Reporting of tax debts a wake-up call for directors

Businesses with tax debts of at least $100,000 that are overdue by more than 90 days may have this information passed onto credit reporting agencies.

The ATO announced in April it was providing commercial tax default data to CreditorWatch and in May also agreed to provide Equifax with the same information to include in its credit reports to factor into commercial risk scores. This move to provide tax default data to these bodies will help customers evaluate risk more accurately when assessing credit applications.

The ATO is expected to provide the agencies with weekly data on businesses that have at least one tax debt where $100,000 or more is overdue for more than 90 days. The aim is to give customers greater insight into customers' debt positions and ability to pay tax, which in turn will determine if they should approve a credit application.

Important to take action

The move to provide tax debts to credit reporting agencies arose following legislation that passed in 2019 called: "Disclosure of Business Tax Debts" (formerly Transparency of Tax Debt). Now, if a business meets certain criteria, the ATO can disclose its debt information to credit reporting agencies. However, this won't happen if the business has engaged with the ATO to find a solution to manage its debts. The criteria for reporting a tax debt are:

- If the business has an ABN and is not an excluded entity
- It has one or more tax debts and at least $100,000 is overdue by more than 90 days
- It is not engaging with the ATO to manage the debt
- It does not have an active complaint with the Inspector-General of Taxation Ombudsman about the ATO's intent to report its tax debt information.

Entities that are excluded from having their tax reported include deductible gift recipients, complying super funds, registered charities and government entities.

Greater transparency a positive move

Trent Devine, Jirsch Sutherland Partner and keen race car driver

Jirsch Sutherland Partner Trent Devine says the move to provide tax data to CreditorWatch and Equifax is a positive one, especially as historically, businesses would take on customers which had undisclosed tax debts that they had no idea about.

“Businesses will be able to better evaluate credit risk,” he says. “Especially as data is provided on debt that is more than 90 days old. Previously, this type of data was unable to be tracked, and instead was only discovered when the ATO began winding up a company – which is obviously too late to be of any use.”

ATO Deputy Commissioner Vivek Chaudhary says while the ATO understands COVID has meant many businesses incurred tax debts, it’s important not to ignore them. “We have a range of support and assistance we can provide, and we can tailor a solution to a taxpayer’s unique circumstances. What is critical is that taxpayers or their representatives talk to us and respond to our calls.”

The ATO has recently written to businesses under two key awareness programs: the Disclosure of Business Tax Debts (mentioned above) and the use of Director Penalty Notices (DPNs). By mid-May, the ATO had sent 29,552 awareness letters for disclosure of business tax debts and 52,319 awareness letters about the use of DPNs.

Chaudhary says the ATO had seen an encouraging response to its awareness campaigns, with “a significant level of payments and taxpayers entering into payment plans. In fact, more than 20,000 taxpayers have already responded to our awareness letters by making payments or entering into payments plans”.

However, for those taxpayers who have not responded, the ATO has issued nearly 300 “intent to disclose” notices and has commenced disclosing some of these to Equifax and CreditorWatch.

Jirsch Sutherland’s Devine says the greater transparency about tax debts should be a wake-up call to directors and their accountants to get their tax affairs in order. “Tax debts are often the last debt to be paid but now it can have dire consequences for business relationships,” he says. “At the very least, companies with overdue debts should be contacting the ATO to discuss payment options.