

## Annex

To facilitate the provision of information on legislation, policies, practices and institutions on promoting beneficial ownership information transparency, including existing registry(ies) and mechanism(s) to make requests for such information, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to the following agencies/authorities, depending on their national system for obtaining and recording information on legal persons and legal arrangements in their country, e.g.:

- Company registry and any other relevant registry(ies)
- Agency(ies)/authority(ies)/body(ies) responsible for obtaining and maintaining beneficial ownership information
- National competent authorities responsible for international cooperation in criminal matters, including freezing and confiscation of criminal proceeds

## **Questionnaire on Beneficial Ownership Information**

### **Australia's Responses**

#### **Contact Information**

#### **1. Definition of beneficial ownership & mechanisms for obtaining beneficial ownership information**

- 1.1. Please provide the definition of “beneficial ownership” in your country for: (a) legal persons; and (b) legal arrangements, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).

Businesses regulated under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) (reporting entities) are required to identify the beneficial owners of a customer prior to providing designated services<sup>1</sup> to the customer, or as soon as practicable after.

Chapter 1 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2017* (AML/CTF Rules) defines ‘beneficial owner’ as an individual who ultimately owns or controls (directly or indirectly) the customer.

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<sup>1</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), s 6

In this definition: *control* includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to determine decisions about financial and operating policies.

In this definition: *owns* means ownership (either directly or indirectly) of 25% or more of a person.

Chapter 4 of the AML/CTF Rules set out the obligations for reporting entities to identify and verify the beneficial owner(s) of its customer using reliable and independent documentation or electronic data.

Under the AML/CTF Act (Part 10), reporting entities are required to keep records of the procedures they used to identify and verify the beneficial owner(s) of their customer. This information must be retained for seven years after the reporting entity ceases to provide designated services to the customer.

FATF Recommendations refer to 'legal arrangements' as express trusts or similar legal arrangements.

In Australia, trusts are commonly used as vehicles for business (trading), asset protection, investment, and estate planning. Trusts in Australia are governed by:

- Common law and the law of equity;
- Federal laws in relation to taxation;
- State and/or Territory based Trustee Acts which govern the powers of trustees;
- Federal laws in relation to Managed Investment Schemes (**MIS**);
- Other State and/or Territory based laws that apply to legal entities generally, such as stamp duty.

In relation to trusts undertaking specific activities, they may also be subject to other governing laws, for example:

- Superannuation Funds are subject to the *Superannuation Industry (Supervision) Act 1993* (Cth) and oversight by the Australian Prudential Regulatory Authority or the Australian Taxation Office (**ATO**); and
- MIS are subject to the *Corporations Act 2001* (Cth) (Corporations Act) and oversight by the Australian Securities and Investment Commission (**ASIC**).

Broadly, foreign trusts are subject to the same Federal taxation laws that apply to Australian trusts for their Australian sourced income and gains or when they undertake relevant activities in Australia

Companies are generally governed under the Corporations Act, administered by ASIC.

In relation to companies undertaking specific activities, they may be subject to other governing laws, for example:

- Certain prescribed Commonwealth entities or Commonwealth companies are subject to the *Government Business Enterprises Act 1995* (Cth), which provides guidance on Board and corporate governance, financial governance, and planning and reporting.

Presently, there are various reporting systems in Australia that may give a direct/indirect insight into the beneficial ownership of legal persons and legal arrangements (trusts), including:

- Business entity information captured in the registration process for an Australian Business Number (**ABN**). This includes data elements such as the business address, industry

classification and personal details of individuals associated with that business. All ABN data is available at no cost; approved government agencies are able to access the full dataset, with a subset of this being available to the public.

- Various registers currently maintained by the ASIC (however these services are being transitioned to the Australian Business Registry Services (**ABRS**)), including registries relating to business name and company registration. The Company Register holds Australian Company Number (**ACN**) data, such as director and officeholder details. The Business Names Register contains details on entities operating in Australia. Presently, this information is publicly available through paid search services.
- For certain types of companies, share registries held by a share registry service and/or the entity itself.
- Stamp Duty records on dutiable (inc. property)/trust transactions
- Bank account information
- AUSTRAC reporting
- Land Title records
- Vehicle registration systems
- Tax return, financial statement reporting, other tax related registrations (TFN, GST registrations)
- Superannuation Fund reporting
- Insurer information
- Sharing of information with other Government Departments (as permitted by relevant information sharing and privacy laws)

Other registers maintained by Australia relating to publicly and non-publicly held business data also include:

- The Australian Business Register (**ABR**), which stores ABN business and organisation details to verify business information that is available for the community, third parties (such as software developers) and government agencies, based on individual permissions. As part of the Modernising Business Registers (**MBR**) program, the ABRS will be absorbing the ABR as well as more than 30 of ASIC's registers into a single platform. The Registrar of the ABR and ABRS is the Commissioner of Taxation (the **Commissioner**);
- The Australian Charities and Not-for-profit Commission (**ACNC**) maintains the ACNC Charity Register containing information about Australia's registered charities, including information concerning entities, such as Associations, that may be conducting or involved in charitable enterprises; and

The ATO maintains registers established to provide greater transparency about levels of foreign investment in residential real estate, agricultural land, and water entitlements. Currently, the ATO is developing a Foreign Ownership of Australia Assets Registers (**FOAAR**). However, the FOAAR will capture legal interests only.

