



INSTITUTE OF  
PUBLIC  
ACCOUNTANTS®

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

*By email to: [taxadministrationconsultation@treasury.gov.au](mailto:taxadministrationconsultation@treasury.gov.au)*

Dear Sir/Madam,

### **Strengthening the ABN system**

On behalf of the Institute of Public Accountants, I submit our comments on the Exposure draft legislation and accompanying explanatory materials *Treasury Laws Amendment (Measures for Consultation) Bill 2022: Strengthening the ABN system*.

IPA is supportive of the proposed reforms that act to strengthen the integrity of the Australian Business Number (ABN) system to target misuse, enhance the quality of ABN data, and improve ABN holder engagement and compliance.

Consistent with our earlier submissions concerning improving the integrity of the ABN system (Appendix 1), we believe there is further scope for the Government to also improve the processes to strengthen controls over the granting of ABNs.

If you would like to discuss our comments, please do not hesitate to contact me.  
Yours sincerely

Tony Greco  
General Manager, Technical Policy  
Institute of Public Accountants



## APPENDIX 1

### Designing a modern Australian Business Number system

We welcome the opportunity to provide this submission in response to the consultation paper titled “Designing a modern Australian Business Number system”.

The IPA is supportive of the ABN review which is long overdue. The ABN is akin to a licence to do business and this unique identifier for business now represents a key business credential. Around 320 government agencies use the ABR register to verify holders of ABNs and over 1 billion searches of ABNs took place in 2017-18. As at the end of June 2018, there were 7.7 million ABNs of which, 3.6M were held by sole traders. When the ABN system was introduced back in 2000, it was supposed to make operating in the black economy a more difficult undertaking. Without an ABN, the payer is generally required to withhold tax at the highest marginal tax rate. What we know is that the ABN system has been played by black market participants and rather than been an inhibitor, continues to be used by participants to provide a false sense of legitimacy to their business.

The introduction of the taxable payment reporting system (TPRS) has illustrated the wide spread abuse of the ABN system. The first sector subject to mandatory TPRS was the Building and Construction industry. In its first year of operation in 2012, an extra \$2.3B of revenue was reported to the revenue authority. The Black Economy Taskforce has confirmed that the ABN system is facilitating, rather hindering, black economy activity by allowing participants to deceive other businesses by legitimising business transactions.

The Government is further expanding the TPRS to other high risk sectors. Entities with ABNs providing road freight, IT or security, investigation or surveillance services will be required to report to the ATO, information about transactions where the entity has provided consideration to another entity to provide that service on its behalf.

The IPA commends the important work already undertaken by the Black Economy Taskforce (Taskforce); with the release of two key reports that have informed this submission, as have other discussions related to the redesign of the business registers, administration of the goods and services tax, and strategies to minimise revenue loss stemming from the cash economy. The introduction of a \$10,000 cash limit is another integrity measure the Government is introducing to help curtail black economy transactions. The Government is also proposing to improve the integrity of the Commonwealth procurement process by requesting tenderers provide a statement of tax record from the ATO. Addressing the black economy will require a series of integrity measures which will need to include the ABN system.



The IPA agrees with the Taskforce's observation that more regulation is not necessarily the answer to dealing with the black economy. It is however, critical to maximise the application of the best currently available technologies for business registration and identification mechanisms. This will ensure that while the Government creates an incentive for small to medium businesses to keep better records, it will simultaneously improve the Government's monitoring of compliance with the goods and services tax and income tax legislation. The work currently being undertaken to rationalise business registers, ensuring that individuals and enterprises deal with only one online resource, will greatly assist with this objective.

The IPA further agrees that the possibility of fraud must be considered when it is apparent that there is an incentive to use a bogus ABN. Any 'business to business' transaction however, is less likely to involve a fraudulent ABN. A business that purchases supplies from another business would have an incentive to verify the legitimacy of the supplier's ABN so that an *input tax credit* can be claimed for the GST paid on the purchase. Whilst this may be the case, there is still evidence of ABN holders either not fully, or under, reporting revenue. Without mandatory taxable payment reporting, ABN holders are aware that the ATO does not have the data to cross check amounts reported for income tax purposes against ABN activity. It is interesting that New Zealand has recently increased its withholding taxes to ensure taxpayers are more likely to report as income, all activity when a withholding occurs. If the extension of TPRS reporting to more sectors shows evidence of under-reporting of revenue as was experienced in the building and construction industry, then it will confirm that there is wide spread abuse of the ABN system. The next step will be either to extend taxable payment reporting to all sectors or introduce a withholding tax system where no TPRS applies. Both these options will impose considerable compliance obligations which will need to be considered.

