

29 November 2022

Tax Administration Unit
Personal and Indirect Tax, Charities and Housing Division
Treasury
Langston Cres
Parkes ACT 2600

By email: taxadministrationconsultation@treasury.gov.au

Dear Sir/Madam,

Treasury Laws Amendment (Measures for Consultation) Bill 2022: Strengthening the ABN system

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to Treasury Laws Amendment (Measures for Consultation) Bill 2022: Strengthening the ABN system (**Draft Bill**) and accompanying draft explanatory memorandum (**Draft EM**).

In the development of this submission, we have closely consulted with our National Goods and Services Tax Technical Committee and National Small and Medium Enterprise Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

It is important to ensure integrity and confidence in the issue and management of Australian Business Numbers (**ABNs**) and that taxpayers with an ABN are meeting their obligations. As highlighted in the findings of the Black Economy Taskforce, entities operating in the black economy are likely to not be meeting their taxation and other reporting requirements. These entities may be using ABNs as a front to give the perception of legitimacy to their business operations. Changes to the ABN system to target and correct the behaviour that is part of the black economy is important. However, changes should not impose a significant compliance burden or impact on the business operations of taxpayers who are doing the right thing and not part of the black economy.

The Tax Institute is of the view that the Draft Bill needs to be amended to better achieve this balance, prioritising changes that supports simplified and streamlined taxpayer compliance. We have concerns that the draft legislation likely to impose disproportionate consequences on taxpayers who are not the intended group. In particular, it is inequitable to cancel a taxpayer's ABN in instances where they simply do not update their details on the ABN register, especially if taxpayers have already provided this information through their lodgment requirements or to other government bodies.



We consider that some aspects of the Draft Bill should be amended to ensure that a more reasonable balance between integrity and compliance burdens is achieved. This includes increasing the threshold of tax or annual returns not lodged from two years to three years, better allowing taxpayers to be compliant with their obligations and account for unforeseen instances. Taxpayers also need timely reinstatement of their ABN once they rectify any registration deficiencies. Legislating the reinstatement timeframes and rights to streamlined appeals processes will better ensure that impacts on the business operations of taxpayers with cancelled ABNs are minimised.

The Draft EM would also benefit from clarification of key aspects of the Draft Bill. This includes how a taxpayer evidences an intention to lodge for the purposes of reinstatement, and any subsequent implications for goods and services tax (**GST**) registration.

Our detailed response is contained in **Appendix A**. We would be please to work with the Treasury to ensure that the Draft Bill better achieves its policy intent without resulting in inequitable outcomes for taxpayers.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact our Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



Jerome Tse

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration to ensure that the Draft Bill better achieves its intended policy intent without resulting in inequitable outcomes for taxpayers.

Implications of cancelled ABNs

The cancellation of a taxpayer's ABN can have significant implications for that taxpayer's business operations. Taxpayers who have had their ABNs cancelled may be unable to effectively conduct their business, significantly impacting their livelihoods. Feedback from our members suggests that the Draft Bill is more likely to impact sole traders, and small and medium businesses, a group of taxpayers that are generally in need of greater guidance and support in relation to their reporting obligations. Cancellations of ABNs may also impact consumers, especially those who are unable to receive a valid tax invoice as proof of work completed for tax and other purposes. The potential severity of these consequences highlights the importance of ensuring there is a fair and equitable approach prior to any ABN cancellation.

The Tax Institute considers it important for the legislation to build a framework for the Registrar to follow, ensuring that a comprehensive process is undertaken before the drastic step of cancelling a taxpayer's ABN is undertaken. This will provide greater certainty that the process has procedural fairness, minimising the impact on taxpayers who may unintentionally fail to meet their new requirements. These are discussed in further detail below.

We recommend that further consideration also be given to whether the cancellation of an ABN is an appropriate response for what could be a relatively minor breach, such as not confirming that their details are current. A more balanced approach may be to impose a fine on a taxpayer who does not lodge the stated number of tax returns, or fails to update details in the first instance. Cancellation could occur when taxpayers repeatedly do not meet these obligations or do not pay outstanding fines. An intermediary step of a fine could still achieve the policy intent while also providing taxpayers with an opportunity to correct any non-compliance.

