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Jacky Rowbotham  
Assistant Secretary  
Tax Administration Unit  
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Cc: Narda Phillips, Deputy Commissioner, ABRS  
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Dear Jacky,

## Strengthening the ABN system

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 170,000 members in over 100 countries and regions. We make this submission on behalf of our members and in the broader public interest.

The ***Exposure Draft Treasury Laws Amendment (Measures for Consultation) Bill 2022: Strengthening the ABN system*** legislation (the ED) proposes to enact two recommendations from the Black Economy Taskforce giving the Registrar the power to cancel an Australian Business Number (ABN) when:

- Two or more income tax returns are outstanding, or
- Annual confirmation of details and the need to hold an ABN is not received by the Registrar.

CPA Australia supports efforts to ensure that Australian businesses are complying with their tax and superannuation obligations. A well-maintained and current register assists consumers, businesses and government agencies to check details and obtain relevant information about Australian enterprises in a timely manner. It is also important for businesses to keep their tax return and other obligations up to date.

The case to provide the Registrar with additional powers of cancellation as well as to increase obligations on ABN holders was put forward in the **Black Economy Taskforce Final Report**. We acknowledge the inefficiencies of the current intent to cancel process required of the Registrar and that ABNs may not always be properly cancelled when a business ceases.

While, in principle, the reforms seem sensible, the potential ramifications for ABN holders whose ABN is cancelled can be significant. As raised in our discussion with Treasury on Tuesday, 22 November 2022, we hold concerns that such powers will impact the most vulnerable and economically disadvantaged ABN holders at a time when compassion and support is required. We also believe that there is potential for the Registrar to create unnecessary disruption to the ABN system if this measure is not carefully designed and/or is poorly administered.

Our members report that it is common for small business clients to experience difficult financial or personal circumstances and, despite best efforts, fall behind in their reporting obligations. Safeguards and broader whole-of-system thinking should be incorporated into the design of the proposed measure before it is legislated.



## CANCELLATION FOR OUTSTANDING INCOME TAX LODGEMENT OBLIGATIONS

The ED allows the Registrar to cancel an ABN without notice on the day after two income tax returns become overdue. In the context of increasingly automated tax administration and rules-based compliance, there is the potential for ABN holders to find their business deregistered overnight and unable to trade.

### Impact of inability to trade

Businesses will not be able to issue a valid tax invoice, which means that they may not be able to undertake normal business operations – e.g., collect receipts from sales, make purchases, and so on. In some cases, this may even trigger insolvency. Their receipts will also be subject to 47 per cent withholding under the ‘No ABN withholding’ rules. Further, many state and local governments include active ABN registration as a requirement for many licensing and regulatory regimes, effectively halting their ability to trade.

It is therefore imperative that ABN holders are provided with all reasonable opportunities to lodge prior to a decision to cancel the ABN being made.

### ABRS and ATO compliance approach

Cancellation of an ABN by the Registrar is a high-impact action against the ABN holder and should only be undertaken when alternative forms of engagement have been unsuccessful.

The Registrar can only know to act when notified by the ATO, meaning that the process of identification, treatment, and referral by the ATO of ABN holders with two or more tax returns outstanding becomes critical.

The interaction between these provisions and the ATO’s Lodge and Pay strategies including lodgment prosecutions needs to be clear. A referral by the Commissioner of Taxation (the Commissioner) to the Registrar should be properly considered and include:

- Reasonable basis to expect the ABN holder has a requirement to lodge
- Reasonable efforts to ascertain or confirm ABN holder details for service
- Demonstrated efforts to seek lodgment from the ABN holder
- Consideration of the compliance history and circumstances of the ABN holder
- Consideration of the potential impacts of cancellation on the ABN holder.

An obligation on the Commissioner to seek tax return lodgment through a formal notice prior to referral to the Registrar should be included in the legislation. This ensures that proper efforts have been made by the ATO to contact the ABN holder and clearly notify them of their obligation, rather than merely relying on the annual legislative instrument.

### The meaning of “made arrangements to lodge”

The draft provisions refer to the ABN holder being required to have “made arrangements to lodge” to either avoid cancellation or seek reinstatement. There is a lack of clarity as to what is meant by this and whether it is confined to the ATO providing a deferral of time to lodge or that engagement with the ATO and an expressed intention to lodge is sufficient.

