100,000’ AND ‘DUE AND PAYABLE FOR MORE THAN 90 DAYS’ IS UNCLEAR

Paragraph 6(1)(b) requires there to be ‘one or more tax debts, the total of which is at least \$100,000, that have been due and payable for more than 90 days’. We submit that the wording of paragraph 6(1)(b) be amended to make it clear that only debts that have been outstanding for 90 days will be considered towards the \$100,000 threshold.

Reasons and explanation

The current wording of paragraph 6(1)(b) is unclear. Where a taxpayer has more than one debt, it is unclear whether only those debts which are more than 90 days outstanding are to be used in calculating the \$100,000 threshold.

For example, say a taxpayer has a \$50,000 debt that has been outstanding for more than 90 days and subsequently lodges their Business Activity Statement which has a new \$50,000 liability that was not paid by the relevant due and payable debt. The question arises, based on the existing wording of paragraph 6(1)(b), whether a taxpayer in this scenario would meet the threshold requirement as only half of the total debt amount of \$100,000 was outstanding for more than 90 days.

Accordingly, the IGTO considers that the wording of paragraph 6(1)(b) be amended to make it clear that only debts that have been outstanding for 90 days will count towards the \$100,000 threshold.

Recommendation 15

The IGTO recommends paragraph 6(1)(b) of the exposure draft Tax Administration (Tax Debt Information Disclosure) Declaration 2019 be amended to make it clear that only debts that have been outstanding for 90 days will count towards the \$100,000 threshold.

ISSUE 16—PARAGRAPH 6(1)(B) 90-DAY OUTSTANDING DEBT PERIOD POLICY INTENT IS UNCLEAR GIVEN THE PARAGRAPHS 6(2)(B) TO (E) DISPUTED DEBT EXCLUSION CRITERIA

Paragraph 6(1)(b) includes within the declared class of entities those with one or more debts totalling \$100,000 that have been outstanding for more than 90 days. However, the relevant tax debts may be excluded under paragraphs 6(2)(b) to (e) if the taxpayer is formally disputing the debts. The formal dispute process, from an objection lodged with the ATO to external appeal to the Federal Court of Australia (FCA), is unlikely to be resolved within 90 days. We submit that the Exposure Draft Declaration be amended to require debts to be outstanding for more than 90 days and that taxpayers have exhausted their appeal rights.

Reasons and explanation

Paragraph 6(1)(b) of the Exposure Draft Declaration includes those with one or more tax debts totalling \$100,000 that have been outstanding for more than 90 days in the class of entities who may have their debts disclosed to CRBs. However, as per paragraphs 6(2)(b) to (e), some tax debts that are subject to certain formal disputes by the taxpayer are excluded from the calculation of total debts.

The payment of many tax liabilities is required either 21 or 28 days after an assessment or after the relevant Business Activity Statement reporting period.²⁷ A taxpayer may, however, dispute the quantum of tax debt.

In many circumstances, a taxpayer has 60 days from the date of assessment to lodge an objection. In some circumstances the timeframe may be up to 4 years. Moreover, the ATO may agree to an extension of time to accept an objection.²⁸

The ATO then has 60 days to decide upon the objection, if not, the taxpayer can give the ATO a notice to make a decision. If, after a further 60 days, the Commissioner has still not decided upon the objection, the Commissioner is taken to have disallowed the objection.²⁹

