



25 November 2022

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

This submission is made on behalf of the **UNSW Tax and Business Advisory Clinic**.

About us

Established in 2019, UNSW Tax and Business Advisory Clinic is an international award-winning clinic, funded in part by the Federal Government through its National Tax Clinic program¹.

We provide our clients – all of whom are financially vulnerable – with a pro bono tax agent service. That is, our team of registered tax agents provide free and independent tax advice to financially vulnerable taxpayers who otherwise would not have access to tax advice across NSW. In addition to registered tax agents our team also engages student volunteers, pro bono accountants, pro bono lawyers, and academics from a variety of disciplines (including the Black Dog Institute, the Gendered Violence Research Network, and the Centre for Social Impact).

We are fully integrated into the financial counselling sector, working closely with Financial Counselling Australia and the Financial Counsellors' Association of NSW Inc. Almost all of our clients are obtained via 'warm referrals' from financial counsellors. As such, we apply a targeted and selective approach to client eligibility².

Aspects of our Clinic and related research are published in "Tax Accounting for Financial Wellbeing: Quantifying the Unmet need for Pro-bono Tax Advice" (2022) 51 *Australian Tax Review* 228. Most relevantly, our national survey of the financial counselling sector found that the unmet need for tax advice has been increasing over time. Themes emerging from these observations range from the implications of the "gig economy" and proliferation of ABNs, low levels of awareness of tax obligations associated with running a small business, the sheer complexity of the tax system, issues associated with declining levels of literacy in society, the compliance burden associated with the Goods and Service Tax (GST), and the somewhat punitive nature of the interaction between the tax and transfer system.

Specifically, an increasing number of sole traders with little knowledge of tax was cited by survey respondents as a reason for the increasing need for tax advice among people in financial distress. Another pattern that emerged in observations made by financial counsellors was that most clients needed help with lodging multiple years of outstanding tax returns and needed advice with tax debt discussions. Importantly, financial counsellors

¹ See <https://www.ato.gov.au/general/gen/national-tax-clinic-program/>

² See <https://www.unsw.edu.au/business/our-schools/accounting-auditing-taxation/about-us/unsw-clinic/free-tax-advice-business-coaching>

are not able to complete or lodge tax returns. This presents a major gap in advice available to those in need.

It is problematic that there is currently no publicly available data quantifying the otherwise unmet need for independent tax advice amongst financially vulnerable people. Our research fills this gap. We find that the unmet need for independent tax advice ranges between 30.1-40.6% of all people seeking financial counselling assistance regardless of their socio-economic group across Australia. This means that a total of between 632,000–852,600 financially vulnerable people need – but are unable – to access independent professional tax advice (being 30.1-40.6% of 2.1 million adults across Australia experiencing severe or high financial stress: (UNSW Centre for Social Impact, 2018).

Our academics and tax agents involved in the Clinic represent many years of experience in taxation practice and taxation research. We are unanimous in our disapproval of the so-called 'black' economy and support efforts to eradicate it.

Submission

We wish to express concerns arising from two aspects of the proposed changes intended to strengthen the ABN system.

1. Annual ABN renewal

The consultation material refers to the effect of new section 14A requiring ABN holders to annually inform the Registrar of their need for an ABN. Given the millions of ABN holders in the country this seems to involve an extraordinary scale of annual compliance. Given too that the majority (probably) of these millions of ABN holders are legitimate compliant and law abiding ABN holders it seems an extreme and unnecessary compliance burden to impose on a very large segment of the business community that has done nothing wrong.

It is suggested that the problem of unjustified use of ABN's might be better addressed if this entitlement were justified less frequently (e.g. Tax Practitioners Board registration of tax agents has a three year renewal and although that is rumoured to change to an annual renewal there is a big difference between regulating a small number of agents annually and managing the entire population of ABN holders); or were set up to be justified on request by the Registrar. The latter approach would allow the Registrar to focus on suspect ABN holders and would accommodate an audit approach where a segment (either random or otherwise) of holders is tested in order to flush out holders whose use of an ABN is not justified.

2. Cancellation of ABN for outstanding returns

The proposal to allow the Registrar to cancel an ABN (amendments to Section 18) where the taxpayer has two years of tax returns outstanding seems harsh in the sense that it is a blunt instrument that will catch businesses that are not the intended target. It may also be questionable whether the measure will have the intended effect.

Firstly on these issues – we frequently assist taxpayers who have lost control of their compliance obligations for understandable reasons (misadventure; domestic violence; poor health; bereavement etc) but who remain and should be allowed to remain in the tax system once their difficulties have been remediated. Many we have helped have had returns outstanding for well in excess of two years and of those several end up demonstrating that they are in a refund position. A strict application of this new cancellation rule would adversely and possibly unfairly impact such taxpayers. A solution

to ameliorate the harshness of this new rule might be to extend the years limit to more years than 2 in order to have an impact only on the egregious cases.

Secondly, the consequence of a cancellation of their ABN for such a business is extreme. At the moment that the ABN is cancelled the business in question will instantly lose the ability to issue a valid tax invoice and will, for transactions with business customers, be subject to non-ABN withholding rules. It will soon be bankrupt. That may be the intention, but it will be extremely harsh, and far exceeds the normal penalty imposed for late filing of a tax return. The published article referred to above explains how many ABN holders are in need of advice and support in dealing with an administratively complex system – a more appropriate response than punishment.

Thirdly, the fact that a non-compliant business has had its ABN cancelled will not close it down as an (albeit illicit) economic activity and it is not entirely clear how this measure limits participation on the so-called 'black' economy. It may simply push some business teetering on the edge of that economy into an area where there is no longer any scrutiny at all from tax administration systems. Perhaps the sponsors of these amendments have thought of that but from our limited perspective the 'black economy' in these cases will simply have got darker.

My colleagues and I would be happy to discuss further.



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