Guidance should be issued as to whether the lodgment of a “return not necessary” or “further returns not necessary” notification is sufficient to satisfy the lodgment requirement or whether a tax return is required.

Similarly, clarity will be required as to whether the ATO will notify the Registrar when an arrangement has been made to lodge, or if the onus remains on the ABN holder to present information to ABRS staff for their consideration. An automatic and immediate notification system from the ATO to ABRS is preferred.

### Reinstatement

For ABN holders operating active businesses, cancellation of their ABN immediately halts their ability to trade and may trigger certain clauses in commercial and financial contracts. There is a risk that the Registrar’s action will

trigger legal action or insolvency. Therefore, the reinstatement process must be reasonable and timely with the ABN holders' circumstances properly considered. In complex cases, the ATO and ABRS will need to work together in real-time to resolve lodgment and reinstate the ABN as soon as possible.

We note that in many cases, the ABN holder is unlikely to be eligible for a deferral given their lack of engagement and poor lodgment compliance. More vulnerable ABN holders may also struggle to gather the information required to lodge the tax return or afford advice.

A differentiated lodgment and ABN reinstatement process should therefore be established between the ABRS and ATO to support those wishing to re-engage and comply with their obligations. Additional support should be provided to vulnerable and disadvantaged ABN holders as well as those re-engaging after a significant period of time.

### **No reinstatement if returns remain outstanding**

The proposed section 10(3) of Schedule 1 to the *A New Tax System (Australian Business Number) Act 1999* prevents the Registrar from reinstating ABNs while returns remain outstanding and no arrangement has been made to lodge.

Some ABN holders will be so disengaged that they will be unaware of their ABN cancellation until they seek to use it again, potentially many years in the future. Examples include itinerant sole traders with intermittent contract work or ABN holders with challenging circumstances and limited ability to deal with their obligations. The longer the returns have been outstanding, the more difficult it is for the taxpayer to lodge and report correctly. The question arises as to whether it is appropriate to deny these taxpayers the ability to work due to outstanding tax returns, and at what point any lodgment action could or should be withdrawn.

There is no discretion for the Registrar to reinstate the ABN until those specific returns are lodged, nor is there the ability for the Commissioner to notify the Registrar that the outstanding returns are no longer being pursued and for the lodgment condition to be removed. As a result, the ABN holder could face significant difficulty in re-registering. This difficulty is disproportionate to the level of risk they pose. Some may ultimately be permanently excluded from the ABN system as a result.

Consideration should be given to including an exception that allows the Registrar to reinstate in circumstances where the Commissioner confirms that lodgment action has been withdrawn.

### **No requirement to lodge**

Certain classes of entity are entitled to an ABN but do not necessarily have a requirement to lodge income tax returns. Examples include many not-for-profits and body corporates. Due to our self-assessment system, the Commissioner of Taxation (the Commissioner) does not necessarily always know when an entity is required to lodge.

To avoid unnecessary concern for entities with no requirement to lodge tax returns, the Registrar should work with the ATO to publish guidance as to the classes of entities that are excluded from these rules.

### **Commencement date**

This draft provision is proposed to apply from income years commencing on or after 1 July 2022, meaning the earliest the Registrar could act is on 1 November 2024 in relation to the 2023- and 2024-income years. Given that most businesses use a tax agent, the relevant dates are more likely to fall between March and May 2025.

The intervening period should be used to inform and educate ABN holders of the upcoming changes, and to design a fair process between the ATO and ABRS that properly considers the views of external stakeholders including ABN holders and their agents.

## CANCELLATION FOR FAILURE TO CONFIRM

We recognise the importance for the Australian Business Register (ABR) to hold accurate information and the benefits to consumers, commercial partners, regulators and government of up-to-date data. The consolidation of registers under the Modernising Business Registers Program (MBR Program) provides the opportunity to introduce efficient and simple registration processes. It also provides the opportunity to use the data that is provided annually on existing government systems to update the data relating to ABNs on the Register.

