

The ALP's proposed Public Registry of Ultimate Beneficial Ownership (PRUBO) – what are the likely practical implications for tax and other professionals?

Australia's recent Federal Election campaign included only minimal tax-related announcements, with the majority contained in the ALP's April 2022 policy release entitled '[Labor's Plan to Ensure Multinationals Pay Their Fair Share of Tax](#)' (2022 ALP Policy Announcement). Most measures announced are indeed relevant to large multinational groups (i.e. entities within groups with approximately \$AUD 1 Billion or more in accounting revenue) and have been included in detail in our client training sessions since last week. Importantly, however, some policy measures of relevance to both large and small entities are also included in this announcement.

One 2022 ALP Policy Announcement measure expected to have a much broader application (i.e. to both large and small companies and their related entities and individuals) is the proposed '**Public Registry of Ultimate Beneficial Ownership**' (PRUBO). Brief details of the ALP's proposed PRUBO are included towards the end of the 2022 ALP Policy Announcement, with implementation currently proposed to be from 2023.

What is a Public Registry of Ultimate Beneficial Ownership (PRUBO)?

A PRUBO is broadly designed to make publicly available (e.g. to banks, journalists, members of the general public etc.) the true ultimate individual beneficial owners/controllers/profit recipients of the majority of companies (large and small) which are either:

- incorporated in Australia; or
- otherwise linked to Australia (e.g. an offshore incorporate company with an Australian Permanent Establishment, substantial Australian borrowings etc.).

The UK implemented its own version of a PRUBO via domestic legislation in 2016 (see Guidance Tip at page 6). Assuming that the UK's approach is broadly followed in Australia, the registry data would most likely be maintained and made publicly available online by the ATO or ASIC. The UK's statutory guidance contains only limited exception rules and it is currently expected that a similar approach is most likely to be followed under future Australian legislation. At release time (and subject to future legislation details) an Australian PRUBO is therefore likely to impact both small and large entities, their direct and indirect stakeholders and professional advisers, most likely from 2023 onwards.

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A PRUBO is one of numerous recommendations of the international [Financial Action Taskforce \(FATF\)](#). FATF member countries include Australia as well as 38 further jurisdictions including, but not limited to, the UK, USA, Singapore, China, Canada, Japan, New Zealand, Ireland and Israel. It is noted that Australia's FATF membership meant it was always likely that an Australian PRUBO would eventuate at some point, regardless of the Federal Election outcome. The ALP's specific inclusion of the PRUBO in its 2022 ALP Policy Announcement suggests, however, that the issue is high on the new ALP Government's legislative agenda. This therefore makes an Australian PRUBO more likely to occur in the near term (likely commencement will be from 2023 based on the announcement).

While originally designed to combat illegal money laundering and terrorist financing activities, the ability to trace '*ultimate ownership*' using a PRUBO can also be used for numerous more commonplace purposes by banks, regulatory authorities, the press and more (e.g. for State and Federal tax, ASIC and Foreign Investment Review Board ([FIRB](#)) compliance activity, insolvency and Family Court tracing of ownership through interposed entities and more).

How is an Australian PRUBO likely to operate?

The following diagram, commentary and online recording excerpt have been adapted from existing UK PRUBO Statutory Guidance as well as the more recent FATF Recommendation 24 (see resources in the Guidance Tip at page 6) to introduce the PRUBO concept and to illustrate the broad features which are considered most likely to apply when an Australian PRUBO is implemented by future domestic legislation (currently expected from 2023).

IMPORTANT NOTE

Apart from a brief paragraph in the 2022 ALP Policy Announcement, there is currently no draft legislation or other detailed information available at the time of release regarding the ALP's proposed Australian PRUBO. Given, however, that both Australia and the UK are FATF members, the ALP has committed to a Public Registry approach (as opposed to lesser alternative options provided by FATF) and the ALP has drawn various other measures noted in its 2022 ALP Policy Announcement from existing UK, US and European legislation, the diagram and commentary from page 3 below has been adapted from existing offshore legislation and FATF guidance. It should be noted that the relevant percentages, look through requirements and exceptions may vary under the final Australian PRUBO legislation. Inclusion of some offshore-based companies and indirect recipients of profit are likely to be additional elements of Australia's PRUBO.

