

28 July 2021

Mr Paul McCullough
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The Treasury

By email: Paul.McCullough@treasury.gov.au

Cc: Jacky Rowbotham, Assistant Secretary, Treasury
Deepti Paton, Treasury
Mark Muir, Treasury
Ian Klug, Chair, Tax Practitioners Board
Michael O'Neill, CEO/Secretary, Tax Practitioners Board
Janette Luu, Tax Practitioners Board
Hoa Wood, Deputy Commissioner, ATO

Dear Paul

Implementation of the Tax Practitioners Board Review Final Report Recommendations

Following your update at the inaugural meeting of the Tax Practitioners Board (TPB) Tax Practitioner Governance and Standards Forum (TPGSF) on 6 July 2021, the external members¹ of the TPGSF (**the external members**), seek your consideration of the following issues of common interest related to the implementation of the recommendations made in Tax Practitioners Board Review Final Report Recommendations (**the Final Report**). This has been informed by a further verbal update provided by Deepti Paton, Mark Muir and Janette Luu on 16 July 2021 and emails from the TPB to the TPGSF External Co-chair.

The recommendations, when taken in their totality, have potentially significant impacts on the regulation of tax practitioners. We believe that it is critical that their implementation is carefully managed to ensure that the intended outcomes are achieved without major disruption to the vast majority of tax practitioners who provide professional and high-quality services to their clients. As such, we greatly value ongoing dialogue with Government, Treasury and the TPB to ensure that the views of the external members, as representatives of the tax profession, inform and are reflected in the details of the legislative and administrative responses.

At the TPGSF meeting, we expressed the concern that several recommendations had proceeded to drafting without further discussion with the external members. The specific issues that arise are as follows.

Recommendation 2.1(a)

Concerns have previously been raised with respect to the conflation of the respective roles of the TPB and ATO. The introduction of words such as "community confidence in the integrity of the tax and superannuation system" into the Object of the *Tax Agent Services Act 2009* (TASA) diverts the TPB's purpose from one of ensuring appropriate standards of professional and ethical conduct in relation to the provision of tax and BAS agent services to one of being a co-custodian of the tax and superannuation system.

We would seek that the wording of any proposed amendment to the TASA's object:

1. focus on consumer protection
2. be clearly distinct from the role and purpose of the ATO

¹ The external members are (in alphabetical order): Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, Corporate Tax Association, Financial Planning Association of Australia, Institute of Public Accountants, Law Council of Australia, SMSF Association, The Institute of Certified Bookkeepers and The Tax Institute.

3. reinforce the role of the TPB as the regulator of tax practitioners
4. avoid using the words “integrity of the tax and superannuation system” because they are likely to be misinterpreted as involving some kind of duty to the revenue.

Recommendation 4.7

The TPB has advised that the implementation of this recommendation will result in the merging of the annual declaration and triennial registration process. They state that, “the annual declaration would cease upon the commencement of annual registration, because the matters being addressed by an applicant in their renewal are the same matters that they address in the annual declaration process”.

As such, we understand the changes experienced by tax practitioners would be confined to:

1. A shift to annual instead of triennial payment with fees increased on 1 July each year by the consumer price index adjustment
2. A shift to annual reporting of eligibility matters not included on the annual declaration, such as relevant experience and voting membership of a registered professional association.

However, we hold concerns that the implementation of certain other recommendations will lead to future renewals being contingent on the TPB’s satisfaction with the information provided on the declaration. Currently, where the TPB may hold concerns in relation to information contained in the annual declaration, the onus is on the TPB to investigate the tax practitioner and for the Board to determine the appropriate sanction, if any. If this process is replaced by a combined renewal-declaration process, we would seek to ensure that the this does not provide the TPB with the power to deny re-registration without having to prove that a sanction should be imposed.

We highlight that recommendations 4.4, 4.6 and 4.5 have the potential to increase registration requirements with potentially significant consequences, as follows:

- Recommendation 4.4 will require company and partnership tax practitioners to demonstrate appropriate governance arrangements that show who is accountable for the delivery of tax agent services as part of the eligibility requirements for registration.

This introduces significant risks for practices given that the ability for their firm to continue operating becomes dependent on the TPB’s annual assessment of whether they have sufficiently demonstrated appropriate governance arrangements.

If progressed, our view is that standards related to governance arrangements can be addressed without necessarily linking it to registration, particularly so when it becomes a potentially onerous annual requirement with an uncertain outcome.

- Recommendation 4.6 will require the declaration of any close associates and/or employees affected by the fit and proper events in the TASA². We understand that the risk sought to be addressed by this recommendation is the behaviour where former disqualified or sanctioned practitioners are employed or engaged by another registered tax practitioner. We support efforts to address this risk, however we do not necessarily agree that the proposed response is appropriate given the potential burden on compliant practitioners. Our view is that the TPB can monitor and deal with deregistered agents with their existing powers.