## 2. Access to basic information on legal persons

### 2.1. Please describe the process for obtaining basic information on legal persons created or registered in your country, including the role of the company registry.

ASIC is Australia's corporate, markets and financial services regulator. ASIC registers Australian companies and regulates financial markets and financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and consumer credit. ASIC currently maintains, amongst other things, the Companies Register, which contains a record of the incorporation of each company in Australia.

2.2. Please list the categories of basic information on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date of incorporation, tax ID number, etc.

The information available from the Companies Register that is available for free depends on the organisation type being searched. Some examples of information we provide for free include:

- organisation name
- unique identification number (ABN, ACN, ARBN, ARSN)
- type of company
- registration date
- next review date
- locality of registered office, and
- list of documents lodged with ASIC.

Additional information, in the form of a company extract, is available to the public for a small fee. This includes current and historical information on company officeholders, addresses of registered office and principal place of business, and share structure.

Separately under s 169 of the Corporations Act, companies are required to maintain their own register of members containing:

- members' names and addresses
- the date the member was issued shares
- the number and class of shares held
- whether the shares are fully paid and the amount unpaid (if any)
- if any shares are not held beneficially by a member

Members of the public have the right to inspect the register maintained by the company and obtain a copy from the company in certain circumstances: s 173

Proprietary companies are required to notify ASIC of details of its top 20 members and any changes. These details are:

- name and address and date of entry of member's name into register
- number of shares held by the member
- class of shares held by member
- amount paid on the member's shares and whether fully paid
- whether shares are held beneficially or not
- and this information is also included in company extracts from the Companies Register for proprietary companies.

2.3. Is the company registry available publicly & online in your country? **YES / NO**

If YES, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

Yes. The company registry is available online and can be searched by the public (with free results and paid results available) at [Search Company and Other Registers \(asic.gov.au\)](http://asic.gov.au).

### 3. Access to beneficial ownership information of legal persons

3.1. Through which mechanism(s) can competent authorities (such as law enforcement, police, financial intelligence unit and tax agencies) access beneficial ownership information on companies and other legal persons created or registered in your country. Please select all that apply.

- Through a registry/registries with beneficial ownership information
- Through a different mechanism
- Competent authorities do not currently have access to beneficial ownership information

Through a different mechanism – Australia does not have a single register of beneficial ownership information on companies and other legal persons created or registered in this country (noting however our response to question 1.1, where we referred to various registers currently maintained by the ASIC and transitioning to the ABRS).

#### Listed Companies – Tracing Notices

Listed companies or listed managed investment schemes may issue a tracing notice pursuant to s 672A Corporations Act on a registered holder (or a person previously named in an earlier tracing notice response) directing them to disclose information about and ‘relevant interests’ and instructions issued in relation to the holding. A tracing notice may be issued to members of a company to ascertain the beneficial ownership of holdings in a company or scheme. ASIC can also issue a tracing notice at its own initiative or at the request of a member of a listed company or scheme (s 672A(2)).

Listed companies must record details in responses to tracing notices about relevant interests on its register, which is to be kept at the company’s registered office or principal place of business (ss 672DA(1)-(4)). It must be open for inspection by any member of the company free of charge, and by any other person for a fee (s 672DA(7)):

- The register of relevant interests is maintained by the company. It must contain details of (s 672DA(1)):
- the nature and extent of a person’s relevant interest in shares in the company, interests in the scheme or interests in the fund
- details of the circumstances giving rise to a person’s relevant interest
- the name and address of a person who has a relevant interest
- details of instructions that a person has given about acquisition/disposal of shares, the exercise of any voting or other rights attached to shares, or any other matter relating to the shares; and the name and address of the person who has given instructions

#### Listed Companies - Substantial holding notices

A person (and/or their associates) who holds 5% or more of the total voting shares or interests in a listed company or scheme must disclose this relevant interest via the substantial holding notice regime. A person must disclose when the substantial holding begins, ceases, moves by a new movement of 1% in their holding, or when the person makes a takeover bid for securities of the company or scheme (s

671B(1)). These details must be provided to the market operator and as such are publicly available. To notify a listed company and the relevant market operator, a person must list the following information:

- name and ACN/ARSN of the substantial holder and the date they became/ceased to be a substantial holder
- details of voting power (present and previous), including class and number of securities of the substantial holder and/or associate
- details of relevant interests (or any changes to relevant interests), including the holder of the relevant interest, the nature of the relevant interest and class and number of securities
- details of present registered holders
- the consideration paid for each relevant interest (cash and non-cash)
- the name of associates (or changes in associates), including the nature of the association and copies of any relevant agreements giving rise to the association, and the addresses of persons named.

