



Submission to Senate Economics Legislation Committee
on
Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019
Related to Schedule 5—Disclosure of Business Tax Debts

[\[https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6369\]](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6369)

15 August 2019

1. Our Submission—Summary

The section of this Bill that raises our interest is Schedule 5 that would allow the Australian Taxation Office to report taxpayers' debts to credit reporting agencies.

We oppose this Bill. We are seeking legal analysis as to whether the Bill could be in conflict with other Commonwealth legislation protecting privacy. Subject to that analysis we may seek to supply a supplementary submission to the Committee.

However, if the Bill is to be passed, adequate taxpayer protections need to be inserted into the Bill.

Our submission is that if the ATO is to have credit agency reporting power, there must be certainty that any debt reported is in fact a verifiable and true debt. Processes need to be embedded in the Bill to ensure that the ATO is reporting true debt. We suggest below what those processes can be.

2. Introduction and background

In February 2018 we supplied a submission [\[https://www.selfemployedaustralia.com.au/Downloads/Taxation/SEA-Submission-Treasury-Tax-3-Transparency-Bill-February-2018.pdf\]](https://www.selfemployedaustralia.com.au/Downloads/Taxation/SEA-Submission-Treasury-Tax-3-Transparency-Bill-February-2018.pdf) to Treasury on the draft Bill that now forms the basis to Schedule 5 of this Bill.

The draft Bill proposed, and this Bill allows for, the ATO to report taxpayer debts to credit rating agencies.

In early 2018 we opposed [\[https://www.selfemployedaustralia.com.au/Downloads/Taxation/SEA-Submission-Treasury-Tax-3-Transparency-Bill-February-2018.pdf\]](https://www.selfemployedaustralia.com.au/Downloads/Taxation/SEA-Submission-Treasury-Tax-3-Transparency-Bill-February-2018.pdf) the draft Bill on the basis that the existing powers of the Australian Taxation Office are draconian and that the evidence is that the ATO abuses those powers, particularly in relation small business people.

Our primary concern was (and is) that the ATO lacks effective, independent, external oversight and transparency. This lack of oversight enables abuse by the ATO. Abuse by the ATO of small business, in particular, was widely exposed in the media during 2018 and into 2019.

Our concern in early 2018 with the proposed Bill was (and is) based on the following facts and reasoning:

- A report by the ATO to a credit rating agency of a tax debt has the power to destroy a business's or a person's credit rating. This can easily result in credit suppliers withdrawing and/or denying credit, causing immediate business collapse.
- Under tax law the ATO's assessment of a tax debt is not an *allegation* of a tax debt but becomes, at law, an *actual* debt whether that debt is true or not.
- There is significant evidence of the ATO issuing debts that have proven over time to be false.
- There is significant evidence of the ATO misusing its processes to enforce debts to the point that the activities of the ATO amount to bullying—particularly of self-employed, small business people. There is clear denial of natural justice by the ATO.
- The method by which the ATO 'creates' a debt is to take an assessed primary debt and then add to that interest of 9 per cent and penalties of up to 90 per cent. So, a primary debt can start at, say, \$40,000 but be reported by the ATO as being \$150,000. In other words, the ATO's standard procedures create an impression of the size of a debt (say, \$150,000) when the actual debt is much less (say, \$40,000). This inflationary debt figure, if reported to a credit rating agency, can and will give a worse picture of a business's credit situation than is factual.

3. Events subsequent to February 2018

Since our Treasury submission in February 2018 there have been major developments in relation to the ATO and small business.

- The *Four Corners* programme 'Mongrel Bunch of Bastards' [<https://www.abc.net.au/4corners/mongrel-bunch-of-bastards/9635026>] provided evidence of the ATO's abuse of small business people. The program ignited major ongoing media coverage during 2018 and significant parliamentary and other official reports [<https://www.selfemployedaustralia.com.au/latest-news/ato-mongrel-bunch-of-bastards-one-year-on>] all indicating ATO abuse.
- In response, in March 2019 the government established the Small Business Tax Tribunal. [<https://www.selfemployedaustralia.com.au/Current-Issues/Taxation/small-business-tax-tribunal>] This allows a small business person to refer a tax dispute to the tribunal for speedy, cheap and fact-based determination. Support is provided through the Small Business Ombudsman and others.

The existence of the Small Business Tax Tribunal is a significant step towards creating appropriate, independent, institutional oversight of the ATO's powers—at least for small business people. This has direct relevance to this Bill.

4. The Bill Schedule 5—Ensuring checks and balances

The Bill takes steps in the right direction of creating checks and balances—namely, by requiring the ATO to:

- 'Consult' with the Inspector-General of Taxation (IGT).
- Provide the taxpayer with 21 days' notice of intent to report.

(See below for the relevant text from Schedule 5 of the Bill)

To strengthen those checks and balances we submit that:

1. In 'consulting' with the Inspector-General of Taxation the ATO be required to:
 - (a) consult with the IGT in relation to the accuracy or otherwise of the debt;
 - (b) respond to all enquiries from the IGT in relation to the debt; and

- (c) not report the debt if the IGT expresses concern or disagreement as to the ATO's debt calculation.
2. In informing the taxpayer of an intention to report a debt, that the ATO must inform the taxpayer:
 - a) in writing by registered post or other written system that will verify the taxpayer has received the notice; and
 - b) in cases involving a small business person, that they can appeal to the Small Business Tax Tribunal before a report is made to the credit rating agency.
 3. If an appeal has been lodged with the Small Business Tax Tribunal, the ATO will not be able to report to a credit rating agency until the Small Business Tax Tribunal makes a determination authorising a report.
 4. In reporting tax debt, the ATO be required to specify how the debt is composed by stating:
 - (a) the primary debt;
 - (b) interest charged; and
 - (c) penalties imposed.

