



21 December 2022

First Assistant Secretary
Corporate & International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: contact.internationaltax@treasury.gov.au

Dear Treasury

Multinational Tax Integrity: Public Beneficial Ownership Register

The Australian Financial Markets Association (AFMA) is the leading industry association promoting efficiency, integrity, and professionalism in Australia's financial markets. AFMA represents the interests of over 125 participants in Australia's financial markets. Our members are the major providers of wholesale banking and financial market services to Australian businesses and investors - they include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers.

We are pleased to lodge a submission on the Treasury Consultation Paper (**the Consultation Paper**) on the establishment of a Public Beneficial Ownership Register (**the Register**).

Executive Summary

The key aspects of AFMA's submission to the Consultation Paper are as follows:

- The Government should more clearly articulate the policy intent from the establishment of the Register to ensure that the final design of the Register is aligned to that policy intent;
- To the extent that there are currently issues associated with the regulatory framework for substantial holding notes and tracing notes, these be addressed through a separate process;
- That the development of the centralised Register be conducted in one phase and be aligned from a timing perspective with the project to modernise Australia's business registers;

- That, notwithstanding the recommendation above, to the extent the Government ultimately adopts a phased approach is adopted in the implementation of the Register then all entity types (including trusts) should be included in the initial phase to reduce scope for regulatory arbitrage;
- That the threshold for beneficial ownership be set at 25% to align with the AML/CTF threshold for beneficial ownership and the threshold used in other jurisdictions; and
- That it be stipulated in legislation that reporting entities are able to rely on the information disclosed in the Register to satisfy AML/CTF regulatory obligations.

Policy Articulation

In AFMA's view, the Consultation Paper suffers from a lack of a clear statement as to the policy intention of the proposal to establish a Public Register of Beneficial Ownership. AFMA's view is that, notwithstanding that the Consultation Paper is couched as being part of the Government's policy commitment in relation to multinational tax integrity, the real benefit arising from the Register will be to entities that are reporting entities for the purposes of the AML/CTF Act and Rules to more easily comply with their obligations and therefore, assist in the frustration of serious financial crime. In circumstances where the Register is intended to be used for AML/CTF purposes, downstream impacts to other regulatory obligations such as FATCA and the Common Reporting Standard will also need to be considered.

It is apparent from the Consultation Paper, together with discussions with other stakeholders since the publication of the Consultation Paper, that a particular concern exists relating to the effectiveness and regulatory burden for listed entities associated with substantial holding notices and tracing notices. While it may be the case that the regulatory framework supporting these notices may be enhanced, it is perplexing that these notices, that apply solely to listed entities, are such a predominant focus of the Consultation Paper given the likelihood of there being a "beneficial owner" of such entities (based on the proposed criteria set out in the Consultation Paper) is very low. As such, it is AFMA's view that any consultation on enhancing the regulatory framework applying to such notices be undertaken through a separate process.

For completeness, regarding the questions in the Consultation Paper in relation to substantial holding notices and tracing notices, AFMA's view is that:

- Substantial holding notices and tracing notices should not be amended to capture additional beneficial ownership information. Obtaining such additional information would substantially increase the resources and burden required to provide the notification and would not be practicable within the two-business day lodgement timeframe. If the Government does ultimately decide to amend the notices, the lodgement timeframe would need to be extended to at least five business days;
- Listed entities should not be required to maintain a register of information collected by substantial holding notices.

Staged Approach

AFMA notes the proposal for a phased approach to implementation of the Register, particularly:

- Phase 1 being limited to only those entities that are subject to regulation under the *Corporations Act 2001*, namely proprietary companies, unlisted public companies,

- unlisted managed investment schemes and unlisted corporate collective investment vehicles; and
- Phase 2 bringing in other entity types, such as trusts, together with consideration of the centralisation of the individual registers on a centralised register.

AFMA has two concerns with this approach. Firstly, the non-inclusion of all entities in the initial phase of the Register creates the opportunity for regulatory arbitrage for entities that may want to continue to obscure their beneficial owners. This would appear to frustrate what AFMA understands to be the policy intent of the Register, at least until the second phase is completed, with the window for regulatory arbitrage being open for as long as the second phase remains outstanding.

Secondly, there are a number of examples where government projects have been bifurcated into two phases and the second phase has never been completed. In the Treasury space, the complete re-write of the *Income Tax Assessment Act 1936* into the *Income Tax Assessment Act 1997* has never been completed, while the extension of the AML/CTF regulatory net to “Tranche 2” entities (lawyers, accountants, real estate agents, precious metal dealers) remaining outstanding some sixteen years after the commencement of the AML/CTF regime in Australia.

As such, AFMA’s preference is that the project to create a centralised Register be undertaken in one phase and, ideally, aligned with the project to modernise Australia’s business registers. This will ensure that the project is completed in a manner which provides maximum utility to users of the Register, enhances the use of the registry infrastructure and ensures that the project is completed in its entirety.

AFMA is conscious, however, that there may be external factors which will influence the timing of the establishment of the Register, at least in terms of having individual registers established and providing reporting entities with a source of truth to obtain beneficial ownership information for those entities to whom they provide designated services. Accordingly, to the extent that these factors persuade the Government to adopt a phased approach to the establishment of the Register, AFMA would support an approach where all entities (i.e. trusts) were within scope for the first phase and the creation of a centralised Register in the second phase.

Threshold for Beneficial Ownership

The Consultation Paper provides a proposed approach for determining beneficial ownership. In proposing a 20% minimum threshold, the Consultation Paper states that this threshold is “consistent with existing corporate control and takeover thresholds in Australia, and would leverage an existing body of guidance and shareholder understanding.”

Noting AFMA’s understanding as to the predominant policy rationale for the establishment of the Register, namely to assist reporting entities their AML/CTF regulatory obligations, AFMA would support consistency with the threshold of 25% that is used to establish a beneficial owner for AML/CTF purposes. If a threshold of 20% was adopted, this would exacerbate the regulatory burden for reporting entities by reducing the extent to which the Register may be relied upon in circumstances where an owner holds between 20 and 25% of the shares/units in the entity, thereby frustrating a core policy objective in establishing the Register.

Setting the threshold at this level would also have the advantage of consistency with other jurisdictions, as noted in the Consultation Paper. For those reporting entities that operate in multiple jurisdictions and adopt a global model to AML/CTF compliance, regulatory alignment is important to avoid fragmentation.

AFMA would support legislative confirmation that reporting entities may rely on the disclosures in the Register for compliance with AML/CTF regulatory requirements.

Further Issues for Clarification

For completeness, AFMA notes that the following issues and queries have been raised by its members through the consultation process and notes that clarification will be necessary as the scope of the Register is determined and the Register becomes operational:

- Whether and what impacts arise for foreign entities that are the recipients of designated services in Australia, that is, whether there is the need for such entities to maintain a Register? To the extent that the policy intent of the Register is to allow reporting entities to rely on the Register for KYC purposes, then an extension of scope to foreign entities would appear appropriate;
- Whether reporting entities have any obligation to assess the disclosures on the Register against existing records of beneficial owners;
- In relation to the proposed approach to disclosure of information, and particularly the proposal to truncate certain information, whether reporting entities will be able to seek the truncated information from the entity so as to satisfy AML/CTF regulatory requirements (noting that the Consultation Paper states that the information will only be available to “the regulated entity, regulators and law enforcement agencies”).

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Thank you for the opportunity to respond to the Consultation Paper. Please contact me on (02) 9776 7996 or at rcolquhoun@afma.com.au to discuss any of the matters that we have raised in this submission.

Yours sincerely,



Rob Colquhoun
Director, Policy