### **Proprietary companies**

ASIC holds limited beneficial ownership information about proprietary companies. Proprietary companies are required provide ASIC with their top 20 members. The company must provide details to ASIC relating to the legal ownership/non-beneficial ownership status of a member if there is a change (ss 178A and 178B) (but not the details of the beneficial owner).

If **REGISTRY**, please provide further details on such registry(ies) including

- Authority(ies)/agency(ies) responsible for obtaining and maintaining beneficial ownership information and for maintaining the register(ies). Please list if more than one;
- Categories of beneficial ownership information (data fields) obtained, recorded and maintained on the registry(ies), e.g. name, nationality, date of birth, address, etc.;
- Types of legal entities covered within the scope of the beneficial ownership registry(ies), including any exempt entities;
- Details of the registry's(ies') access policy:
  - Is the information on the registry(ies) available to the public? YES / NO
    - If YES, please include a link(s) to the registry(ies).
    - If NO, please list the authorities/agencies that have access to this information, or that can request access.
  - Does accessing beneficial ownership information in the registry(ies) entail any costs?
  - Does the registry(ies) provide features to search information by different types of information, e.g. legal entity name, name of director, name of beneficial owner, by first or last name, by business address, by registered agent? Is it possible to search for a combination of information (Boolean searches)?
- Frequency of updates of information and triggers for updates;
- Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).

3.2. Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In

each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

*Examples may include through private-public partnerships (e.g. involving financial institutions, notaries and/or corporate service providers), though stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.*

We refer to our response to question 1.1.

In relation to matters relating to his administration of the Federal tax laws:

- The Commissioner has significant information gathering powers to request information regarding legal persons (including companies) and legal arrangements (trusts) in relation to governance and beneficial ownership of companies (including directors and shareholders) and of trusts (including the settlor, trustee and beneficial where relevant individuals are present in Australia).
- The Commissioner is also able to compel that information be provided from an overseas entity, or recorded or stored outside of Australia, in certain circumstances via an offshore information notice.
- Other powers of the Commissioner to gather information including the identity of beneficial owners of a company or trust include gaining access to premises, servicing a notice to compel the provision of information or documents including from third parties, and to compel a person to attend an interview to provide evidence.
- The Commissioner also has a tracing notice power that enables information to be obtained about rights or interests in property.

Further, the ATO, with other domestic agencies, is cooperating with their international counterparts to detect and disrupt tax evasion.

- Measures to detect tax evasion, include:
  - information from law enforcement and Commonwealth agencies.
  - information from other agencies
  - data sets (E.g. Pandora and Panama Papers)
  - public referrals
  - information sharing networks with the Organisation for Economic Cooperation and Development and the J5.
- Strengthening domestic laws to fight against corporate tax avoidance and operations of the Tax Avoidance Taskforce (**TAT**)
  - TAT focuses on risks of lodgement of trust tax returns, complex distributions, trust and taxable income mismatches, unidentified beneficiaries, cross border and international risks and avoidance and evasion
- The ATO works in collaboration with and utilising information from Australian Transaction Reports and Analysis Centre (**AUSTRAC**), Fintel Alliance, International Exchange of Information (**EOI**) (further to EOIs, we also refer you to the response to question 6.1) and the ATO-led joint-agency Serious Financial Crime Taskforce (**SFCT**).

- The SFCT was established on 1 July 2015 and has been supporting Australia's involvement as a member of the Joint Chiefs of Global Tax Enforcement working globally with leaders of tax enforcement authorities from Canada, UK, USA and the Netherlands to further disrupt international tax crime and money laundering (we also refer to our response to question 6.5).
- The Integrated Compliance business line (Transnational Crime Program) within the ATO is working with the Asia/Pacific Group on Money Laundering to develop a tax crime - money laundering typologies paper. Other agencies – e.g. AUSTRAC, are also supporting this work.
- The Commissioner's powers to request information regarding legal persons and legal arrangements (trusts) complement Australia's anti-money laundering and counter terrorism financing (AML/CTF) framework, which enables law enforcement authorities to access beneficial ownership information obtained, held and maintained by a reporting entity (E.g. financial institution) as part of Common Reporting Standard due diligence requirements and the anti-money laundering ongoing Customer Due Diligence /Know Your Customer requirements where the company or trustee enters into a financial relationship with that reporting entity).
  - AUSTRAC oversees the AML/CTF framework.
    - Section 127 of the AML/CTF Act provides the AUSTRAC CEO with the power to disclose information held by AUSTRAC to the government of a foreign country or to a foreign agency if the CEO is satisfied that the foreign government will protect its confidentiality, control the use that will be made of it, control how it will be used, and the disclosure is appropriate in the circumstances.
    - This legislative framework is supported by robust and comprehensive international information sharing memoranda of understanding (MoUs) and processes. AUSTRAC has 102 active MoUs with international partners. AUSTRAC can disclose AUSTRAC information to the government of a foreign country or to a foreign agency in the absence of an MoU where it is appropriate to do so, and subject to relevant undertakings where considered appropriate.
    - Offences contained in the AML/CFT Act are used in prosecuting money laundering.

