



**Australian
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David Pearl
First Assistant Secretary
Market Conduct Division
Treasury
Canberra ACT 2600

Dear David Pearl,

RE: Multinational Tax Integrity: Public Beneficial Ownership Register

The Australian Chamber of Commerce and Industry (ACCI) appreciates this opportunity to provide comment to the Treasury on the *Multinational Tax Integrity* and the implementation of a publicly available beneficial ownership register.

The increased digitisation and globalisation of the economy has led to significant benefits to Australia including consumer choice, innovation, productivity and economic growth. It has facilitated an increased ability for international businesses, particularly large multinational enterprises (MNEs) to operate and invest on Australian shores. Similarly, it has allowed for international entities or individuals to become involved in the governance of Australian businesses. This openness has provided significant benefits to the transferal of knowledge, skills and currency into Australia. Nonetheless, we welcome the Government looking to improve the transparency of MNE governance.

The design of the public beneficial ownership register (PBOR) requiring entities regulated under the *Corporations Act 2001* to keep a register of all natural persons and companies that have beneficial ownership and disclose when enquired will help improve transparency in the governance of these entities. Following movements made globally including in the UK, France and Germany, this will help bolster Australia's policy on transparency and exchange of information for tax purposes to international standards.

Further, ACCI supports the overall goal of ensuring MNEs pay their fair share of tax, and agrees a PBOR will help reveal and prevent any concealed ownership of assets through overseas companies or trusts for the purpose of evading tax liability, debts and sanctions laws. We concur that, it will improve the integrity of Australian businesses and protect them from bad-faith actors.

However, we caution that these benefits need to be appropriately weighted against the deterrence and barriers placed upon stakeholders engaging in the Australian marketplace and the regulatory burden placed on business.

Businesses in Australia are already heavily regulated. The introduction of the PBOR adds to the administrative burden and compliance costs entities must undergo. Australia needs a tax and regulatory environment that enables our industries to compete in the international

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market and makes Australia a more attractive destination for foreign multinational to engage and invest. As such, the processes of registering beneficial owners needs to be streamlined to minimise burden.

Acknowledging the 20% threshold of shares and voting rights or the ability to influence the board of directors for beneficial owners to be registered on the PBOR, a further threshold should be installed relating to the size of regulated entity. A small entity, in terms of workforce and turnover, operating under the *Corporations Act 2001*, should be exempt from any reporting requirements. They firstly lack the appropriate human resources to continually update beneficial ownership reporting requirements. Forcing them to allocate valuable time and resources to the maintenance of their beneficial ownership register would disadvantage them against larger competitors. Additionally, the regulatory burden placed upon them does not outweigh the benefits associated of the PBOR nor the deterrence and barriers placed upon stakeholder engagement. ACCI recommends regulated entities that meet ASCI's definitions of small proprietary companies¹ are exempt from the PBOR.

Furthermore, the requirement for regulated entities to be "reasonably assured" of the identities of their beneficial owners presents the potential for unwarranted and overbearing penalties. Whilst it is common practice for an entity to verify the identity of their stakeholders either through formal or informal processes, it is important that the use of an identity verification service provider is not mandated. Additionally, if a business opts to prove the identity of their beneficial owners through informal processes that they are not subject to scrutiny or penalties if proven inaccurate beyond their control.

Greater flexibility should also be granted in the updating of an entity's beneficial ownership. Understanding the operations of regulated entities are dynamic and availability of resources vary dramatically from entity to entity, the proposed 14 days for regulated entities to issue notices and collect information from potential beneficial owners and another 14 days to update their registry is insufficient time. ACCI recommends this be amended to provide regulated entities three months to collate the required information from beneficial owners and update their registry. This more lenient timeframe grants regulated entities adequate time to dedicate resources to this administrative process and helps address setbacks beyond their control, including delayed responses from beneficial owners.

Regarding the future phase development of a centralised public register, it is important regulated entities face an easy-to-use interface that coordinates all reporting requirements. Regulated entities should only be required to register beneficial ownership details once and is transferable to the involved parties. By way of example, sensitive information deemed necessary for regulators and law enforcement should be provided to the same system but separated from public viewing of the centralised register.

Both the initial phase, requiring regulated entities to release beneficial ownership personal data when requested, and the future phase, developing a public centralised register, raise significant cyber security concerns. It is important that international and domestic persons or

¹ Satisfy at least two of the following:

- an annual revenue of the company and any of its controlling entities of \$50 million or less
- consolidated gross assets of the company and any of its controlling entities of \$25 million or less
- the company and any of its controlling entities employs 100 or less employees



entities interested in investing in Australian businesses are not deterred due to their information becoming publicly available or stored in an unsecure private database. The framework proposed details the type of information that only regulated entities, regulators and law enforcement agencies can obtain and the data that is to be released to the public. Whilst a seemingly pedantic recommendation, the release of a beneficial owners month and year should be withheld from public disclosure. Acknowledging that the day of birth is already not included in the public registry for data privacy concerns, the release of any date of birth information to the public elicits the same concerns while providing little benefit to the aim of improving transparency. This information is only of relevance to regulatory bodies and law enforcement. With a goal of not deterring engagement, small changes such as this and the removal of any other unnecessary data from public view is encouraged.

Furthermore, in the future phase with a central register, sensitive information that is not released publicly but still obtained needs to be stored in a secure data network. It is important that the risk or perceived risk of data insecurity will not discourage involvement by natural persons or companies. With cyber security threats becoming increasingly common in Australia, it is vital the private network is secure and safe.

It is acknowledged that many regulated entities already have beneficial ownership registration requirements through ASCI's substantial holding notices and tracing notices. However, under the proposed PBOR an additional three million unlisted entities would be subject to transparency rules. It is therefore essential that new regulation is clearly communicated to the Australian and global business community. Businesses directly engaged with the reform, both those with previous beneficial ownership requirements and those without, should have clarity regarding their obligations. Moreover, all impacted businesses need to be afforded sufficient time to set-up frameworks to ensure the burden of compliance is not hastily forced upon them.

In summary, ACCI supports the notion of a PBOR that will improve transparency for tax, integrity and other governance purposes. However, ACCI warns against increasing the administrative burden placed on regulated entities, the unnecessary inclusion of sensitive data collation, the use of insecure networks, and the deterrence of individuals and entities from Australian business. As such, the following amendments need to be made:

- **regulated entities that meet ASCI's definitions of small proprietary companies are exempt**
- **use of an identity verification service provider is voluntary and informal verification processes are not unduly penalised**
- **regulated entities are afforded three months to collate changes to beneficial owners' information and update their registry**
- **date of birth information and other unnecessary personal data is removed from public releases**

Yours sincerely

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