Registrar's required enquiries before cancellation

The Draft Bill, or Draft EM, should highlight any checks or searches the Registrar is required to complete before an ABN is cancelled. This will provide taxpayers with the appropriate protection and certainty that a formal process is followed before a potentially drastic step is taken. These pre-cancellation enquiries should include confirming whether the taxpayer:

- has received notification of the potential consequences for non-lodgment of their income tax returns; and
- is part of a consolidated group and, if they are, whether the head entity has lodged income tax returns.

Number of income tax returns outstanding

Clause 3(d) of the Draft Bill proposes to allow for the cancellation of a taxpayer's ABN if they have not lodged income tax returns for two or more income years. We consider that the current threshold of two years is unreasonable, potentially resulting in unfair outcomes for taxpayers. The threshold would be more equitable if it was raised to a minimum of three or more years where a tax return is not lodged.

Taxpayers may be delayed in lodging their tax returns for a number of reasons that are not intentional steps to avoid their taxation obligations. For example, personal circumstances (e.g. health of family matters) or deteriorating business conditions are likely to result in taxpayers prioritising these aspects over most of their obligations in the short term. This is a result of the limited resources these taxpayers have available and the need to prioritise the urgent personal circumstances or survival of their business. These factors are likely to be most relevant to sole traders and small or medium business entities.

If taxpayers are on a tax agent's list, they will generally have access to the tax agent's lodgment concession allowing an extension of the lodgment date and payment date of their current year tax return. In some cases, if these taxpayers have an outstanding tax return due to unforeseen circumstances, they may only have a period between four and seven months until the second return is due for lodgment in October of the following year. This can be an unreasonably short period of time to rectify and lodge income tax returns for two income years, especially if the reason for the delay is due to unforeseen or unfortunate circumstances. Extending the proposed threshold to three or more outstanding tax returns will better allow taxpayers to address any outstanding tax returns in a more reasonable period of time.

Further, and noting that the outstanding returns do not need to be for consecutive years for an ABN to be cancelled, it is essential that the Commissioner provides adequate notification and warnings to impacted taxpayers. Taxpayers need every opportunity to understand the potential impacts of outstanding returns to their livelihoods, with a reasonable amount of time to seek assistance and remedy any lodgment issues. Inserting a notification requirement into the Draft Bill, or requiring the Registrar to confirm that the appropriate notice was sent, will provide taxpayers with greater protection before an ABN is potentially cancelled.

Application date

Clause 7(2) of the Draft Bill states that the first year the Registrar may cancel an ABN is on or after 1 July 2024. Paragraph 1.17 of the Draft EM explains that this is to account for a taxpayer not lodging a return for the income years beginning on 1 July 2022 and 1 July 2023. Noting our comments above regarding the recommended increase in the minimum threshold, we consider that the application date should be deferred to 1 July 2025 or after.

Deferring the start date will also allow time for the development and testing of any relevant system changes and updates that may better facilitate taxpayers' and tax practitioners' ability to readily update their information on a single, easy-to-use platform. These are discussed in further detail below.

Updating information

The Draft Bill proposes to effectively introduce an annual requirement for ABN holders to update their information or confirm it is accurate. Although this may be an undemanding task for some taxpayers with simple affairs, there is likely to be substantial and increasing compliance impost as the size of the group increases.

Feedback from our members highlights the significant increase in compliance costs taxpayers have faced in recent years. Depending on the taxpayer's size and activities, they may be subject to several taxation reporting requirements or ATO engagement activities each year. Each of these instances often require the taxpayer to provide basic information that is likely to be requested under the Draft Bill which may be additional to any reporting requirements to other Government Bodies, such as the Department of Industry or the Australian Securities & Investments Commission.

The basic information provided during any of these dealings does not appear to be shared or updated on a common database. Instead, taxpayers are required to provide the same information across various channels or different forms. There are concerns that taxpayers may overlook updating their details on the ABR in the face of ever-increasing compliance costs and requirements, especially if they have already provided the information to an associated government body. The cancellation of a taxpayer's ABN for information they have likely already provide though other channels is an unfair and excessive outcome.