As noted in Q1, reporting entities are required to identify the beneficial owners of a customer. That information is retained by the Reporting entities as per record keeping requirements.

Reporting entities are only required to provide the name of the beneficial owner(s) of a customer (if it is known by the reporting entity) when they report a suspicious matter report (SMRs) to AUSTRAC.<sup>2</sup> Beneficial owner information that is contained within SMRs reported to AUSTRAC is stored and accessible to AUSTRAC and partner agencies through the AUSTRAC database.

AUSTRAC can request information about the beneficial owner of a customer by issuing a notice under s. 167 of the AML/CTF Act to a reporting entity (or an officer or employee) to obtain information and documents that is relevant to the operation of the AML/CTF Act and AML/CTF Rules. This includes the beneficial owners of a customer and supporting documentation used to identify and verify the beneficial owner.

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<sup>2</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, s 41; *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*, r 18.2.



- AUSTRAC and certain law enforcement agencies<sup>3</sup> can also issue a notice under s 49 of the AML/CTF Act seeking further information about a transaction report or SMR submitted to AUSTRAC under the AML/CTF Act, which may also include a request to provide information about the customer's beneficial owner(s) that is the subject of the transaction report or SMR.
- The Australian legal framework for prosecuting money laundering offences is set out in Part 10.2 of the Australian Criminal Code (**Criminal Code**) which encompasses a wide range of criminal activity.
  - Sections 400.3 to 400.8 of the Criminal Code: Dealing with money or property that is the proceeds of crime or intended to become an instrument of crime;
  - Section 400.9 of the Criminal Code: Dealing with property reasonably suspected of being proceeds of crime.

Offences contained in the AML/CTF Act are used in prosecuting money laundering.

Law enforcement has a range of investigative powers to investigate beneficial ownership arrangements where there is suspected offending or where it is suspected that these types of arrangements are being used to hold or conceal criminal assets. The *Crimes Act 1914* (Cth) contains a comprehensive suite of investigative powers to assist the Australian Federal Police to investigate alleged breaches of the law. In addition, depending on the type of offending, other types of investigative powers such as telecommunications interception and surveillance device powers may also be available.

AFP investigators can also draw upon powers under Part 3 of the *Proceeds of Crime Act 2002* (Cth) (POC Act) to assist them in identifying beneficial ownership arrangements that control suspected criminal assets. For example, at any stage of their investigations, or once POC Act proceedings are on-foot, an investigator can seek a production order, monitoring order, search warrant or issue a notice to a financial institution. These are powerful domestic information-gathering tools which enable investigators to identify assets and their links to a suspect.

Once a restraining order is in place, a proceeds of crime authority, including the AFP Commissioner, can apply for an examination order for the compulsory examination of a person about the affairs of a suspect and associated persons, which is also an important mechanism for investigating how a suspect may have used beneficial ownership arrangement to conceal their assets. These examination powers are set out in Part 3-1 of the POC Act.

### 3.3. Are foreign legal persons, foreign (express) trusts or foreign legal arrangements allowed to operate in/own assets/ and/or register in your country? **YES / NO** If YES,

- how is basic information on these arrangements recorded (if at all)?
- how is beneficial ownership information on these arrangements recorded (if at all)? Please provide details of the relevant legislation and practices.

Yes – we refer to our response to question 1.1.

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<sup>3</sup> The Commissioner of the Australian Federal Police; or the Chief Executive Officer of the Australian Crime Commission; or the Commissioner of Taxation; or the Comptroller-General of Customs; or the Integrity Commissioner; or an investigating officer.

4. Access to basic information and beneficial ownership information of (express) trusts and other similar legal arrangements

4.1. Does your country recognize (express) trusts or other similar legal arrangements?

YES / NO

- If YES, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar legal arrangements created or registered in your country.

We refer to our response to questions 1.1 and 3.2.

- If NO, please skip to question 5

4.2. How is basic information on (express) trusts and other legal arrangements obtained and recorded in your country?

Yes – we refer to our response to questions 1.1 and 3.2.

4.3. How is beneficial ownership information on (express) trusts and other legal arrangements obtained and recorded in your country?

