

Thursday, 22 December 2022

The Director
Beneficial Ownership and Transparency Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: BeneficialOwnership@treasury.gov.au

Dear Director

Implementing Beneficial Ownership Identification and Disclosure requirements for Corporations Act Entities

Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia welcome the opportunity to provide feedback on the proposed approach by the Government to introducing a public register of ultimate beneficial ownership information.

Executive summary

CA ANZ and CPA Australia support the creation of an ultimate beneficial ownership register to support stronger regulatory and law enforcement responses to tax and financial crime, assist foreign investment applications, and facilitate the enforcement of sanctions.

In particular, we support the Financial Action Task Force ([FATF Recommendation 24](#) of the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation “that there is adequate, accurate, and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently **by competent authorities**, through either a register of beneficial ownership or an alternative mechanism.” As such, we do not support a *publicly available* ownership register as this could expose sensitive information of both individuals and trusts that can be used for fraudulent purposes.

The proposal to publicly self-report ownership as outlined in the consultation paper is an onerous compliance burden that will affect over 3 million entities. Each of these entities will be required to comprehend new concepts, identify, and verify individuals and registrable entities at various levels in the ownership chain, create and maintain an ownership register that is different to a share register and create a website to house the register (if they do not already have a website). Even when an entity has successfully completed all of these actions it is questionable whether the register will provide useful information to readers, as it is unlikely that dubious people (at whom this measure is aimed) would provide accurate information. CA ANZ and CPA Australia do not support the creation of individual ownership registers.

There is an alternative way to generate information to construct an ultimate beneficial ownership register. The alternative outlined below could provide more accurate information at a lower compliance cost, and would allow existing law enforcement agencies (such as AUSTRAC and the Serious Financial Crime Taskforce) to develop their own ultimate beneficial ownership register.

Concerns with proposed register

The proposal contained in the consultation paper requires over 3 million unlisted entities¹ to publicly self-report a concept of ownership which is neither legal ownership nor ultimate beneficial ownership. Rather, it is a halfway house between the two concepts. Under the proposal details of ownership interests of 20% or more by individuals or other entities registered under the Corporations Act would need to be included in an ownership register. However, there would not be any tracing through the other entities registered under the Corporations Act. Consequentially the proposed ownership register is not a shareholder register or an ultimate beneficial ownership register but is something that lands between the two concepts. Multiple ownership registers would need to be consulted to construct an ultimate beneficial ownership register that is based on incomplete shareholder information.

This proposal is an onerous compliance burden as it:

- Introduces a concept that is neither legal ownership nor ultimate beneficial ownership.
- Requires unlisted entities to ascertain from their shareholders, information that is currently not required to be collected.
- Requires unlisted entities that do not have a website to create and list on a website the proposed ownership register.

Many private companies do not maintain websites. Expecting very small companies to set up their own website would require significant time, IT expertise and compliance costs. Furthermore, the public benefit of having such a website is not clear – for example, how would you determine which website to look for the register for 'ABC SPV Sub No 456 Pty Ltd'?

- Creates substantial compliance costs. Feedback from our members indicates that compliance costs in establishing a register will be substantial and difficult to recover from clients, particularly where trusts are concerned². It will also divert resources from key business areas.

For example, to implement this measure our members would need to:

- Create a register master checklist and resources.
- Train their teams on how to educate clients around this new compliance measure.
- Identify all trusts and beneficiaries.
- Identify all groups of beneficiaries.
- Educate and collect information from the beneficiaries, through many different means e.g., face to face meetings, video conferences, phone calls etc.
- Verify non-clients plus pay for the cost for verification software.
- Track down settlors and their details.
- Track down and verify non-resident beneficiaries.

Once this is completed, our members would then need to allocate resources to maintaining the register just like they do for managing company registers.

¹ Page 12 of <https://treasury.gov.au/sites/default/files/2022-11/c2022-322265-cp.pdf>

² One member has estimated that where existing verified trust beneficiaries are involved it will take around 45-60 minutes to incorporate the beneficiary into the proposed register. Where the trust beneficiary needs to be verified it is estimated that 1-2 hours is needed. The member assists 200 company registers and 250 trusts. Total hours involved has been estimated at 800 which the member is not currently resourced to provide.

The proposal is unlikely to be effective in identifying questionable persons as it relies on entities in the ownership chain being truthful. Participants in crime are unlikely to be fully transparent in their disclosures about beneficial ownership. Consequently, it is doubtful the proposed ownership register could be relied upon.

Better alternative

There are cheaper, more effective ways to develop an ultimate beneficial ownership register.

Ensuring that the Modernisation of Business Registers program meets its objectives and has better verifiable information that can be used by the relevant government authorities (such as AUSTRAC and the Serious Financial Crime Taskforce) is one such option. A low compliance cost model should not require the following:

- Determination of 20% or 25% thresholds.
- Reliance on ultimate owners to provide information.
- Expansion of significant shareholder and tracing notices that are designed for large, listed entities to all entities.
- Tracing of ownership chains.
- Creation of separate registers and websites to contain the registers.

The development of an ultimate beneficial ownership register could be done through:

- Obtaining better data.

