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Submission from the Tax Justice Network Australia on Registry Fees 21 December 2018

The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make submission in response to the *Modernising Business Registers Program Review of Registry Fees* consultation paper.

1. Do you agree that the principles of making fees simpler, easier to understand and more equitable are the best guide to review registry fees? Should any other principles be considered?

In addition to the principles of making fees simpler, easier to understand and more equitable, equally important is to set fees to drive desirable behaviour. On that basis, for example:

- Fees for registering a company should be set high enough to try and deter people setting up complex webs of shell companies to conceal the nature of the business or other unethical purposes;
- Late fees should be structured to encourage people to keep the information about their corporate entity up-to-date; and
- Search fees should be kept low so that people use the registry to check who they are doing business with and to encourage bodies that have anti-money laundering obligations to do thorough due diligence on corporate entities they are dealing with. Ideally searches for electronic records should be free, like a number of other business registries around the world.

The fee structure should also consider cost recover for the work the registering authority needs to do. For example, it would be desirable if business registration fees funded the registration body to do adequate due diligence on the people registering a business. ASIC has stated that currently it does not check the accuracy or truthfulness of information provided on registering a business, so in our experience it is easy for people to register companies at false addresses, with straw directors, with false names and use false dates of birth.

Reforming registration and review fees

2. How could the registration and annual review system be reformed to make it simpler and more equitable?

The registration fee should be a simple flat fee set high enough to deter people from registering webs of companies that are not actually conducting any real business. At the moment the fees are too low to achieve this purpose. Members of TJN-Aus have encountered people that have set up a large number of companies where the purposes of those companies is unclear.

3. Do you support the introduction of differentiated rates of annual review fees between small and large businesses?

The TJN-Aus is supportive of the annual review fees being lower for small business than for a large business, using existing definitions of these entities.

3.1 If yes, what definition of small business do you support and how should the notification of small business status occur?

Small business should be defined by the ATO definition of small business, which is defined as a business entity with aggregated turnover of less than \$10 million in an income year.¹

Simplifying late fees

4. How could the late fee system be reformed to incentivise compliance and make the system simpler and more equitable?

Given that late fees constituted \$118 million in the 2017-2018 financial year suggests substantial levels of non-compliance in filing on time. This suggests that reforms are needed to both make it easier for businesses to file and report, as well as increasing the late fees to provide a higher financial incentive to file on time.

5. Do you support the introduction of interest on late payments rather than the late payment fee?

The TJN-Aus supports the introduction of interest on late payments, but this needs to be set at a level that will incentivise compliance.

5.1 If yes, what interest rate should be charged and when should it be applied?

The interest rate should be set to apply starting immediately a lodgement, review or payment is late. A number of the businesses that this applies to impose late fees on the people using their services the moment payment by the customers is late. It seems reasonable the same should apply to businesses. A business should be able to apply to have a late fee waived if it can show there was a legitimate reason beyond its control as to why the lodgement, review or payment was late.

6. Do you support lowering late payment fees but increasing late lodgement fees, or eliminating late review fees?

Consistent with the principle that fees should be structured to drive the desired behaviour, it would be desirable that the fees for late lodgement be much higher than for late payment, as the need for accurate up-to-date information in the registry is highly desirable for the functioning of the Australian economy and to assist other people and businesses in doing due diligence on who they are doing business with.

6.1 If yes, by how much should the fees change?

In interest rate applied for late lodgement fees should be triple the rate that applies for late payment. A late lodgement fee should be three times the fee applies for late payment.

Simplifying or removing search fees for digital interactions

7. How could search fees be reformed to make data more accessible, the system simpler and more equitable?

The TJN-Aus believes that basic searches of electronically held records on the business registry should be free, to encourage people to use the registry in doing due diligence on who they are doing business with and to assist in optimising investment decisions people make. A fee should still apply where paper records exist, due to the costs involved in dealing with paper records for the registry authority.

It is particularly inappropriate that ASIC currently sells information that is publicly available elsewhere for free and does not inform buyers that is the case. We note this happens when users want to purchase the accounts of a company and ASIC sells them the annual report of the company for \$40, which is available for free on the company's website. There is no warning that this is the document that will be sold.

Based on the work by TJN globally on the Financial Secrecy Index the following governments allow accounts of companies on the business registry to be accessed for free:

- The UK;
- Belgium;

¹ <https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Definitions/>

- Slovenia;
- Norway;
- Bulgaria;
- Denmark;
- New Zealand;
- Slovakia; and
- The Czech Republic.

The Israeli Government allows for the free access to the accounts of listed companies, but the accounts of private companies are not available at all.

The following governments have low charges for accessing accounts of companies on the business registry:

- Ireland (€2.50)
- Luxembourg (€2.93)
- Italy (€2.50)
- Sweden (\$8.60)
- Finland (€6.20)
- Estonia (€2)

The Australian Government should join these governments in making the Australian business registries more accessible by making access free for electronic searches.

An infrastructure fee for users of the modernised register services

8. Should an infrastructure fee be introduced if it is payable by users of an API or comparable technology?

The TJN-Aus supports an infrastructure fee for API users who on-sell data or make financial gain from accessing data stored on the register. By contrast Open Corporates provide API information for free, although they do charge an annual subscription for data handling services.

9. Should funds raised from an infrastructure fee be set aside to cover the costs of upgrading the registry and/or a testing environment?

The TJN-Aus is supportive of at least part of the funds raised from an infrastructure fee being set aside to cover the costs of upgrading the registry and on ensuring the information on the registry is accurate. It is unreasonable to charge a fee if the register authority takes no steps to verify the information on the registry is accurate.

The fee seems a reasonable way for the funds to be provided for this purpose, otherwise the experience seems to be that investment to upgrade the registry to make sure it is useable and to ensure the accuracy of the information in the registry is neglected due to the other demands on government revenue.

10. Is the Document Verification Service charging model appropriate, or is there an alternative model that should be considered?

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Background on the Tax Justice Network Australia

The Tax Justice Network Australia (TJN-Aus) is the Australian branch of the Tax Justice Network (TJN) and the Global Alliance for Tax Justice. TJN is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels. The Tax Justice Network aims to:

- (a) promote sustainable finance for development;
- (b) promote international co-operation on tax regulation and tax related crimes;
- (c) oppose tax havens;
- (d) promote progressive and equitable taxation;
- (e) promote corporate responsibility and accountability; and
- (f) promote tax compliance and a culture of responsibility.

In Australia the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union
- Australian Manufacturing Workers Union
- Australian Nursing & Midwifery Federation
- Australian Services Union
- Australian Workers Union, Victorian Branch
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability and Research
- Community and Public Service Union
- Electrical Trades Union, Victorian Branch
- Evatt Foundation
- Friends of the Earth
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation
- Jubilee Australia
- Maritime Union of Australia
- National Tertiary Education Union
- New South Wales Nurses and Midwives' Association
- Oaktree Foundation
- Oxfam Australia
- Save the Children Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- Social Policy Connections
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- UnitedVoice
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld

- Victorian Trades Hall Council
- World Vision Australia