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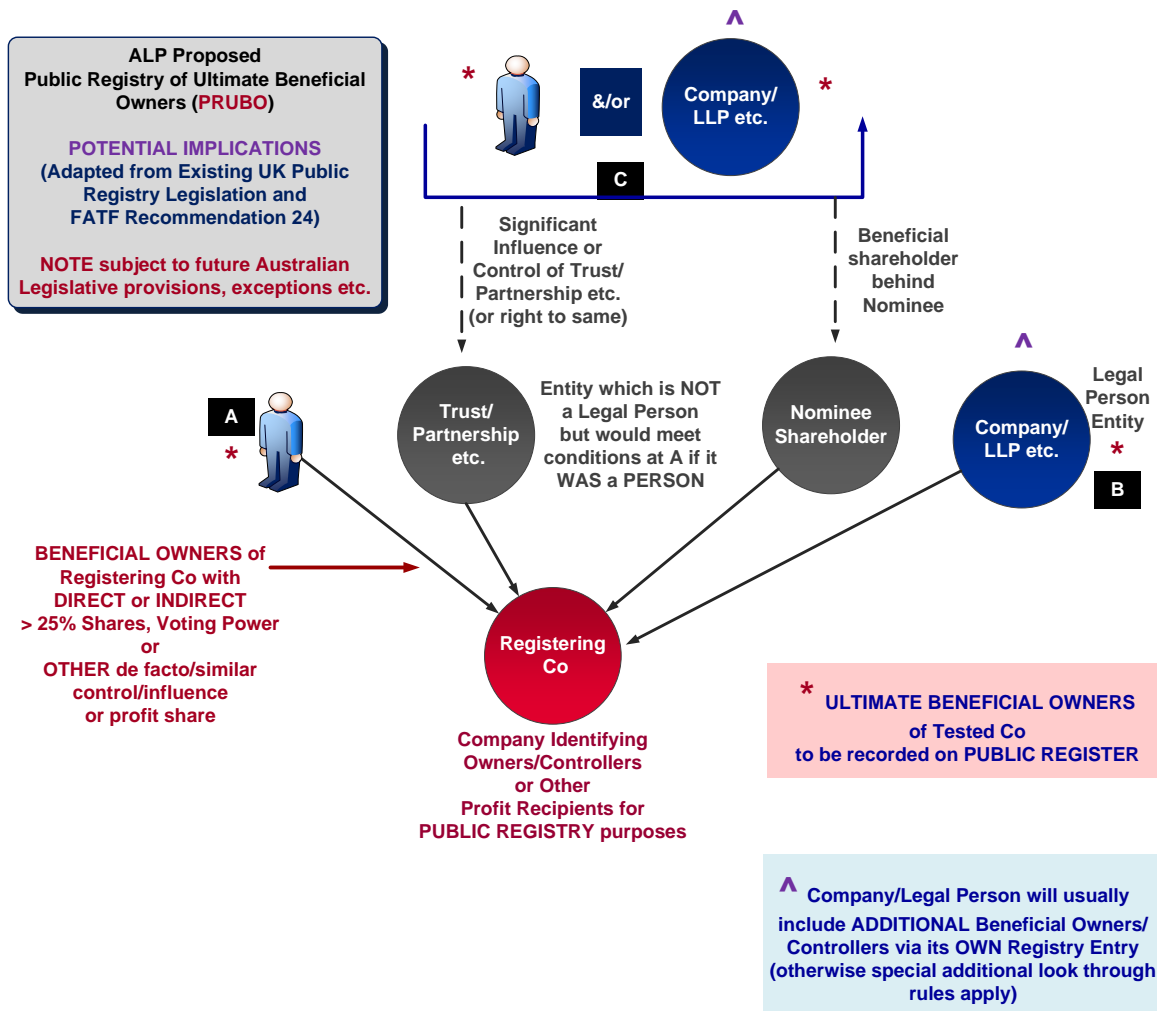
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To watch Tax Astute Training's online explanation of the below diagram, please use this link:

<http://taxastute.adobeconnect.com/p6ipmqswy1jg/>

This link connects with the Adobe Connect website.

(Adobe are a trusted software developer and are the makers of PDF).



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The '**Registering Co**' shown above represents a small or large company (either Australian incorporated or with sufficient links to Australia via assets held, presence of employees, a Permanent Establishment etc.) which is required to register its ultimate beneficial ownership on a future Australian PRUBO. **Individuals or 'legal person' entities** marked with an * represent the ultimate beneficial owners which are likely be recorded on the PRUBO in respect of Registering Co. Identifying the information to be reported on the PRUBO for Registering Co is likely to broadly involve the following steps:

- Initially, '*Beneficial Owners*' of Registering Co (e.g. the individuals or companies at A and C and/or the trustee/partnership or nominee stakeholders shown) must be identified based upon factors such as:
 - > 25% shares or voting power held - it is noted that the UK uses > 25% for its shareholding/voting power purposes although FATF Recommendation 24 notes that 25% is a maximum possible percentage for PRUBO control (i.e. the Australian percentage may be lower than 25%); or
 - via other de facto significant influence/control over the company (including rights to control/influence which may not have been exercised) and/or other rights to company profits (whether the relevant rights are exercised or not).