The misuse of an ABN also likely occurs when a business sells or provides services to a non-ABN holding customer; ie, there is an incentive to misuse the ABN system by misleading the ultimate customer as to the identity of the supplier. In this scenario, the supplier can avoid paying income tax by not disclosing revenue. Cash-based business, such as cafes and take-away food shops also create a challenge for tracking income. Customers, particularly for small purchases, may be less likely to use credit or similar cards for transactions at cafes and similar establishments. This creates an opportunity for under-reporting revenue. We note with great interest that the Tax Commissioner has promised "more concerted action" in relation to cash-only businesses.<sup>1</sup> We support the ATO's initiatives in ensuring greater compliance with the tax regimes and initiatives intended to curb tax avoidance practices. Different strategies will need to be deployed to curtail misuse of ABNs where a business provides services to a non-ABN holding customer for domestic purchases.

IPA members have informed us that the levying of fees for an ABN and business registrations generally, has been a contentious issue for business owners within the SME community. The IPA is of the view that it may be inappropriate for there to be any



fees for ABN registration or renewal under the proposed regime. An ABN is conceptually the same as a tax file number (TFN), given that a TFN is used for identification and/or tracking purposes.

The process of registering an ABN or a TFN is not the same as the more detailed processes involved in the incorporation/registration of an association or a company, as well as annual lodgement and reporting requirements in respect of these entities. It is important that this fact be recognised in any move to change the current regime. Once the proposed online platform has been implemented, the government should consider making access available to current and potential ABN holder's free-of-charge. We see no need to impose a further charge on small businesses for what is essentially the development of regulatory infrastructure.

In any tightening of the ABN system, consideration also needs to be given to entities that may infrequently provide services to other entities. The ABN system needs to cope with holders of an ABN who infrequently (maybe once per year) issue tax invoices using their ABN.

### **Use of accountants to verify ABNs**

The IPA believes that the Government should make more extensive use of tax and BAS agents to verify the need for new ABNs. Accountants have an existing relationship with their clients and would thus, be in an ideal position to vouch for their intent in terms of their business goals and plans and therefore, ABN requirements. This is one way that accountants and similar professional advisers can assist in the process of ensuring that an ABN will be issued to persons for proper business purposes.

Having an accountant provide some form of assurance, can add much more rigour to the application process. Applicants may not fully understand the eligibility requirements nor the compliance obligations associated with holding an ABN. The integrity of each holder of an ABN is vitally important to the tax system so we need to balance the ease of obtaining one against adding some integrity controls into the ABN application process. Trusted intermediaries such as tax agents who are also members of an accounting body which are subject to and must abide by ethical and professional standards can play an important assurance role in determining the quality of an ABN application.



Given the number of ABN holders who have obtained one without satisfying eligibility, there is a need to tighten the process for applying for one to reduce the number issued to holders not entitled to hold one. Prevention early is much better than dealing with the issues after the horse has bolted. The number of ABNs that the ATO has had to cancel in the last two years, illustrates the poor integrity over the application process. Twenty per cent of ABNs cancelled in 2015-16 year became employees highlighting the significant problem of sham contracting that is prevalent and the threat that this imposes on the PAYG withholding base.

We acknowledge that one of the current benefits is the easy application process. However, given the importance of the ABN system to the integrity of the tax system, the regulators need to also ensure that there is more rigour in the application process. The ease of obtaining an ABN has now undermined the integrity of the tax system. An ABN is essentially a licence to 'do business' and the public need to have more assurance that the ABN information on the public register can be relied upon to verify the legitimacy of an enterprise.

Having an ABN enables the holder the following benefits:

- Exemption from withholding (TFN & no ABN withholding)
- Listing on the ABR as an active business
- Access to a business name
- Opening of a bank account
- Establishment of com.au website
- Collection of GST
- Claiming of GST input tax credits
- Collection of PAYGW from employees
- Discounts on purchases
- Access to government licencing
- Access to government grants, rebates and contracts

The obligations of holding an ABN:

- Lodge and report
- Pay nett GST to the ATO
- Pay employee PAYGW to the ATO
- Pay employee super to superfund
- Meet other regulatory obligations
- Renew government licences

An important weakness in the current system is that an ABN holder maintains their ABN entitlements regardless of whether they meet their obligations. Issuing an ABN to someone who is not entitled to one only creates downstream problems which are more difficult to reverse so prevention is a more desirable outcome.