Basic shareholder information is required to be provided to ASIC. However, if shares are non-beneficially owned then it is only the listed owner that is required to provide details³. There are no requirements for disclosure to ASIC or under the Corporations Act, of the immediate beneficial owner, which in many cases could be a family trust. Adding such a requirement to the Corporations Act, along with verification requirements (discussed below), would greatly assist in the tracing of ultimate beneficial ownership at a much lower compliance cost than that proposed in the consultation paper. The appropriate trust information could be obtained by the relevant enforcement authorities through existing information exchange agreements with the Australian Taxation Office (ATO) about trust distributions.

The rights to vote, sell shares and appoint directors generally follow the ownership of shares. Rather than have all entities potentially report on these issues, consideration should be given to the ABRS requiring an answer as to whether these rights exist, and if not, only then requiring the entity to provide details regarding who holds such rights.

- Strengthening the verification of data

Shareholder data that is currently stored for ASIC purposes includes the name and address of the shareholder and the number and type of shares they own. The consultation paper proposes to require entities to verify identities before entering them on a register. Stronger verification of ownership information is supported and will assist in Australia improving its performance when the FATF conducts its Mutual Evaluation Report of Australia in 2024-25, regarding Australia's implementation of FATF recommendations.

³ <https://asic.gov.au/for-business/running-a-company/shares/>

The consultation paper suggests that many entities “already have well-developed approaches to identity verification in compliance with ‘know-your-customer’ obligations in the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (AML/CTF Act) and the new director identification number (director ID) provisions”. This is unlikely to be true for the majority of the 3 million businesses that will be affected by this proposal. It is also unlikely that the majority of these businesses have used third-party identity verification service providers.

Consideration should be given to requiring companies to verify, once-off, the identity of existing, and then future, shareholders through the use of myGovID – which was always intended to be used by the private sector, as well as the public sector, to verify identity without the need to hold sensitive information that could be the target of cyber criminals. This could be incorporated into share registry processes.

- Better data matching

Ensuring that the Australian Business Registry Services contains accurate source information that allows computer programmes to trace information and create ultimate beneficial ownership registers. Such programmes could be developed by government enforcement agencies and/or the private sector.

Government agencies can then continue to use the multitude of ownership information that is held by the government. For example, the ATO holds information about distributions to trust beneficiaries to further enhance its understanding of ownership structures. There have been substantial improvements in the international exchange of information and in reducing the number of tax secrecy jurisdictions since 2017, that will also assist this process.

Better data matching by government authorities that are responsible for enforcing financial crime provisions would provide a better result with less compliance burdens and less chance of misinformation by questionable persons.

Public disclosure and privacy

Recommendation 24 of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation recommends that countries ensure that there is adequate, accurate, and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by **competent authorities**, through either a register of beneficial ownership or an alternative mechanism. It does not require public disclosure.

A clear, strong rationale for public disclosure, as opposed to disclosure only to regulators, has not been provided. Our members have raised with us significant concerns about a public register releasing private information that could be used for fraudulent purposes – a matter that the recent Medicare and Optus cyber hacks have highlighted. The burden of dealing with such fraudulent behaviour falls heavily on the victim and can have devastating consequences. Members have called for government agencies to help prevent such crimes by verifying identities when changes are made to information.

The consultation paper proposes a couple of mechanisms to reduce the amount of private information that is available publicly, namely:

- The ability to seek exemption from the disclosure of information on the basis that such information would put at risk of personal safety. This is welcomed.
- That only the month and year of birth are displayed instead of day month and year of birth. Concerns have been raised that a shareholder's full name plus month and year of birth is too easy to data match with other material and can facilitate fraud.

Given the significant privacy concerns and the lack of justification for publication of this information, we do not support the proposed register being made public.

Trusts

The consultation paper proposes that where there are trusts (including SMSFs and small APRA funds but not registrable superannuation entities) entities will be obliged to take reasonable steps to identify, verify and record all of the trust's beneficiaries on its ownership register. Where there is a chain of trusts, the entity will need to trace through the chain. Figure 4.3 of the consultation paper indicates that the ownership register will contain details of the trust such as its trustees, beneficiaries, settlors, appointors, and members.

Feedback from our members indicates that this is where matters become complex. For example, a discretionary trust may not be for a specific beneficiary (or beneficiaries) and a copy of the trust deed may need to be on the public record for people to see who the potential beneficiaries are. Putting a trust deed on the public record could reveal a substantial amount about the personal life and financial circumstances of the entities involved in the trust arrangements. The outcome is that a large number of people could be listed even though they have not benefited from the trust as they form part of a broad class of beneficiary. This would not be helpful in determining ultimate beneficial ownership and may result in questions being asked by other agencies such as Centrelink.

An alternative approach is for the ATO to continue to share information with the appropriate law enforcement agencies about how trust distributions are actually made so that those law enforcement agencies can "follow the money". This would be consistent with the ultimate beneficial ownership register being created and which would then be available to competent authorities in line with the FATF recommendations.

Please contact Susan Franks with any queries on this submission on +612 401 997 342 or via email at susan.franks@charteredaccountantsanz.com.

Sincerely,

Michael Croker
Tax Leader - Australia
CA ANZ

Dr Gary Pflugrath
Executive General Manager
Policy & Advocacy
CPA Australia