A full analysis of the complex existing UK rules and exceptions behind this initial step and further issues such as special rules for LLP's are beyond the scope of this Tax Snapshot. It is noted, however, that some '*beneficial owners*' will be simply identified via share registry details whereas detailed legal analysis of the company constitution and circumstances may be required for some scenarios involving de facto control, significant influence etc.

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- Once various beneficial owners/controllers have been identified using the above factors, the individuals or '*legal person*' entities which are likely to be reported on the PRUBO for Registering Co (see * in the diagram) can be identified as follows:
 - any **individuals shown at A** - it is noted that the existing UK legislation relating to > 25% shares held/voting power usually requires reporting based on direct interests held by the individual although there are some special rules which may include indirect individual beneficial owners under the UK legislation. Additionally, de facto control/profit share indicators may also result in PRUBO inclusion; and
 - any company/limited liability partnership (**LLP**) or other entity which qualifies as a '**legal person**' as shown at **B** and has similar interests in Registering Co to the individuals at A (see also the Important Note below).
- Where the initial beneficial ownership noted above is held by a **trust or partnership** (or any entity which is NOT a legal person) or by a **nominee shareholder**, a '**look through**' treatment **will apply to identify at C** any individuals or companies (or other legal persons) with a significant influence or control over the trust/partnership etc. (or the beneficial shareholder behind the nominee) for PRUBO reporting purposes in relation to Registering Co. It is noted that the UK provisions can also involve '*looking through*' complex chains of entities.

IMPORTANT NOTE

As indicated with a [^] in the diagram above, under the UK PRUBO Legislation, companies (or other '*legal person*' entities) which need to be reported as ultimate beneficial owners of Reporting Co on its PRUBO (i.e. at B or C above) will generally need to undertake their own PRUBO reporting process (i.e. the above process and reporting will, in turn, apply to those '*upstream*' companies with a beneficial interest in Registering Co). As a consequence, if Registering Co reports another company (or LLP or other legal person entity) as one of its beneficial owners, then additional individual and company '*ultimate beneficial owners*' will ultimately be reported either:

- through the reported '*beneficial owner*' company (or similar) needing to undertake its own PRUBO reporting process; or
- through special '*look through*' rules (broadly similar to the process shown at C above) which currently apply in the UK if a '*beneficial owner*'/upstream company is not required to report on the UK version of the PRUBO (e.g. due to an exception, lack of connection to the UK etc.).

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Why is it important for tax and other professionals to understand the proposed PRUBO?

Tax and other professionals should understand the future implications to anticipate:

- future corporate registry initial and ongoing compliance needs to establish PRUBO information and changes to it over time in order to avoid future PRUBO penalties; and
- the implications arising from State and Territory Government, ATO, FIRB and similar use of the future publicly available data.

Anticipating the forthcoming PRUBO is also likely to be particularly important where a restructure or new structure is being implemented and the privacy of certain individuals behind the structure is a desired feature. In brief, strategies which may currently be effective to protect individual privacy (e.g. nominee shareholdings, receipt of profits through a chain of entities including trusts) may ultimately become ineffective, depending on the final form of the Australian PRUBO legislation and any exceptions which may be provided.

While initial implementation of an Australian PRUBO is likely to involve complexity and the need for significant legal and other advice for some companies, it is also noted that data from the UK suggests that companies which are subject to the established UK version of the PRUBO do not find ongoing compliance to be onerous 6 years after implementation in the UK.

GUIDANCE TIP

Further details of some of the source materials likely to form the basis for a future Australian PRUBO see:

- The recently updated Financial Action Task Force (**FATF**) Public Statement and FATF Recommendation 24 – see <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/r24-statement-march-2022.html> and <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> respectively.
- The UK Government Guidance page for identifying 'People with significant control' (the UK version of an 'ultimate beneficial owner') – see <https://www.gov.uk/guidance/people-with-significant-control-pscs>.

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WANT MORE DETAILS?

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- Tax Astute Online or Face to Face/Hybrid Training Seminar;
- Tax Astute Training Seminar Reference Notes; and
- Tax Astute Training Online Multimedia Recording.

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