- Through a registry/registries with beneficial ownership information
- Through a different mechanism
- Competent authorities do not currently have access to beneficial ownership information

If **REGISTRY**, please provide details on the registry(ies), authority(ies)/agency(ies) in charge of maintaining the registry(ies), type of information collected, and details on the access policy. If **ALTERNATIVE MECHANISM**, please provide details on the mechanism, type of information collected, and details on the access policy.

Through a different mechanism – we refer to our response to questions 1.1 and 3.2.

## 5. Sanctions

- 5.1. Please describe the types of sanctions, sanctionable conduct, and targets of sanctions for non-compliance with beneficial ownership disclosure regulations (whether on the registry(ies) or through an alternative mechanism).

### 1 Tracing notice regime

Requirement	Person Liable	Consequence*
Failure to provide information (s 672B)	Persons directed	60 penalty units
Failure to keep register (s 672DA)	Listed entity	20-30 penalty units
Failure to provide access to or copies of register (ss 672DA(7) and (8))	Listed entity	30 penalty units
Failure to update register (ss 672DA(9))	Listed entity	30 penalty units

\*A penalty unit is currently AUD210 (s 4AA of the *Crimes Act 1914* (Cth))

### Substantial holding notice regime

If a person fails to provide a notice, this can result in up to 2 years imprisonment if fault can be proved, or alternatively a person may be fined up to 60 penalty units (currently, \$13,320).

### Registry

Requirement	Person Liable	Consequence
<b>Storage</b>		
Failure to maintain registry (s 168)	Company	30 penalty units
Failure to update registry (s 176)	Member	Registry is evidence of ownership absent any other evidence to the contrary.
Failure to notify company of changes in beneficial ownership status (s 1072H)	Member	30 penalty units
Failure to update ASIC of unlisted company beneficial ownership changes (s 178A)	Company	60 penalty units
Failure to provide correct information in application to register (s 117)	N/A	ASIC may decide not to register or to deregister <sup>4</sup> if a company fails to respond to a request to correct ASIC's register. <sup>5</sup>
<b>Access</b>		
Failure to provide access or copies (s 173)	Company	30 penalty units
Failure to provide access or copies (s 174)	Share registry provider	30 penalty units

5.2. Please describe the powers available to the designated authority(ies)/agency(ies) to enforce sanctions for non-compliance with the beneficial ownership disclosure requirements, including any statistics on enforcement of such sanctions.

As part of its plan to ensure multinationals pay their fair share of tax, the Australian Government has committed to introduce a public register for beneficial ownership of companies. The implementation of a beneficial ownership information register will increase transparency and accountability around the ownership and control of companies operating in Australia. An appropriate set of penalties for non-compliance with beneficial ownership disclosure requirements will be considered.

<sup>4</sup> *Corporations Act 2001*, para 601AB(1).

<sup>5</sup> *Corporations Act 2001*, s 348D.

The AFP is responsible for investigating breaches of Commonwealth laws, including offences for providing false or misleading information. The *Crimes Act 1914* contains a comprehensive suite of investigative powers to assist the AFP to investigate alleged breaches of the criminal law.

Further, it is an offence not to comply with the investigative powers under the POC Act (noted in the response to Question 3) and non-compliance with these powers is an offence and can carry serious penalties. For example, non-compliance with a request to produce documents pursuant to a production order or a notice to a financial institution both carry a maximum penalty of 2 years imprisonment, or 120 penalty units (i.e. a fine). Failing to attend a compulsory examination, or providing false or misleading answers or documents to an examination, carries a maximum penalty of 5 years imprisonment or 300 penalty units, or both. At the time of writing, the value of a penalty unit is AUD210.<sup>6</sup>

Reporting entities are subject to sanctions for non-compliance with the requirements in the AML/CTF Act.

Reporting entities may be subject to civil penalties or infringement notices for failing to identify the beneficial owner(s) of its customers (ss 32, 36 and 82) and to keep the required records (ss 112 and 113).

A failure to comply with an s 49 notice issued to a reporting entity is subject to a civil penalty or an infringement notice.

A failure to comply with an s 167 notice issued to a reporting entity is subject to imprisonment for 6 months or 30 penalty units, or both.

As the AML/CTF regulator, AUSTRAC supervises reporting entities for compliance with these obligations. AUSTRAC has not taken any enforcement action in relation to these specific obligations under the AML/CTF Act.

## **6. International Cooperation, asset recovery and challenges**

6.1. Does your country make beneficial ownership information available to foreign competent authorities (directly or upon request)? Please provide details of the relevant legislative and regulatory framework in your country that allows for the international exchange of such information.

