

**Senate Economics Legislation Committee Inquiry into Treasury Laws Amendment
(2019 Tax Integrity And Other Measures No. 1) Bill 2019 [Provisions]**

ANSWERS TO QUESTIONS ON NOTICE

Inspector-General of Taxation

19 AUGUST 2019

Department/Agency: Inspector-General of Taxation
Topic: [Question Topic]

Question:

Senator PATRICK: Are you familiar with the phoenixing legislation that's before the parliament at this point in time?

Ms Payne: No.

Senator PATRICK: Okay. There is a provision—I think it's in schedule 3, but I could be wrong; it is schedule 3 or 4 of that legislation—that allows the tax office to create a debt on an estimate rather than an assessment. Are you familiar with that at all?

Ms Payne: No.

Senator PATRICK: So I'm taking it that, if that legislation were to pass and thereby the tax office could create a debt on an estimation, that then falls in underneath this as well.

Mr Pengilley: If it remains outstanding after the time period and it is within a class of—

Ms Payne: More than \$100,000

Mr Pengilley: more than \$100,000, it's triggered by the assessment. And so if—

Senator PATRICK: No. I understand it's triggered by the assessment, but the new laws being proposed will suggest that the tax office can make an assessment which then has the effect of creating a debt. Now, an estimation is different from an assessment. In an estimation they'll be able to create a debt, which will then fall in under this as well, so you'll have this double arrangement where the tax office has made an estimate that's created a debt, and then it marches along this particular pathway as well.

Ms Payne: Can we take that on notice?

Answer:

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) understands that the question is whether the Commissioner of Taxation's (Commissioner) estimate of liabilities proposed in Schedule 3 to the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 (Phoenix Bill) could be disclosed as 'tax debts' to Credit Reporting Bureaus (CRBs).

The IGTO understands that Schedule 3 of the Phoenix Bill will insert certain provisions into Division 268 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). Once incorporated, the Commissioner would be empowered to make an estimate of liability in relation to a net amount under the *A New Tax System (Goods and Services Tax) Act 1999* (sections 6, 7 and 9 of the Phoenix Bill). The Commissioner could then issue a notice of estimate to a taxpayer (section 268-15 of Schedule 1 to the TAA 1953) which would require the taxpayer to pay the estimate to the Commissioner (section 268-20 of Schedule 1 to the TAA 1953).

Importantly, such estimates would be considered a 'tax-related liability' (as defined in section 250-10(2) of Schedule 1 to the TAA 1953).

“A tax-related liability is a pecuniary liability to the Commonwealth arising directly under a taxation law (including a liability the amount of which is not yet due and payable)” (section 255-1 of Schedule 1 to the TAA 1953).

Furthermore, a tax-related liability may be recovered as a debt due to the Commonwealth and payable to the Commissioner (section 255-5 of Schedule 1 to the TAA 1953).

The proposed Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 (**Bill No. 1**) will insert certain provisions into Division 355 of Schedule 1 to the TAA 1953. In combination with the proposed Taxation Administration (Tax Debt Information Disclosure) Declaration 2019 (Declaration), taxation officers would be permitted to disclose information that relates to the ‘tax debts’ of an entity to CRBs if certain requirements are met.

However, the term ‘tax debt’ is not defined in Schedule 1 to the TAA 1953.

The IGTO notes that the term ‘tax debt’ is defined in section 8AAZA of the TAA 1953 for the purposes of Part IIB of the TAA 1953 (that is Running Balance Accounts),

“tax debt means a primary tax debt or a secondary tax debt”.

“primary tax debt means any amount due to the Commonwealth directly under a taxation law..., including any such amount that is not yet payable”.

“secondary tax debt means an amount that is not a primary tax debt, but is due to the Commonwealth in connection with a primary tax debt” (section 8AAZA of the TAA 1953).

It is unclear to the IGTO whether the term ‘tax debt’ in the Bill No. 1 will or should properly take its definition from section 8AAZA of the TAA 1953. However, if so, and if the terms ‘tax debt’ and ‘tax-related liability’ are conceptually the same, then subject to the requirements of the Bill No. 1 and Declaration being met, the Commissioner may disclose estimates of liabilities under the Phoenix Bill as tax debt information of an entity to CRBs.