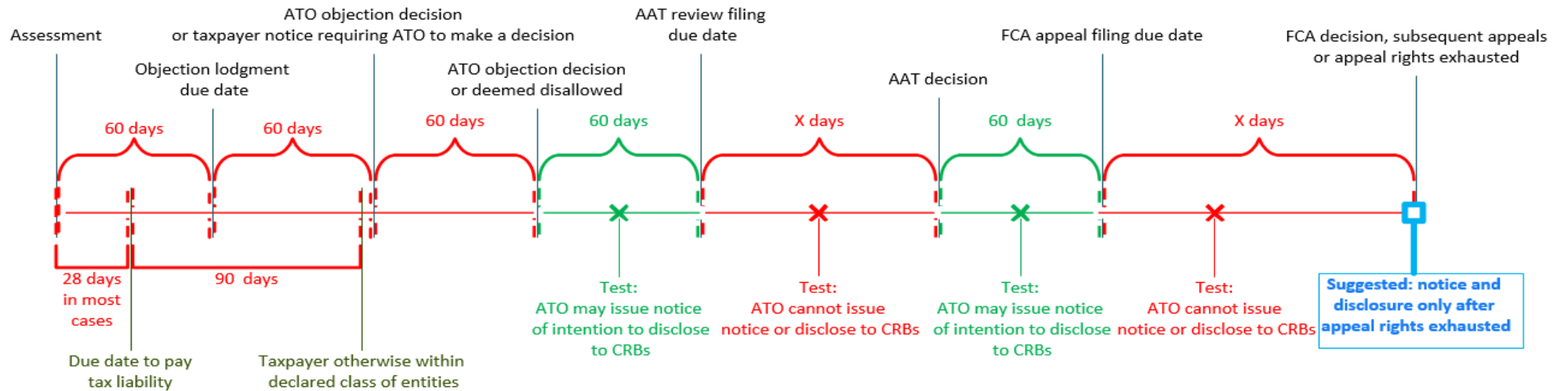
A disallowed objection enables the taxpayer to seek external review of the Commissioner's decision by the Administrative Appeals Tribunal (AAT).³⁰ Such review must be sought within 60 days of the objection decision.³¹ However, it is possible to seek an extension of time from the AAT.³² The AAT will then take the time it needs to make its review decision.

Following the AAT's review decision, taxpayers may appeal to the FCA if they remain dissatisfied. Such appeal must be lodged within 60 days of AAT's decision.³³ Again, the FCA will take the time it needs to make its appeal decision.

As such, the dispute process, including the intervening timeframes to seek additional review or appeal, may be a lengthy process and not be resolved within 90 days of the debt being outstanding. The Exposure Draft Declaration is also unclear whether a notice of intended disclosure could be issued to taxpayers during any intervening periods before additional review or appeal may be sought. For example, a taxpayer may remain within the declared class of entities and have their information disclosed to CRBs during an intervening period. Accordingly, it is difficult to administer and comply with the tax law as designed – for both the ATO and taxpayers.

A potential dispute process and the relevant ATO debt disclosure periods are shown below for illustration purposes only.

Example of timeline for a dispute with the ATO



Key:

- ATO cannot issue notice of intention to disclose to CRBs —————
- ATO can issue notice of intention to disclose to CRBs —————

The above example assumes a sequence of events as follows: assessment, objection, ATO decision disallowing the objection, review sought in the AAT and appeal to the FCA.

The timeline illustrates that there will be periods within a ‘normal’ dispute continuum where the ATO could disclose tax debt information to a CRB (the line segment in green) in circumstances when the taxpayer disputes that they have a debt at all or cannot accept the terms of the ATO payment arrangement.

Conversely, where the taxpayer has entered payment arrangement with the ATO, there is no opportunity to notify the CRB even where the debt is more than 90 days old. Where taxpayers are reluctant to enter payment arrangements due to the terms offered by the ATO, the disclosure to the CRB may be unfair. The IGTO can assist taxpayers to secure fair payment arrangements with the ATO in these circumstances. However, the IGTO has no power to negotiate payment arrangements with the ATO or require it to agree to payment arrangement terms. Similar themes are considered under Issue 17.

We submit that entities should be entitled to exhaust their review and appeal rights and the Exposure Draft Declaration be amended to include within the declared class of entities those with tax debts that have been outstanding for more than 90 days and that have exhausted their review and appeal rights in respect of those debts.