Yes - in relation to the making available to foreign competent authorities, information concerning tax and tax transparency:

- Australia has an extensive network of EOIs with other jurisdictions under different types of tax treaties and conventions, including Double Tax Agreements and Double Tax Conventions with 45 jurisdictions, Tax Information Exchange Agreements with 36 jurisdictions and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (there are currently 146 signatories to the Multilateral Convention).
- Other types of EOI (in addition to EOI-on-request) include regular transmission of agreed taxpayer information between treaty partners (Automatic EOI). This information includes income in the form of interest, dividends, and trust distributions.
- Broader Automatic EOI designed to improve international tax transparency includes:

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<sup>6</sup> The value of a penalty unit is prescribed in section 4AA of the *Crimes Act 1914* (Cth) and is currently AUD210.

- Common Reporting Standard (the collection, reporting and exchange of financial account information on foreign tax residents)
- Foreign Account Tax Compliance Act (US) (the automatic exchange of financial account information between Australia and the United States of America)
- Country-by-Country reporting (the collection and international exchange of information regarding significant global entities.)
- In circumstances where there is a treaty in place covering the parties to legal arrangement (trust), the EOI Article (OECD Model Article 26, paragraph 1) is sufficiently broad to enable Competent Authorities to obtain the relevant information and exchange it with the Competent Authority of the other State.
- If there is no exchange mechanism available (for example, Australia does not have a Tax Treaty or Tax Information Exchange Agreement with the jurisdiction and the jurisdiction is not a signatory to the Multilateral Convention), exchange of information about legal arrangements and international co-operation is not available.

ASIC may be able to assist foreign competent authorities with obtaining information, documents or evidence that may assist that authority with identifying beneficial owners.

ASIC is only able to use its powers in furtherance of its own statutory objectives. This means that while ASIC can issue a notice pursuant to s 672A of the Corporations Act to require the disclosure of a persons' interest in listed shares (for example), ASIC must have an independent interest in the matter to do so. It cannot issue a notice solely for the purposes of assisting a foreign competent authority.

Where ASIC has previously obtained information or documents or testimony that is on its files then it may be able to release this information to a foreign competent authority pursuant to s 127(4) of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act). Section 127(1) of the ASIC Act imposes an obligation on ASIC to take reasonable measures to protect from unauthorised disclosure information given to it in confidence or in connection with the performance of its functions or exercise of its powers. Section 127(4) provides that an authorised disclosure includes where the ASIC Chair (or their delegate) is satisfied that the information will enable or assist:

- a government, or an agency of a foreign country, to perform a regulatory function or to exercise a related power, conferred by a law in force in that foreign country (s 127(4)(c) ASIC Act);
- a foreign body, although not an agency of a foreign country to perform a function or exercise a power, conferred on the body by or under a law in force in that foreign country (s 127(4)(ca) ASIC Act);
- an international business regulator to perform its functions or exercise its powers (s 127(4)(cb) ASIC Act).
- ASIC can release information under s 127(4) of the ASIC Act to a foreign regulator either at the request of that authority or at ASIC's own volition.

Where ASIC receives a request from a foreign competent authority and does not itself hold relevant information or documents or evidence and is not able to use its own powers, then assistance may be able to be provided under the *Mutual Assistance in Business Regulation Act 1992* (Cth). The foreign competent authority would need to be a "foreign regulator" administering or enforcing a "foreign business law" for the purpose of this Act. ASIC can in response to a request falling within the scope of this Act, issue notices to obtain information, documents or evidence from a person within this jurisdiction. This includes compelling testimony from a person.

Where a request is solely for the purposes of a criminal investigation or criminal proceeding and ASIC does not hold or cannot otherwise obtain information then the foreign competent authority can consider making a request to the Attorney General under the *Mutual Assistance in Criminal Matters Act 1987* (Cth) (MACMA).

Australia is a member of the Asset Recovery Interagency Network - Asia Pacific (ARIN-AP) and an observer to the Camden Asset Recover Inter-agency Network (CARIN). Appointees from the AFP-led Criminal Assets Confiscation Taskforce (CACT) are the Australian representatives for ARIN-AP and CARIN. These are informal networks of law enforcement and prosecution/litigation practitioners who specialise in the field of asset tracing, freezing, seizure and confiscation. The intention of these networks is to increase the effectiveness of their members' efforts to deprive criminals of their illicit profits. These informal networks can facilitate the sharing of information on beneficial ownership (where legislatively permissible), without requiring a mutual legal assistance process, and also allow practitioners to direct each other to open sources of beneficial ownership information.

In certain circumstances, a foreign country may require that information be shared via a formal process: for example, if the requested material is required to meet admissibility requirements in the foreign country. In these circumstances the beneficial ownership information may be facilitated by way of a mutual assistance request, and facilitated pursuant to the MACMA.

However, as a matter of practice, requests should primarily be made through informal channels, as set out above. Mutual assistance should be reserved for cases requiring the exercise of a coercive power, or to meet the evidentiary or admissibility requirements of the requesting foreign country.

