



Australian Government

Attorney-General's Department

16 December, 2022

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**Submission to the 'Multinational tax integrity: Public
Beneficial Ownership Register' consultation paper**

Introduction

The Attorney-General's Department (the department) thanks Treasury for the opportunity to make a submission in response to the 'Multinational tax integrity: Public Beneficial Ownership Register' consultation paper.

Overall, the department strongly supports the phased approach to implement a centralised public register of beneficial ownership information outlined in Figure I.A of the consultation paper. Figure I.A proposes two phases, an 'initial phase' involving individually regulated entities' registers and enhanced disclosure, as well as 'future phases' which would adopt a centralised register that captures additional entities, legal vehicles and other enhancements. The introduction of a centralised public beneficial ownership register is particularly important for transparency, to prevent concealment and laundering of illicit funds, and to provide crucial information to support law enforcement investigations and prosecutions for corruption, foreign bribery, money laundering and other serious crimes. A centralised beneficial ownership register will also support the work of intelligence, national security and revenue protection agencies.

A centralised public beneficial ownership register will also better align Australia's domestic regime with its international obligations relating to beneficial ownership, such as the Financial Action Task Force (FATF) Standards and the 2021 OECD Anti-Bribery Recommendation. The department highlights the importance of implementing beneficial ownership transparency measures prior to the next round of FATF Mutual Evaluations, which is expected to commence in 2025.

Benefits to law enforcement and other agencies

Understanding who ultimately owns or controls a company or legal vehicle is crucial in detecting, disrupting and preventing criminal activity. Allowing beneficiaries to remain anonymous can allow criminals to conceal illicit funds under complex company structures and impede national efforts by law enforcement, intelligence, national security and revenue protection agencies to trace money trails or corrupt assets, or identify shell companies.

The department supports the phased approach to implement a centralised public beneficial ownership register, as outlined in the consultation paper. The initial phase will potentially provide some modest benefits to law enforcement and regulators, allowing for an initial picture of ownership and control to be formed of various corporate structures in Australia. However, progression to a centralised beneficial ownership register will offer the fullest utility and benefits for law enforcement agencies and regulators. These benefits include:

- ensuring beneficial ownership information is publicly accessible within a central repository,
- ensuring beneficial ownership information is up-to-date and verified for accuracy,
- enhancing law enforcement ability to identify beneficial owners in a timely and efficient manner, with less chance of potentially tipping off a suspect,
- reducing the requirement and burden on regulated entities to retain their own beneficial ownership registry,
- facilitating covert access to beneficial ownership information by intelligence, law enforcement and other agencies, where relevant, providing an additional avenue for enquiry during an investigation,

- reducing the risk of beneficial ownership information being falsified, tampered with or destroyed and assets dissipated by persons of interest once law enforcement interest becomes known, and
- increasing corporate compliance, as maintaining beneficial ownership information could form part of a company's annual reporting process.

FATF considerations

In conjunction with wide-ranging law enforcement benefits, increasing beneficial ownership transparency measures will enhance Australia's compliance with the FATF Standards. The FATF sets the global minimum standards relating to legal, regulatory and operational measures for combating money laundering, financing of terrorism and proliferation financing, and promotes their effective implementation. This includes standards on beneficial ownership transparency.

Recommendation 24 of the FATF Standards focuses on beneficial ownership transparency of legal persons. At a minimum, the updated Recommendation 24 standard¹ requires countries to mitigate the risks of misuse of legal persons for money laundering or terrorist financing by having mechanisms to:

- require companies to obtain and maintain **adequate, accurate and up-to-date information** on their own beneficial ownership and control of legal persons,
- ensure competent authorities and international counterparts can **access beneficial ownership information in a timely manner**, and
- ensure that there are **sanctions for non-compliance**.

The updated Recommendation 24 requires countries to implement the above requirements through a centralised register of beneficial ownership, or an alternative mechanism that provides similar access to such information. This requirement has been introduced on the basis that such registers represent best practice, and it is generally an effective way to ensure beneficial ownership transparency information is available quickly and is useful. A register facilitates central oversight of measures for verification of beneficial ownership information and would provide further certainty that information is adequate, accurate and up to date at all times.

The FATF also sets standards in relation to the beneficial ownership transparency of legal arrangements, captured under Recommendation 25. The FATF requires countries to ensure timely access by competent authorities to adequate, accurate and up-to-date beneficial ownership information in relation to legal arrangements (i.e. trusts), as well as fines for non-compliance, and international cooperation mechanisms to allow for information sharing. The department supports the inclusion of legal arrangements in future phases of implementing a centralised beneficial ownership register.

As a founding and active member of the FATF, Australia has committed to the full and effective implementation of the FATF Standards, including most recently in April 2022 at the FATF Ministerial level. The FATF monitors jurisdictions' implementation of the FATF standards through their program of Mutual Evaluations, where independent assessors look at a jurisdiction's domestic anti-money laundering and counter-terrorism financing

¹ <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/r24-statement-march-2022.html>

(AML/CTF) regime across all relevant portfolios to ensure relevant legal, institutional and operational frameworks are in place and are effective.

Australia was last assessed by the FATF in 2015. The 2015 Mutual Evaluation of Australia² identified key vulnerabilities in Australia's AML/CTF regime. The Mutual Evaluation Report noted Australia's lack of beneficial ownership transparency measures with respect to legal persons and legal arrangements. Australia has not improved its ratings on the beneficial ownership transparency measures in any follow up reports since 2015, despite the FATF's expectation that all technical deficiencies should be rectified within three years of the completion of the mutual evaluation (i.e. 2018).

Lack of progress with addressing identified technical deficiencies will have consequences for Australia in its next mutual evaluation, which will take place as part of the FATF's next round of mutual evaluations commencing in 2025. Australia could face a range of consequences for poor results on technical compliance, ranging from letters to our Ministers and high-level visits from the FATF, to potential public statements identifying Australia as a jurisdiction under increased monitoring³ (the 'grey list'). While the FATF does not call for enhanced measures to be taken against grey-listed countries, financial institutions and other businesses are likely to apply enhanced due diligence measures when dealing with grey-listed countries, potentially raising the cost of doing business and compliance costs. For Australia, these measures may result in reduced access to foreign banking for Australians, impact on cross-border capital flows, and reduced correspondent banking relationships and foreign investment. This has the potential to severely impact Australia's economy and international trade opportunities.

The department is also engaged in a number of other international fora which have agreed on measures and obligations relating to beneficial ownership information.⁴ Notably, the OECD Working Group on Bribery adopted the 2021 Anti-Bribery Recommendation which calls on members to ensure a broad range of investigative measures, including on beneficial ownership, is available in foreign bribery investigations and prosecutions. The department recommends that these additional obligations and measures be considered in the course of Treasury's proposed implementation of a beneficial ownership register.

Conclusion

The department welcomes the introduction of increased beneficial ownership transparency and the opportunity for a public discussion on a public beneficial ownership register for Australia. Overall, the department supports Treasury's proposed implementation approach, but urges swift movement to a centralised register. This type of register is consistent with global best practice and likely to deliver operational outcomes for law enforcement, national security, intelligence and revenue protection agencies, as well as regulatory savings for specific industry sectors. The department will continue to engage with and support Treasury in the design of a beneficial ownership register.

² [Australia's Mutual Evaluation Report 2015](#)

³ [Jurisdictions under Increased Monitoring](#)

⁴ G20 Anti-Corruption Working Group, [High-Level Principles on Beneficial Ownership Transparency](#) (2014); Resolution 9/7 of the Conference of States Parties to the United Nations Convention against Corruption titled '*Enhancing the use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime*' (2021).