Recommendation 16

The IGTO recommends paragraph 6(1)(b) of the exposure draft Tax Administration (Tax Debt Information Disclosure) Declaration 2019 be amended to include a requirement that debts be outstanding for more than 90 days and that review or appeal rights have been exhausted.

ISSUE 17—SUBSECTION 6(2) DEBT EXCLUSIONS SHOULD BE EXPANDED TO REQUIRE ADDITIONAL EXCLUSIONS

Subsection 6(2) only excludes tax debts from the calculation of total debts if a debt is subject to a payment arrangement, certain formal dispute processes or subject to an active complaint with the IGTO. We submit that the exclusion criteria be expanded to include additional debt management processes, additional formal dispute processes and be extended to include informal dispute processes.

Reasons and explanation

Subsection 6(2) provides a list of specific situations where tax debts may be excluded from the calculation of total debts. However, there are a range of other situations where taxpayers may consider that they would be effectively engaging with the ATO in relation to their outstanding debt.

First, a taxpayer may seek to engage with the ATO to manage their tax debt other than by way of an agreed payment arrangement. As noted in the IGTO’s previous submission, taxpayers may also effectively engage with the ATO by seeking a payment deferral, provide security or be seeking debt release for serious financial hardship (e.g. a sole trader that is no longer trading).³⁴ We submit that the additional debt management option be included in the exclusion criteria.

Secondly, taxpayers may be involved in additional types of formal dispute with the ATO, such as by appeal to the Full FCA or High Court of Australia. Taxpayers may also be involved in separate but related formal disputes with the ATO about the tax debt. For example, the ATO may take legal action in the state Supreme Courts to commence insolvency proceedings against a taxpayer. We submit that the exclusion criteria include the latter type of formal disputes.

Lastly, taxpayers may effectively engage with the ATO by availing themselves of the ATO's structured informal dispute mechanisms, such as in-house facilitation, internal independent review or through a complaint lodged with the ATO. Moreover, taxpayers may also be in the process of negotiating a payment arrangement or other debt management process with the ATO. Such negotiation may be frustrated where the ATO takes collateral debt collection action, such as extracting funds from bank accounts by way of a garnishee notice or limit access to the funds by seeking a freezing order from the court. Indeed, as noted in the IGTO's previous submission, the IGTO receives complaints concerning taxpayer difficulty in negotiating a suitable payment arrangement.³⁵ Accordingly, informal methods of dispute resolution should provide a basis for the debt to be excluded from the calculation of total debts in estimating the \$100,000 threshold.

Without the expanded range of exclusions noted above, taxpayers may inadvertently and unnecessarily remain in the declared class of entities and have their information disclosed to CRBs.

Recommendation 17

The IGTO recommends that subsection 6(2) of the exposure draft Tax Administration (Tax Debt Information Disclosure) Declaration 2019 be amended to include additional debt management processes, additional formal dispute processes and be extended to include informal dispute processes.

GLOSSARY

Abbreviation	In Full
AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ABN Act	<i>A New Tax System (Australian Business Number) Act 1999</i>
ABR	Australian Business Register
ATO	Australian Taxation Office
Bill No. 1	Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019
CDDA Scheme	Scheme for Compensation for Detriment Caused by Defective Administration
Commissioner	Commissioner of Taxation
Committee	Senate Economics Legislation Committee
Committee Inquiry	Senate Economics Legislation Committee's inquiry into the provisions of the Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019
CRB	Credit Reporting Bureau
Explanatory Memorandum	Explanatory Memorandum to the Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019
Explanatory Statement	Explanatory Statement to the Taxation Administration (Tax Debt Information Disclosure) Declaration 2019
Exposure Draft Declaration	Exposure Draft Taxation Administration (Tax Debt Information Disclosure) Declaration 2019
FCA	Federal Court of Australia
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
IGT Act	<i>Inspector-General of Taxation Act 2003</i>
IGTO	Inspector-General of Taxation and Taxation Ombudsman
Treasury Consultation	Treasury's consultation on the exposure draft Taxation Administration (Tax Debt Information Disclosure) Declaration 2019