Further, the sharing of information held by AUSTRAC with foreign countries is governed by s 127 of the AML/CTF Act.

Subsection 127(1) provides that the AUSTRAC CEO may disclose AUSTRAC information to the government of a foreign country or a foreign agency, if the AUSTRAC CEO is satisfied that, where the CEO considers appropriate, undertakings have been provided by the foreign government or foreign agency to protect the confidentiality of the information, control its use, and ensure that it is only used for the purpose for which it is disclosed. The CEO must also be satisfied that it is appropriate in all of the circumstances to disclose the information.

Subsection 127(2) provides that the head of a Commonwealth, State or Territory agency referred to in subsection 127(3), or a person covered under an authorisation in subsection 127(4), may disclose AUSTRAC information to the government of a foreign country or a foreign agency if the person is satisfied undertakings have been provided by the foreign government or foreign agency to protect the confidentiality of the information, control its use, and ensure that it is only used for the purpose for which it is disclosed. The person must also be satisfied that it is appropriate in all of the circumstances to disclose the information.

### **Memoranda of Understanding**

AUSTRAC, as Australia's financial intelligence unit (FIU), frequently exchanges information with international partners.

Through the establishment and use of MoUs and the use of the Egmont Group of Financial Intelligence Units (Egmont Group), AUSTRAC actively engages in international exchanges of information and intelligence produced by AUSTRAC. This formal exchange function allows AUSTRAC to both proactively, and upon request, share pertinent financial information, including beneficial ownership information, to partner FIUs in a secure manner. AUSTRAC may also receive

information via this exchange process that is relevant to Australia and the work of its law enforcement and national security agencies.

MoUs formalise the terms of the relationships between AUSTRAC and the relevant partner agency and establish the framework for the exchange and handing of information. In order to facilitate exchanges, AUSTRAC makes extensive use of MoUs to build relationships with domestic and international partners across the public and private systems. At the time of reporting, AUSTRAC has 103 active MoUs with international partners. A list of all MoUs is available on the AUSTRAC website: <https://www.austrac.gov.au/about-us/international-engagement/exchange-instruments-list>.

AUSTRAC is also able to provide beneficial ownership information held by AUSTRAC to FIUs where no MoU is held, if the counterpart agrees to specific written undertakings that are designed to safeguard information provided.

6.2. Please describe how foreign competent authorities may request or access beneficial ownership information on legal persons and legal arrangements formed in your country. Which agency(ies)/authority(ies) is/are responsible for receiving and responding to foreign requests? Please provide contact information and instructions.

A request for assistance in obtaining information, documents or evidence that may assist with identifying a beneficial owner can be sent to the following:

Email: [international@asic.gov.au](mailto:international@asic.gov.au)  
Senior Manager – International  
Australian Securities and Investments Commission  
GPO Box 9827  
Brisbane QLD 4001

ASIC has entered into bi-lateral or multilateral MoU with our regulatory counterparts in key jurisdictions. These MoUs provide a framework for cross boarder regulatory cooperation including the requirements from making requests for assistance. A request for assistance would generally include the following information:

- Name of the matter;
- Assistance being sought;
- Reason why the assistance was being sought (eg: to assist with the investigation of suspected insider trading);
- How the assistance relates to the reason for the request (eg: trading in the shares was through accounts held with an Australian broker);
- The person of interest (if applicable);
- Offences under investigation and possible penalty (if applicable).

ASIC will consider any request for assistance from an overseas competent authority even if there is no MoU in place.

Further, members of ARIN-AP and CARIN can request information using the dedicated contact points on the members' portal for each of the networks.

Where a mutual assistance request is required (see answer to 6.1, above), Australia's central authority for mutual legal assistance is the International Crime Cooperation Central Authority (ICCCA), which is part of the Attorney-General's Department. The ICCCA is responsible for progressing requests for

mutual legal assistance made under the MACMA or pursuant to a bilateral treaty or multilateral convention to which Australia and the request foreign country are both parties.

Additionally, AUSTRAC exchanges information with foreign competent authorities through Egmont's secure sharing platform and other agreed mechanisms where the partner is not a user of the Egmont secure sharing platform.

6.3. In your opinion, what are the main challenges faced by *foreign competent authorities* to access beneficial ownership information held in your country?

When the ATO receives an incoming exchange request for beneficial ownership information from a foreign competent authority, we will often check out databases first. Where the information is not contained in our databases, we will use our information gathering powers to obtain the information from the taxpayer directly.