We consider that basic information required to confirm the ABN holder's details should be updated from a centralised database based on recent interactions Government Bodies have had with the ABN holder. We recommend that the Government consider funding for a centralised and secure database through which the required information can be sourced. Feedback from our members indicates that the current ABN register is outdated and may not be fit for this purpose. There are concerns that current system will not accurately allow or display changes to the relevant information required in the draft Bill. An updated and centralised database may also allow for other system simplifications, such as allowing taxpayers to cancel their ABN registration at the same time they notify the notice of no further tax returns being necessary are lodged.

Further, all taxpayers should be sent a reminder and given the opportunity to confirm that their details are up to date. As stated above, we are concerned that the compliance burdens imposed by this measure is likely to disproportionately increase the compliance costs of taxpayers who are not part of the black economy. It would be an inequitable outcome for these taxpayers to have their ABN cancelled for what may be viewed as a relatively minor reporting requirement. If Government is concerned that entities are inappropriately getting access to ABNs, it may be more appropriate to introduce extra checks or regular compliance activity that allow for ABN applications to be adequately reviewed in a short period of time.

Reinstatement of ABNs

Timely reinstatement

If a taxpayer has undertaken the necessary steps to rectify non-compliance with the registration requirements, it is essential that the Registrar reinstate the ABN as soon as practical. As stated above, there may be severe consequences in the event a taxpayer's ABN is cancelled. We consider that Clause 5 of the Draft Bill should be amended to include a time limit within which the Registrar must reinstate the taxpayer's ABN. We recommend a period of five working days after any of the conditions set out in Clause 5(1) are satisfied.

Making arrangements to lodge

Clause 5(1)(b) refers to instances where the taxpayer has 'made arrangements with the Commissioner of Taxation to lodge' the relevant tax returns. Paragraph 1.19 of the Draft EM explains this phrase to include instances where:

'...the Registrar may be satisfied that a person has made arrangements to lodge the relevant returns where the person has communicated an intention to lodge to the Commissioner of Taxation and has undertaken to provide their lodgements by a certain date.'

We consider that this requirement should be explained further to ensure that taxpayers and tax practitioners better understand the steps necessary to have the ABN reinstated. In particular, clarity should be provided regarding:

- evidence the taxpayer is required to produce to demonstrate that they have provided the Commissioner with an intention to lodge;
- the format of, or any legally effective wording to be included in, the intention to lodge to ensure it is effective;
- whether any forms or other procedural steps need to be completed by the taxpayer in conjunction with sending the Commissioner an intention to lodge;
- whether the taxpayer needs to provide updated information in instances where the agreed lodgment is deferred or subsequently changed after the initial notice is provided; and
- whether the taxpayer's notice of intention to lodge can be unilateral, or whether agreement is required from the Commissioner.

We note that any steps which require the ATO to respond or act upon the taxpayer's notice of intention need to occur in a timely basis. Processing delays are likely to result in significant consequences for taxpayers.

Right of appeal

While The Tax Institute acknowledge there is an existing right of appeal, we consider that the Draft Bill should include a legislated expedited right of appeal to have the ABN reinstated in instances where the Registrar and taxpayer are in dispute over the relevant requirements being met. Noting the considerable implications of an ABN not being granted or reinstated, it is important to have any disputes settled as priority matters. This may be achieved by allowing impacted taxpayers to lodge a priority appeal to the Administrative Appeals Tribunal, or seek review by an independent arbitrator at first instance. Alternatively, it may be prudent to allow the Registrar the ability to temporarily grant or reinstate an ABN while the dispute is being resolved through the regular channels. This will allow the taxpayer to continue their business operations while they seek rectification of the issues.

Implications for Goods and Services Tax registration

Feedback from our members indicates that ABNs are fundamentally linked with a taxpayer's GST registration and obligations. Cancelling a taxpayer's ABN may result in unintended consequences for these obligations. For the avoidance of doubt, we consider that that the Draft EM should clarify the interaction between the Draft Bill and a taxpayer's GST obligations. In particular, it is important to ensure that a taxpayer who has their ABN cancelled under this measure will still be registered for GST purposes and required to meet their GST obligations, such as the lodgment of BAS returns. Without this clarification, taxpayers may misunderstand the practical impacts of an ABN cancellation.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.