END NOTES

- ¹ Senate Economics Legislation Committee, Parliament of Australia, *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 [Provisions]* (2019) <<https://www.aph.gov.au>>.
- ² The Treasury, *Disclosure of Business Tax Debts* (2019) <<https://treasury.gov.au/>>.
- ³ Explanatory Memorandum, House of Representatives, Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019, p 49.
- ⁴ Inspector-General of Taxation and Taxation Ombudsman (IGTO), *Submission on Transparency of Business Tax Debts Measures* (2018) paras [1.6] to [1.18].
- ⁵ Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 s 355-72(1)(c).
- ⁶ The ATO may recover general interest charges, shortfall interest charges and penalties as a debt due to the Commonwealth and payable to the Commissioner: see ss 250-10 and s 255-5 of sch 1 to the *Taxation Administration Act 1953*.
- ⁷ IGTO, above n 4, paras [1.19] to [1.22].
- ⁸ Explanatory Memorandum, House of Representatives, Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019, p 60.
- ⁹ IGTO, above n 4, paras [1.23] to [1.26].
- ¹⁰ Explanatory Memorandum, House of Representatives, Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019, p 60.
- ¹¹ *Acts Interpretation Act 1901* s 29.
- ¹² IGTO, above n 4, paras [1.23] to [1.26].
- ¹³ Australia Post, *Calculate postage and delivery times* <www.auspost.com.au>.
- ¹⁴ Explanatory Memorandum, House of Representatives, Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019, p 62.
- ¹⁵ ATO, *Current year commitments to service* (2019) <<https://www.ato.gov.au>>.
- ¹⁶ IGTO, above n 4, paras [1.10] to [1.13].
- ¹⁷ Explanatory Memorandum, House of Representatives, Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019, p 62.
- ¹⁸ *ibid*, pp 61-62.
- ¹⁹ *Inspector-General of Taxation Act 2003* s 15; *Ombudsman Act 1976* s 9.
- ²⁰ IGT, *Review into the Australian Taxation Office's use of Garnishee Notices* (2019) pp 38, 123.
- ²¹ IGT, *Review into the Australian Taxation Office's Change Program* (2011) pp 107–109.
- ²² IGT, *Review into the Taxpayers' Charter and Taxpayer Protections* (2016) p 81.
- ²³ *Acts Interpretation Act 1901*, ss 13(1) and (2).
- ²⁴ Australian Taxation Office (ATO), *Income tax: when does a company carry on a business?*, PS LA 2019/1, 5 April 2019, paras [5], [7].
- ²⁵ *A New Tax System (Australian Business Number) Act 1999* ss 8 to 9.
- ²⁶ ATO, *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*, MT 2006/1, 19 April 2017.
- ²⁷ ATO, *Individuals and trusts* (2019) <<https://www.ato.gov.au/>> ; ATO, *Due dates* (2019) <<https://www.ato.gov.au/>>
- ²⁸ *Taxation Administration Act 1953* ss 14ZW and 14ZX; ATO, *Decisions you can object to and time limits* (2019) <<https://www.ato.gov.au/>>.
- ²⁹ *Taxation Administration Act 1953* s 14ZYA.
- ³⁰ *Taxation Administration Act 1953* s 14ZZ.
- ³¹ *Taxation Administration Act 1953* s 14ZZC.
- ³² Administrative Appeals Tribunal, *Time limits* (2019) <<https://www.aat.gov.au/>>.
- ³³ *Taxation Administration Act 1953* s 14ZZN.
- ³⁴ Inspector-General of Taxation and Taxation Ombudsman (IGTO), *Submission on Transparency of Business Tax Debts Measures* (2018) para [1.28].
- ³⁵ *Ibid* paras [1.29]-[1.30].