



15 January 2018

For immediate release

Transparency of Tax Debt Legislation leaves a loop hole big enough for a phoenix to fly through

The Australian Institute of Credit Management (AICM) welcomes the release of the Transparency of Tax Debt draft legislation by The Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP. AICM has been lobbying for this legislation since 2014.

AICM CEO Nick Pilavidis said “This is a long overdue change, addressing a glaring gap in the information available to all businesses to clearly assess and mitigate credit risk. This information gap not only exposes our members businesses to unnecessary risk, it also allows those that avoid their tax obligations to gain an unfair advantage and is linked to illegal phoenix activity”.

Currently credit providers are regularly frustrated when liquidators reports on a failed company reveal extensive debts to the ATO which have often been outstanding for over 12 months.

While the AICM agrees many benefits will flow from the draft legislation it is concerned that it fails to provide sufficient deterrent for those that choose to avoid their tax obligations, because the information will be expunged from credit files if the business subsequently engages with the ATO.

“Information of businesses that have had prior breaches reported, but subsequently paid, is highly relevant to all credit providers, as it assists with a comprehensive assessment of credit worthiness. To remove prior breaches from the file not only reduces the ability for full and complete credit assessments, it also leaves a loop hole for those that intend to avoid their obligations, such as illegal phoenix operators .”

According to the ATO over 95% of businesses pay their tax obligations within 90 days. Of the remaining 5%, around 3% remains outstanding after 365 days. To which Mr Pilavidis says “this clearly indicates that most businesses that fail to pay within 90 days have no intention or capacity to pay and those that do are likely to engage with the ATO within the 21 day warning period.”

Mr Pilavidis believes that “it is highly unlikely that any business will be surprised if information is recorded on their credit file considering tax obligations are ubiquitous to all businesses, most tax obligations are self-reported, the obligation has been outstanding for at least 111 days, they received a notice with a 21 day warning period and the ATO would have exhausted the options available to them to encourage engagement such as calls, text messages, letters and using professional debt collection agencies.”

For an extremely small minority, extenuating circumstances may create exceptions and the ATO should have flexibility to remove defaults in these circumstances, however it is clear the



overwhelming majority of businesses that may be reported have intentionally avoided their obligations and removing the information leaves a glaring loop hole that will be manipulated.

Mr Pilavidis says “to ensure the measure achieves its goals and reduces the ability for businesses to avoid their obligations the information should not be expunged on entering repayment arrangements, raising disputes or full payment, instead the information should be updated to reflect this.

Not only will the loop hole mean those that intend to avoid their obligations continue to do so but provides incentive for them to repeat this activity. Consider:

- Those that enter a repayment arrangement to have a credit file cleared only to default on the arrangements once a credit provider has extended new credit.
- A serial illegal phoenix operator that will enter a repayment arrangement before winding up the business to give the appearance there were no unpaid obligations.

If the information remained on file but was updated to reflect the current status, such as “paid”, “repayment arrangement” or “disputed”, this would not only close the loop holes above but allow credit providers to make further inquiries before extending credit and ensure the repayment can be monitored closely.

“We urge the Minister and the ATO to amend the legislation to address this loop hole and ensure that the measure increases clarity of credit assessments and results in businesses that are gaming the system to obtain an unfair advantage are stopped.”

For media, Nick Pilavidis, CEO of AICM is available to comment.

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About AICM

The Australian Institute of Credit Management (AICM) is Australia’s leading professional member body for commercial and consumer credit management professionals across all industries and sectors, and the only credit industry-specific Registered Training Organisation in the country.



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