5. Relevant Text from Schedule 5 of the Bill

355-72 Exception—disclosure to credit reporting bureaus

Exception—entities in declared class of entities

(1) Section 355-25 does not apply if:

- ... (e) in the case of a disclosure of information other than for the purposes of updating, correcting or confirming information previously disclosed under this exception—both:
 - (i) the Inspector-General of Taxation has been consulted on the disclosure; and
 - (ii) 21 days have passed after a notice under subsection (2) of this section was given to the primary entity for the disclosure.

Notice of disclosure

- (2) The Commissioner must notify a primary entity if:
 - (a) information that relates to the primary entity is to be disclosed to a *credit reporting bureau under this section; and
 - (b) the information is not information that updates, corrects or confirms the information previously disclosed under the exception in subsection (1).
- (3) The notice must:
 - (a) be in writing; and
 - (b) explain the type of information that is to be disclosed to the *credit reporting bureau; and
 - (c) set out the amount of any *tax debts payable by the primary entity at the time the notice is given by the Commissioner; and
 - (d) explain how the primary entity may make a complaint in relation to the proposed disclosure of the entity's information; and
 - (e) be served on the primary entity.

ADDENDUM

Members
Senate Standing Committees on Economics
Legislation Committee

19 August 2019

Re: Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019

Dear Senator,

We write to reinforce the concerns that Self-Employed Australia has with the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019*, specifically *Schedule 5 Disclosure of Business Tax Debts*.

We lodged our submission by the closing date of last Thursday 15 August and note that the Committee hearing of the Bill is occurring today, Monday 19 August. It seems to us that the Bill is moving forward with considerable speed.

In our submission we expressed our concern over privacy issues and indicated that we would forward further analysis. Given that the Committee is considering the Bill tomorrow, we think it necessary to write directly to you to ensure that privacy issues are at least given some consideration.

This correspondence covers two issues:

1. **Major change in taxpayer privacy:** We have considerable concerns that Schedule 5 is a major change to the long-standing protection of taxpayer privacy. This is no mere 'tweaking' of taxpayer privacy protection. We oppose the passing of Schedule 5 on privacy grounds and ask that our opposition be fully noted by the Committee. We further explain our position below.
2. **ATO checks and balances:** If Schedule 5 is to be passed into law, we ask that the Committee pay major attention to the submission made by the Inspector-General of Taxation (IGT). *We fully endorse the 17 recommendations of the IGT* and ask that the Committee likewise endorse each of the IGT recommendations.

It is our considerable experience with the ATO that its assessment of tax debts is frequently inaccurate and plain wrong. We explain this in our submission. Based on the ATO's history, gross injustices will inevitably be perpetrated by the ATO against individuals if this Bill does not require robust checks and balances of the ATO's powers.

As a further taxpayer protection, we reiterate our request in our submission that a provision be inserted in Schedule 5 so that small business taxpayers have a right of appeal to the newly created Small Business Tax Tribunal before the ATO can report a debt to a credit reporting agency.

Taxpayer Privacy

We ask that the Committee pay close attention to *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010* [<https://www.legislation.gov.au/Details/C2016C01035>]. This law prevents taxation officers from (for example) copying and divulging taxpayer confidential information. The ATO acts against ATO whistleblowers under this provision.

We ask that the Committee fully investigate and consider the reasons behind the introduction of this taxpayer protection Act in 2010 and whether the apparent 'need' to inform credit reporting agencies is so urgent today that the 2010 Act should be overridden in this way.

The ATO's own privacy policy will be significantly changed as a result of Schedule 5.

The ATO's taxpayer privacy policy is here [<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/In-detail/Privacy-and-information-gathering/Privacy-policy/>] and states the following:

*Personal information contained in taxpayer records is usually collected, held, used or disclosed for the purpose of administering the taxation laws. Division 355 of Schedule 1 to the Taxation Administration Act 1953 sets out the specific circumstances in which personal information contained in taxation records can be recorded, used or disclosed. In some circumstances, the law allows disclosures of personal information for reasons other than administering the taxation laws. These include **disclosures to: assistance agencies to help them determine eligibility for government benefits law enforcement agencies for the purpose of investigating and prosecuting serious offences courts, tribunals, legal service providers and counsel representing us in disputes and debt collection activities state and territory revenue offices other***

government departments and agencies to enable them to administer their own legislation (for specified purposes).

Schedule 5 is a marked and major shift from the ATO's privacy policy and the law on taxpayer privacy. The rights of people in a democracy are rarely denied through bold, public, attention-grabbing moves. Rather, rights are removed via salami tactics, slice by slice, until people say, 'how did we get to this situation?'

Schedule 5 is a salami tactic which removes a fundamental taxpayer privacy protection. The only protection 'the people' have against such processes is the alertness of Parliament. We ask that the Committee take heed of taxpayer protections.

Yours sincerely,

Ken Phillips
Executive Director
Self-Employed Australia