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Dear Ms Davé

Multinational tax integrity: Public Beneficial Ownership Register

The Property Council welcomes the opportunity to provide comments to the Treasury consultation paper titled *Multinational tax integrity: Public Beneficial Ownership Register*, released in November 2022.

The Property Council of Australia champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

We acknowledge the Government's election commitments made in 2022 to amend Australia's multinational tax framework with respect to tax integrity and transparency measures, which included the introduction of a public beneficial ownership register. We also note that the Government's intention in establishing the register is to support stronger regulatory and law enforcement responses to tax and financial crime, assist foreign investment applications, and facilitate the enforcement of sanctions.

In seeking to achieve these goals, the framework that governs how the register will be set up and administered should be properly targeted and proportional to not discourage ordinary commercial transactions and investment in Australian businesses (including foreign investment that is essential to the domestic economy).

We have set out below our high level comments in response to the proposals put forward in the consultation paper.

Public nature of the register

We have some concerns regarding the Government's intention of making beneficial ownership information publicly available.

Public disclosure of such information could put regulated entities (relative to other entities not regulated for the purposes of the beneficial ownership register) at a commercial disadvantage if the information is made public. Regulated entities may find it more difficult to raise capital or undertake commercial transactions if beneficial ownership information is made public.

We also note that greater information in the public domain, without context, can lead to misunderstandings or incorrect conclusions to be drawn from the information. For example, the company tax disclosures released by the ATO each year can give the impression that taxes are not being paid by entities when there are legitimate reasons for this position (e.g. no taxable income, carry forward tax losses, not being a tax paying entity).

The better approach would be to limit this information to be held by the relevant regulator.

Proposed phasing approach

As noted in the paper, the Government is proposing a two-phase approach to implementing the beneficial ownership requirements – the first phase is intended to capture about three million entities, with the second phase adding additional entities as well as a central register and other enhancements.

Implementation of the initial phase will involve a significant amount of business process changes and IT systems to record and securely store the data collected for all regulated entities. It will be critical to consider how this may interact with any subsequent proposals to ensure the systems put in place under phase 1 aren't made redundant in later phases. This may require setting out a road map and coordinating with industry on what a finalised framework would look like.

Alignment with international frameworks

The consultation paper notes that the implementation of the register is intended to broadly align with international approaches to transparency of beneficial ownership information. We support consideration of overseas regimes when designing Australia's approach to ensure Australia remains globally competitive as an investment destination and to streamline compliance for global organisations as much as possible.

In this regard, we note that the proposed approach to use a 20% threshold for the definition of beneficial ownership is different to the 25% threshold used in the UK, Singapore and France.

A lower threshold would put Australia out of step with comparable jurisdictions and may disadvantage Australia in attracting international capital to invest. We do not believe that there is strong rationale for aligning the beneficial ownership thresholds with existing takeover thresholds, which serve a different purpose under the Corporations Act. The better approach would be to adopt a 25% threshold.

Information required to be reported and disclosed

To minimise the significant regulatory burden and cost that regulated entities would have to bear under the proposed framework, we note and recommend the following measures:

- We recommend increasing the beneficial ownership threshold to 25% (as per the above section on alignment with international frameworks).

- We support the requirement that puts the onus on ultimate beneficial owners to disclose their status to regulated entities and that no tracing through regulated entities or listed entities is required.
- While we support the suppression of sensitive information from public disclosure as a starting point (e.g. days of birth or residential addresses), we would like to see the privacy impact assessment undertaken by Treasury before considering the issue of privacy and sensitive information further.

For beneficial ownership chains involving trusts, there may be practical challenges to the Government's proposed requirements for a regulated entity to identify each trust which satisfies a threshold test for inclusion on the entity's beneficial ownership register, including going up the chain to identify any natural persons that meet the proposed threshold tests. In particular we have concerns about:

- regulated entities' ability to have access to the required information,
- the ability of affected parties (whether natural persons or other entities) to meet requirements for registers to be kept up to date, and
- the definition of 'reasonable steps to identify all of the trust's beneficiaries' when going up the chain to obtain information.

In addition, further clarity should be provided regarding requirements for:

- the length of time that data needs to be kept once a person ceases to be a beneficial owner; and
- what 'promptly updated' would mean in practice regarding the currency of registers, noting that regulated entities may face challenges with getting third-party service providers to verify information in a timely way.

Lead time to ensure appropriate systems and data security in place

In considering the lead time required to roll out the proposed regime, we note two key factors that will be crucial to ensuring this can be achieved in an efficient and cost-effective manner:

- **Ability to collect and safely store the required information** – the three million impacted entities will need to source, configure and roll out new IT systems and set up new operational practices to support the collection, verification and reporting of the beneficial ownership information. This may range from bespoke IT systems to off-the-shelf products, and the cost of these products will range accordingly. Entities will also need appropriate cyber security measures to ensure the personal information is appropriately protected.
- **Ability to verify identity** – regulated entities will also need systems and processes to verify the identity of beneficial owners before entering them on the register. Many of the impacted entities will not be currently subject to AML/CMF/KYC rules and will therefore not have existing processes or service providers they can rely on. Depending on the level of additional identity requests that will arise as a result of these new rules, third party service providers may also not be appropriately resourced to deal with the influx of new requests which will impact their ability to provide their services to regulated entities in a cost efficient and timely manner.

We recommend that further consultation is undertaken with industry to better understand these practical implementation issues and ensure there is an appropriate lead time between when the legislation is enacted and the start date for the new reporting requirements.

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This submission doesn't cover feedback in response to the questions in the consultation paper dealing with amendments to the substantial holding notice and tracing notice regimes, and changes to listed entity obligations. We would welcome the opportunity to provide our comments on these issues to Treasury in due course.

If you would like to discuss any aspect of this submission further, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely



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