Whilst we do not advocate for mandatory ABN assurance from an accountant, the system could be improved by introducing a stick and carrot approach. If an accountant signs off on an ABN application, a higher level of assurance can be attached to the application resulting in certain benefits being granted. Alternatively, if an assurance is not obtained from an accountant then the applicant could be subject to some loss of benefits compared to an applicant whose application has been verified by an independent person such as a tax agent. One of the benefits that could be looked at is PAYG instalments. A new ABN applicant can have up to 18 months before they come within the ATO data and tax collection system. This should be compared to an employee who almost immediately starts having tax withheld from their payments. Alternatively ABN applications which are lodged by tax professionals are fast tracked through the system compared to applications that are self-lodged.

There are multiple benefits to the ATO for seeking an independent assurance for a new ABN:

- To make sure applicants understand the rights and obligations that are attached to holding an ABN. Obligations attached to an ABN are not very well understood. Having this explained early in the cycle is critical
- Make it more difficult for sham contractors to obtain an ABN and thereby, protect the PAYG withholding base from those who present as contractors but are actually employees
- Stop individuals trying to avoid 'no ABN withholding' by incorrectly applying for an ABN
- Make it difficult for individuals not carrying on an enterprise and therefore not entitled to an ABN obtaining one to claim GST input tax credits
- Help applicants understand their obligations such as the responsibility to retain income to meet their taxation obligations
- Potential applicant has necessary business plan and cash flow forecast and finance in place to pursue business opportunities. An added benefit of this early interaction is that the business may have a better chance of survival by having these in place early.

### **Possible changes to the current regime**

We believe that improvements are required and that the integrity of the processes for the granting of an ABN need to be tightened. Mr Michael Andrew, chair of the Government's Tax Avoidance Taskforce, has noted that some 400,000 ABNs were issued to persons on visas who are not permitted to work in Australia. *"It's showing we have a real problem with the ABNs being issued by different parts of government"*



*but not talking to each other.*<sup>2</sup> This is indicative of the need to strengthen controls over the granting of ABNs and an urgent need to revalidate the ABNs already issued. We note that New Zealand has introduced a law requiring businesses that enter into contracts with consultants/sub-contractors, to withhold an amount of taxation and remit this amount to an agency equivalent to that of the ATO. This applies to all industries that are not caught by the 'mandatory reporting of payments to contractors' rules. This mechanism which tracks payments to prevent tax avoidance was proposed by the IPA in its 2017 pre-budget submission to the government.<sup>3</sup>

Responses to specific questions asked in the consultation paper appear in Appendix 2.

## **Appendix 2: Responses to specific questions**

### **Are changes needed to the ABN system to take into account the expanded purposes for which ABNs are used today? If so, what changes?**

Yes, some consideration should be given to individuals that set up small businesses using emerging forms of technology in running those businesses. For example, online or smartphone-based applications – there should be a requirement for these businesses to register for an ABN beforehand and seek advice in order to understand the benefits and obligations associated with obtaining an ABN.

Those individuals or businesses holding an ABN should continue to be required to either confirm each quarter that they/the business, still qualify.

Failure to provide the ATO with a confirmation of status should result in a warning. Multiple failures should result in the suspension of the ABN until the individual/business makes a renewed effort to engage with the ATO.

### **Who should be entitled to an ABN? Who should not be entitled to an ABN? What are the risks or benefits from any changes to ABN entitlement rules?**

Any individual or entity that is conducting or intends to conduct a business (even on an ad hoc basis) should be entitled. Given that the integrity of the ABN data in the current system has been questioned, proposed changes to the system should endeavour to address this issue as a matter of priority. As detailed above (Use of accountants to verify ABNs) more assurance on the integrity of the applicant needs to happen as part of the application process given the importance placed on the ABN as part of our tax system.

<sup>2</sup> <https://www.afr.com/news/policy/tax/budget-will-target-30bn-cash-economy-20170317-gv09nd>

<sup>3</sup> <https://www.publicaccountants.org.au/media/750249/IPA-pre-Budget-sub-2017.pdf>



### **What is the best way of ensuring that only those who are entitled apply for and are granted an ABN?**

As detailed above (Use of accountants to verify ABNs) more assurance on the integrity of the applicant needs to happen as part of the application process given the importance placed on the ABN as part of our tax system.

Evidence should be provided on an annual basis via an individual's tax return that they are conducting a business as a sole trader, and as well, falling under the prescribed threshold for mandatory reporting GST on a quarterly basis.

### **Should individual contractors holding ABNs be required to register for GST regardless of the amount of their annual turnover?**

The existing thresholds should remain intact but placing a quarterly obligation on contractors to confirm they remain below the \$75,000 threshold would ensure a continual monitoring of income by contractors themselves.

