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Our Reference: EC22-003647

21 December 2022

Director  
Beneficial Ownership and Transparency Unit  
Treasury  
Canberra ACT 2600

Via email: [BeneficialOwnership@treasury.gov.au](mailto:BeneficialOwnership@treasury.gov.au)

Dear Mr Alvery

**Re: Public Consultation paper Multinational tax integrity: Public Beneficial Ownership Register**

1. The Australian Federal Police (AFP) welcomes the opportunity to provide a submission to Treasury in response to its Consultation Paper, 'Multinational tax integrity: Public Beneficial Ownership Register'.
2. The AFP is the Commonwealth's primary law enforcement and policing agency, with responsibility for investigating Commonwealth offences, including foreign bribery and corruption, money laundering and other serious and organised crimes. The AFP also leads the multi-agency Criminal Assets Confiscation Taskforce (CACT), which works closely with partner agencies as part of the wider law enforcement community to identify illicit activity and suspicious financial flows, and deprive criminals of the proceeds, instruments and other benefits of their offending under the Proceeds of Crime Act 2002 (Cth) (POC Act).
3. The AFP strongly supports the proposal to introduce a public register of beneficial ownership information, to record who ultimately owns, controls, and receives benefits from a company or legal vehicle. This submission outlines the operational risks posed by a lack of transparency in beneficial ownership information, and challenges faced by law enforcement.
4. The AFP notes the Consultation Paper proposes a phased approach to establishing a register, with the initial phase requiring regulated entities to maintain their own non-centralised registers. While an initial phase of decentralised registers will provide some benefit to law enforcement, we have identified potential amendments to this phase to ensure maximum operational utility until a centralised register can be established. We consider the most significant law enforcement benefits will be gained in the second proposed stage through the implementation of a single, centralised beneficial ownership public register encompassing a broader range of legal entities and legal vehicles.

5. A centralised, public register covering both legal persons and legal vehicles (such as trusts), will help mitigate many of the challenges faced by law enforcement agencies (LEA) when seeking to establish the true ownership arrangements behind businesses, trusts and other structures, and to identify the effective owner of criminal assets particularly where suspects deliberately structure their financial affairs to distance themselves from their assets and/or where there are multiple layers of beneficial ownership. It is critically important that the AFP and other law enforcement agencies are able to search an independent, publicly-available, and point-in-time data source for this beneficial ownership information, in a manner that does not disclose law enforcement interest in the relevant entities or persons.

#### **The risks posed by lack of transparency in beneficial ownership**

6. The AFP acknowledges complex business and asset ownership structures to organise personal or corporate affairs can be done for legitimate purposes. However, these structures can also be exploited by criminal entities for nefarious purposes. The absence of transparency around these arrangements can facilitate the commission of serious and organised crime, support the distortion of legitimate financial markets, and make Australia a more attractive destination for illicit financial flows (including in relation to investments in Australian real estate).

7. Critically, the lack of a beneficial ownership register can have significant impacts on the effectiveness of AFP's criminal investigations and asset confiscation proceedings, as well as those of our Commonwealth, State and Territory law enforcement partners. Difficulties in identifying the beneficial owner can impact investigations into a wide variety of offending, but particularly organised crime, tax offending, foreign bribery and corruption, money laundering and terrorism financing. In these circumstances, complex beneficial ownership arrangements can facilitate a suspect's offending activity, and/or enable the suspect to conceal their offending, identity or assets from law enforcement detection.

8. Ownership arrangements can be deliberately structured to obscure the true beneficial owner's identity, income and other assets by using trust funds, nominees and shadow directors to facilitate tax fraud and avoidance, and fraud against Commonwealth programs. For example, investigations into fraud against Commonwealth programs have uncovered criminal groups registering companies under false directors. This prevents due diligence measures identifying red flags, such as banned service providers, which would lead to further scrutiny and denial of an application to provide services under the program.

9. The CACT is increasingly investigating and taking action in cases where suspects have hidden or protected their effective control of assets behind complex beneficial ownership structures. This makes it more difficult to identify, investigate and commence proceedings under the POC Act against assets which are the proceeds of crime, particularly where those assets are located offshore. A domestic beneficial ownership register will make it easier to identify the beneficial owner of property in Australia and therefore better enable the provision of mutual assistance to international law enforcement partners for their own investigations.

