29 November 2022

Tax Administration Unit
Personal and Indirect Tax, Charities and Housing Division
Treasury

Submitted via email:

To whom it may concern,

Strengthening the ABN system

The Australian Banking Association (**ABA**) welcomes the opportunity to respond to Treasury's consultation on *Strengthening the ABN system* and is supportive of the government's efforts to increase compliance with income tax lodgement requirements and the accuracy of the Australian Business Register (**ABR**).

However, the ABA has concerns regarding the potential flow on impacts of the proposed changes and cancellation of Australian Business Numbers (**ABNs**) on certain customers, particularly active small businesses and primary producers. These businesses can be, and many are currently, affected by events outside their control, such as natural disaster events, some of which can last for years and can materially affect their business operations, including their ability to comply with Australian Tax Office and ABR obligations.

The ABA recommends that:

- consideration be given to distinguishing between active and dormant businesses;
- for active businesses, the Registrar ought to:
    - provide reasonable allowances to businesses facing challenges, such as natural disasters, beyond their control;
    - provide ample warning, information regarding how the authority to cancel ABNs will be exercised and if cancellation of an ABN has a comparable effect as deregistration of a company, as well as an opportunity to remedy their status before deregistration; and
- consideration be given to amending the authority provided to ASIC under Corporations Act s 601AB to similarly cater for businesses facing challenges beyond their control.

Further detail on the banking industry's views on the proposed changes and recommendations are contained in Appendix A.

If you require further information or would like to discuss any of the content of this letter, please do not hesitate to contact me on or at

Regards,

Policy Director
Australian Banking Association

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

Appendix A

The ABN reforms proposed by Treasury (*Treasury Laws Amendment (Measures for Consultation) Bill 2022: Strengthening the ABN System)* authorises the Registrar to cancel the ABNs of holders who failed to lodge a tax return for two years or who failed to confirm the accuracy of their details held by the Registrar in a 12-month period together with confirmation that their ABN is still required.

It is unclear if the cancellation of a business number will also cancel the business name connected to the ABN and if it will have the same effect as a 'deregistration' for the purposes of the Corporations Act ss 601AB and 601AD. If it does, the Treasury proposal expands the current powers to cancel ABNs and, as a consequence, (assumedly) business name registrations for those business name registrations that requires a Business Number.

If this is the case, it will likely lead to more company 'de-registrations', with banks needing to match their systems' data against two external systems (ASIC and the Registrar). Deregulations would likely trigger ASIC rules regarding the vesting of assets after deregistration (assets in agribusiness may include crops, livestock and concentrated chemicals).

Primary producers and (small) businesses can be affected by natural disasters (such as flood, hail, fire, drought, cyclone) which individually can last for years, such as the 1997 to 2009 'Millennium drought'[1], or occur sequentially. This may lead to a business not submitting tax returns for two years (as per the Treasury submission), or fail to pay their registration fees, and then facing the additional complication of having their accounts frozen and closed because ASIC has cancelled their company registration(s) or (still under assumption) the Registrar cancelled their ABN with similar effect.

While the ABA understands the need for income tax returns to be completed in a timely manner and for business registers to be kept up-to-date, it recommends reasonable allowances be given to businesses facing challenges, such as natural disasters, beyond their control.

Furthermore, information should be provided to any impacted business regarding how the authority to cancel ABNs will be exercised and if cancellation of an ABN has a comparable effect as deregistration of a company.

The ABA also recommends that consideration be given to amending the authority provided to ASIC under Corporations Act s 601AB, possibly as an additional item under that subsection, where an ASIC registered company is given ample warning and opportunity to remedy their status before deregistration.

Finally, dormant businesses, as opposed to active businesses, may be at greater risk of being used to perpetrate fraud, providing more compelling reasons to cancel a dormant business' ABN. For this reason, dormant businesses could be distinguished from active businesses.

[1] BOM (n.d.) *Historical droughts*, http://www.bom.gov.au/climate/drought/knowledge-centre/previous-droughts.shtml, accessed: 18 November 2022