Overall, however, we consider that this limb of the measure may be best deferred to be incorporated into the broader MBR Program, rather than introducing this new requirement in the way proposed by the Bill. It could potentially de-stabilise, rather than strengthen, the ABN system if such a power is not administered carefully. As the ED currently stands, the Registrar will be given an unduly wide power to “purge” ABNs without legislated safeguards. We believe this goes too far and does not strike the right balance of providing certainty and security for enterprises.

Something as important and central to an enterprise’s ability to operate as their ABN should not be able to be cancelled in the manner proposed. The provision is constructed in a way that effectively introduces a requirement to update and confirm, without properly formally imposing the requirement to notify. As a result, uncertainty about the administrative obligations is created, which introduces the risk to business that their ABN is cancelled due to an oversight.

### **Tell Government once**

The requirement that the notification be made in the **approved form** potentially limits the ability for the Registrar to obtain the information from alternative sources.

The annual ABN confirmation process should be integrated with other government-related obligations so that a separate form is not required. Potential examples include tax returns, business activity statements (BAS), company declarations or registration with other government bodies (e.g., Tax Practitioners Board, Australian Securities and Investments Commission (ASIC), Australian Charities and Not-for-profits Commission (ACNC) or Fair Work).

Legislation related to information sharing and disclosure requirements should be reviewed and adapted accordingly.

### **ATO information**

Due to tax privacy laws, the Commissioner is properly limited in his ability to divulge tax information to the Registrar. However, in order to ensure ABN holders receive reasonable opportunities to confirm their details, the question arises as to whether the Commissioner should be able to notify the Registrar if there are signs of business activity (e.g., active bank account, recently lodged BAS) or if there are updated business details available.

Consideration should be given to whether consequential amendments are required to enable the necessary information sharing to occur between the Commissioner and the Registrar.

### **12-month confirmation period**

While we acknowledge the benefits of actively maintaining the accuracy of the ABR, we do not consider non-confirmation of information to be of the same severity as non-lodgment of tax returns. However the consequences are the same.

There are a range of situations where we expect ABN holders are unlikely to receive ABRS correspondence and will be unaware of their obligation. These include:

- Electronic communication recipients who do not check their government inboxes or respond to notifications
- Business details have changed since registration, but they have not notified the ABRS
- Address for service may no longer be valid due to a change in directors, agents or other representatives

- Foreign businesses and non-resident taxpayers
- ABN holders who are disengaged, often temporarily, due to personal, business and/or financial difficulties.

After the 12-month period has elapsed, the Registrar should be required to make reasonable efforts to identify alternative contact details and seek to engage with the ABN holder before deciding to cancel the ABN.

### **Commencement date**

At this stage, the commencement date of 1 July 2024 appears aligned with the timeframes for the broader MBR Program and provides sufficient time for the ABRS to design and implement the annual confirmation process.

The director ID rollout has identified challenges in ensuring that communications are effective. It has also demonstrated that behavioural change takes some time.

With the details of more than 7.5 million ABNs to be confirmed, we recommend that the Registrar takes an educative approach and incorporates as much of the confirmation process in natural business systems, i.e., existing alternative forms and processes as possible to maximise responses and minimise multiplication of effort.

### **ADDITIONAL COMMENTS**

#### **Interaction with *Corporations Act***

Companies registered with ASIC are entitled to an ABN and it's unclear how the power of the Registrar to cancel the ABN interacts with this entitlement as well as the company deregistration process.

#### **Connecting to other government authorities**

When an ABN is cancelled by the Registrar, the ABN holder may incorrectly assume that their obligations and business information have been similarly cancelled across other federal, state and local government agencies. They may assume that the outstanding tax returns will no longer be pursued, their company will be automatically deregistered and/or their business trading name is cancelled.

It is important that the ABN holder is informed by the Registrar of any other obligations they may need to consider, and to be properly referred to the appropriate agencies and support services to resolve their issues.

Information collected from the ABN holder by the Registrar should, with their consent, be able to be shared with other government bodies to assist the ABN holder and avoid further punitive action being taken.

For further information in relation to our submission, please contact [Elinor Kasapidis](#), Senior Manager Tax Policy at CPA Australia.

Yours sincerely,

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