### **Common challenges in identifying beneficial ownership and benefits of a centralised register**

10. The AFP works closely with partner agencies as part of a wider law enforcement community to identify illicit activity and suspicious financial flows, including through the sharing of information and intelligence between domestic and international partners for investigations and proceeds of crime action. In the absence of a central register providing direct evidence, the AFP and partner agencies currently rely on a variety of investigatory powers to collect indirect evidence which, when combined, may identify the true ownership of businesses, trusts and other assets. Investigatory powers may include search warrants, telecommunications interception or surveillance device warrants, along with general inquiries made to associates of suspects or relevant entities such as business registries, or relevant State/Territory databases. The POC Act also contains coercive information-gathering tools (such as production and monitoring orders) which the AFP can use to help uncover ownership arrangements for CACT matters, but which cannot be used for criminal investigations.

11. However, collecting indirect evidence to establish beneficial ownership is costly, resource-intensive and may still be insufficient to establish beneficial ownership to the required evidentiary level for Court. This approach can also present significant risks and challenges to the effective progress of a criminal investigation or confiscation action, including:

- a. Increasing the risk of 'tipping off' a suspect or associates while investigations are still covert, disclosing law enforcement's interest in the ownership of an entity and providing opportunity for a suspect to move or dissipate assets, alter their behaviour, warn criminal associates, or flee to offshore jurisdictions;
- b. A lack of relevant documents held by an entity, or incomplete, inaccurate, falsified, tampered or destroyed documentation;
- c. Difficulties in identifying changes in beneficial ownership over time;
- d. The risk of failing to identify or locate all of a suspect's assets, increasing the chance they will not be fully deprived of the benefits of their offending; and
- e. Potential impacts on third-parties, if their legitimate interests in property are inadvertently caught up in proceeding (and potentially diverting resources away from investigatory or confiscation action against the true owner and suspect).

12. A centralised beneficial ownership register, as proposed in the consultation paper, will provide substantial benefits to the AFP's criminal investigations and proceeds of crime action, by providing a direct independent and publicly available source of relevant information.

13. A centralised beneficial ownership register will also equip law enforcement with the same access to information as international counterparts of many like-minded nations with public registers. Global scrutiny on the transparency of beneficial ownership information is ever-increasing, driven by the growing volume of public information about the abuse of corporate structures to facilitate crime.

A domestic register will allow the Australian LEAs to forge closer international relationships, which will assist in tackling the criminal abuse of otherwise lawfully-used beneficial ownership structures.

#### **Suggestions for the initial phase of implementation**

14. Noting the centralised public register will be implemented in future phases, the AFP has a number of suggestions for consideration in the design of the initial phase to maximise utility for law enforcement in combatting serious and organised crime and deprive offenders of any illicit wealth gained.

a. Make information on a regulated entity's beneficial ownership register publicly available.

The AFP strongly suggests relevant beneficial ownership information be publicly available, for example, through publication on the company's website. Notwithstanding the importance of privacy considerations, this requirement would ensure beneficial ownership information is more easily accessible to law enforcement agencies, without carrying the risk of disclosing law enforcement interest during the covert stage of an investigation.

Requiring the publication of this information may also reduce regulatory impact on businesses in responding to law enforcement requests to view a regulated entity's beneficial ownership register (particularly as complex, ongoing matters may require multiple requests over many months or years).

b. Require regulated entities to maintain historical records of information placed on their registers, whenever updates are made.

The ability to identify the beneficial owner at multiple points in time can be critical for both criminal investigations and proceeds of crime action, which may target historical offending, as well as offending which occurs over multiple years.

Requiring regulated entities to keep historical records would permit identification and tracing of beneficial ownership arrangements at any point in time, increasing transparency of information. Such updates should be published, for the reasons identified above, acknowledging there may be a need to consider data retention implications. In addition, publication reduces the potential for a suspect to falsify historic records, particularly once they become aware of law enforcement interest.

#### **Conclusion**

15. The AFP strongly welcomes moves towards improving transparency around beneficial ownership and the establishment of a public beneficial ownership register to encompass legal entities and legal vehicles. The suggested improvements to the initial implementation phase are designed to increase the operational utility of the proposed model, noting the highly complex criminal environment in which law enforcement agencies operate.

16. The AFP welcomes timely consideration of implementing the future phases, in particular centralisation of information contained on individually maintained beneficial ownership registers into a single public registry, that will also apply to additional entities and legal vehicles. This will provide maximum impact to harden the environment against criminals and confiscate their illicitly-gained assets, and support Australia's efforts to meet international standards and best practices.

Yours sincerely



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