### **Could the ABN application process or ABR guidance material be made clearer to help applicants (and employers) distinguish between an employee and a contractor, or to better highlight the consequences if an applicant is caught intentionally ignoring the ABN entitlement rules?**

The ATO already has guidance on its web site dealing with the issue of employees and contractors to which ABN applicants can be referred. This guidance is relatively easy to understand.

Individuals contemplating a contracting arrangement should be encouraged by the ATO and the ABR to seek professional tax or legal advice to confirm whether an arrangement is suitable. Each situation will be different. It is necessary for individuals to ensure they are aware of the complications relating to their work situation before they commit to working as a contractor.

### **Should an ABN holder be required to meet certain conditions or undertake certain obligations? If so, what obligations should apply? Should any exemptions apply and under what circumstances?**

An ABN holder should be required to either lodge the appropriate documents and pay GST owed to the government, or confirm that they do not meet the thresholds prescribed by the GST rules.





**What consequences should apply if an ABN holder does not meet the required obligations (e.g. cancellation of an ABN, publication of a non-compliant status, penalties)? How could these consequences be designed to avoid unfair consequences for businesses?**

ABN cancellation should only occur in the most extreme cases where individuals or entities are not conducting a business. An ABN should not be cancelled simply because a contractual relationship appears in form at least, as an *employer-employee* arrangement.

**What notification should be given to an ABN holder of the ABR's intention to cancel their ABN?**

The ATO should provide options for taxpayers to nominate their preferred method of communication and notifications. Multiple communication channels should be undertaken for cancellations to ensure ABN holder is made aware of this action. Another weakness in the system is that unless an entity checks the current status of an ABN holder, an inactive ABN can continue to be used by entities who have dealt with the ABN holder before it was cancelled as most entities only check the legitimacy of new suppliers.

**Are changes to the ABN system, or related systems and laws, needed to support easier verification of an ABN holder? For instance, this might include increased visibility of ABNs as part of business dealings or better linking ABNs to other systems (such as payment platforms).**

While increased visibility of ABNs may be useful as a reminder for individuals and businesses to check before they transact with a vendor, there is merit in further exploring how payment platforms can assist prevention of ABN fraud. This approach would still however, not assist in capturing cash transactions that some smaller vendors may use as a means of not reporting income.

**Should specific action be taken to require ABN verification:**

- for market stalls and food trucks?
- in order to access trade discounts?

It makes good sense for market stall holders and food trucks suppliers to have their ABNs displayed. Their ABNs should also be checked by their suppliers when transacting.

A common problem is using another entity's ABN (*Bunnings scenario*). This happens where tradespeople are fraudulently using Bunnings' ABN instead of their own. If 'tradies' issue invoices to private individuals for work completed that is not GST claimable; for example, in the case of a plumber, replacing a hot water system for a



private residence, to expect homeowners to check the validity of the ABN is unrealistic. Other more appropriate methods need to be explored.

### **How could the quality of ABN data be improved?**

There is sufficient information available to inform a supplier or creditor whether an ABN is active and whether an individual is registered for GST. Disclosure of a postcode will also give an ABN data user a general location for the business.

### **As an end user of ABN data, what information on ABN holders is, or would be, most useful to you?**

A user of the ABN would require the name of an individual or registered business name, the ABN itself and the suburb and postcode of the place of business and the GST registration status.

### **As an ABN holder, what information would you want to be publicly available on the ABR, noting that there are options to suppress information from being released publicly in certain circumstances?**

Key information should include the name of an individual or an entity, the registered business name where applicable, the ABN itself and the primary place of business operations (suburb and postcode of the place of business), and the GST registration status.

### **Should ABN holders have to renew their ABNs? If so, how often? Should the same renewal period apply for all ABN holder entity types?**

An ABN renewal process should not be necessary if ABN holders are required to confirm their status every quarter.

### **What consequences should apply - and when - if an ABN holder does not renew their ABN on time? This could include late fees, a change in ABN status published on ABN Lookup, eventual suspension and/or cancellation.**

The ABN could be suspended if an individual or entity fails to communicate with the ATO. It should only be cancelled in extreme circumstances.

### **Are ABN registration and renewal fees the most appropriate way to fund an ABN renewal process? Are there other options that should be considered?**

An ABN renewal process would be unnecessary if the suggestion above is adopted as the ABN database would be updated in real time for each ABN every quarter.



**If a fee is thought to be the most appropriate option, should the same registration and renewal fees apply for all ABN holder entity types? What ABN fee arrangements should apply to entities that are also subject to company or business name fees?**

As discussed in our submission, the proposal for an ABN renewal fee should not be entertained.

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