Generally, not specifically relating to Australia, the challenges competent authorities in a jurisdiction may face to access beneficial ownership information held in another jurisdiction could include:

- The unavailability of the beneficial ownership information in the country (e.g. no beneficial ownership registry and authorities rely on the information recorded in the company registry and the information collected by financial institutions, etc.).
- The lack of relevant law and regulations for direct and timely access to beneficial ownership information.
- The lack of proper information sharing mechanisms (e.g. bilateral/multilateral treaties, MoUs etc.)
- Information not being centrally held (e.g. no register of trusts, or legal ownership only on corporate registers). This means to give effect to a request from a foreign country, Australian authorities will often need to search multiple sources or use investigative powers to obtain information (which may not be possible where there is a concern about alerting a POI to law enforcement interest).
- The lack of timeframes to get responses to information requests.
- Legislative restrictions on sharing information (e.g. corporate secrecy and banking secrecy provisions).
- In addition, the type and level of detail of beneficial ownership may vary (or may not be available at all), depending on the structure of the beneficial ownership arrangement, for example, whether the entity is a company or a trust.

Further, the main challenge that foreign countries face in accessing beneficial ownership information held in Australia is identifying the types of arrangements, whether they may be a company or a trust, that exist and the level of control these arrangements have over suspected criminal assets. As noted above, Australia does not have an existing register for beneficial owners, thus some level of investigation would need to go into identifying existing arrangements where they are suspected to own or have effective control over criminally derived assets. This means that a foreign request can remain unactioned if important information identifying the arrangement and the suspected criminal asset is not articulated.

This challenge can be mitigated by the foreign country using informal channels to first identify existing arrangements within Australia and the nexus with suspected criminal assets. Australian law enforcement officers have a comprehensive suite of investigative powers at their disposal that they may use to this end, including authority under the POC Act.



Once a nexus has been drawn, the mutual assistance process can be used to obtain evidence in admissible format, for example under a production order, monitoring order, search warrant or a notice issued to a financial institution.

6.4. In your opinion, what are the main challenges faced by *competent authorities of your country* to access/receive beneficial ownership information held in a foreign country?

We refer to our response to question 6.3.

In addition, obtaining evidence from foreign competent authorities on the ownership or control of criminal assets (particularly where they are “hidden” in complex corporate structures or trusts) through formal mutual assistance processes can significantly lengthen the timeframe, and increase the cost, of conducting proceedings under the POC Act. Further, not all countries recognise non-conviction based action or certain types of offending and therefore may not be able to assist under the mutual assistance processes in providing evidence needed to establish ownership or control over criminal assets. Other jurisdictions may also be resource-limited, meaning that they do not necessarily have the capability or capacity to assist.

The main challenges faced by AUSTRAC in accessing beneficial ownership held in a foreign country includes understanding where the records are kept and how to gain access to this information. Once AUSTRAC gains access, there may be additional delays if it is in a language other than English. These issues may also arise for other countries accessing AUSTRAC information.

6.5. Do you have any case studies or examples where the transparency of beneficial ownership has *enabled or enhanced the effective recovery and return of proceeds of crime in (or for) your country?*

As referred to in part in our response to question 3.2, the SFCT is an ATO-led joint agency taskforce established on 1 July 2015. It seeks to bring together the knowledge, resources and experience of relevant law enforcement and regulatory agencies to identify and address the most serious and complex forms of financial crime. The SFCT includes the following departments/agencies:

- ATO
- Australian Federal Police
- Australian Criminal Intelligence Commission (ACIC)
- Attorney-General's Department
- AUSTRAC
- ASIC
- Commonwealth Director of Public Prosecutions
- Department of Home Affairs, incorporating its operational arm, the Australian Border Force
- Services Australia

## **7. Good practices for Beneficial Ownership Transparency**

- 7.1. Has your country implemented any specific good practices relating to Beneficial Ownership Transparency that you wish to highlight? Examples could include good practices in verification, data format, searchability, use of technology, enforcement of sanctions, automatic red flagging, use or risk-based approach.

An example of implementation in Australia of a specific good practice relating to beneficial ownership transparency would be the implementation of Director Identification Numbers (Director ID) as part of the MBR program by the ABRIS. The Director ID regime is a measure anchored on verification of identity and establishing the relationships between the individual (director) and the companies they are a director of.

Director identification numbers are a unique identifier that is assigned to a director for life. This provides traceability of a director's relationships over time, and across companies, to assist regulators and external administrators to investigate a director's involvement in illegal phoenix activity. This is a potential data source that increases the value of beneficial ownership information.

Director ID data is intended to be published using a tiered access regime where some stakeholders are given access to a subset greater than the public but not fully non-public information, based on their needs. This allows for controls for the access to beneficial ownership information depending on the individual / agency seeking the access and for what purpose.

## **8. Follow-up to the special session of the General Assembly against corruption**

- 8.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 16<sup>7</sup> of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

As part of the plan to ensure multinationals pay their fair share of tax, the Australian Government has committed to introduce a public register for beneficial ownership. The implementation of beneficial ownership reforms will increase transparency and accountability around the ownership and control of companies and legal vehicles operating in Australia.

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<sup>7</sup> 16. We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal systems and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the ability of competent authorities in this regard.