Similar to the impact of recommendation 4.4, this recommendation would result in an annual requirement to undertake an intrusive and time-consuming process across their practice and close associates. We have previously noted the serious concerns we hold about the legality, equity and

² We assume that recommendation 4.6(b) related to the declaration of the engaged persons listed in the proposed unregistered practitioners register will not proceed, given that the Government response to recommendation 8.1(b) did not support the creation of an unregistered practitioners register.

practicality of this proposal, but if progressed, this will significantly increase the compliance burden associated with registration.

We also draw attention to the fact that while the Final Report made reference to the Legal Profession Uniform Law in Victoria and New South Wales as a basis for legislative design³, we do not agree that the proposed amendment would create a level playing field with lawyers. This is because the “close associates” rules for legal practitioners do not affect a legal practitioner’s practising certificate, whereas the proposed TASA amendment appears to directly affect a tax agent’s registration.

Further, there is a lack of clarity as to the consequences for a tax practitioner who declares close associates and/or associates affected by the fit and proper events. It could be presumed that such a declaration may lead to non-renewal of the registration which may deprive the tax practitioner of their livelihood, even where they can demonstrate that the risks are managed and controlled.

- Recommendation 4.5 connects to recommendation 4.6 in that it calls for amendments to the fit and proper person test in the TASA. To the extent that the fit and proper person test is modified, the outcomes from this recommendation will determine the extent to which tax practitioners will need to investigate their close associates and/or employees in order to make the declaration as part of their annual renewal of registration.

Additionally, recommendation 4.5 has much wider ramifications and we would like detailed further discussions on any proposal to amend the fit and proper person test, which lies at the heart of registration and disciplinary provisions.

Recommendation 5.1

We anticipate that the draft legislation for this recommendation will introduce a new power in the TASA for the relevant Minister to supplement the Code of Conduct through a legislative instrument to create a “dynamic” code that remains contemporary.

While the Government's response makes clear the expectation that the TPGSF will first consider any proposed changes, we note that the TPGSF does not have decision-making authority nor veto power and that final decisions are matters for the TPB Board⁴. We acknowledge that the legislative instrument will be subject to scrutiny by the Senate Standing Committee for the Scrutiny of Delegated Legislation, however we do not believe that this is the same as being subject to a vote by Parliament. We therefore hold concerns that the Code of Conduct can be supplemented at the will of future Ministers, potentially introducing prescriptive, onerous and/or poorly defined rules that unnecessarily introduce uncertainty, complexity and cost.

We are available to meet with you to progress the matters in this submission at your earliest convenience. The external members also commit to providing our views during the public consultation period.

We also include our understanding of the status of the recommendations in the Attachment and would appreciate confirmation that this is correct. This will assist the external member in engaging with Treasury and the TPB throughout the implementation process.

Please contact Elinor Kasapidis, TPGSF External Co-chair and Senior Manager Tax Policy at CPA Australia, on 04466 675 194 or elinor.kasapidis@cpaaustralia.com.au in the first instance to discuss further.

³ Paragraph 4.44, Close associates, **Independent Review of the Tax Practitioners Board Final Report**, 31 October 2019

⁴ See paragraph 3 of the TPGSF Charter.

Yours sincerely



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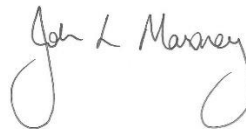
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Status of recommendations as at July 2021 - to be confirmed by Treasury

Before Parliament

No.	Description	Legislative or administrative	Status	Comments
7.1	Tax (financial) advisers moved to ASIC	Legislative	Bill before Parliament	

At drafting stage

No.	Description	Legislative or administrative	Status	Comments
2.1	Update object clause of the TASA	Legislative	Drafting	
4.3 (a)	Flexibility to accept different types and periods of experience as being relevant	Legislative	Drafting	Giving the power to set requirements via legislative instrument
4.7	Annual registration period with pro rata fees	Legislative	Drafting	
4.9	Only intermediaries not regulated by another Government body required to register with the TPB and TPB to be able to exclude certain other services	Legislative	Drafting	Giving the power to set requirements via legislative instrument
5.1	Minister given the power to supplement the Code of Professional Conduct	Legislative	Drafting	Giving the power to add requirements via legislative instrument
6.2 (a)	Investigations can commence or continue when registration terminated, surrendered or not continued	Legislative	Drafting	

Being progressed administratively

No.	Description	Legislative or administrative	Status	Comments
3.2	CEO accountable to the Board but not statutory appointment and formal MoU with ATO	Administrative	Inter-agency discussions	
3.3	Publish joint TPB-ATO plan and establish TPGSF and Charter of Tax Practitioner Governance	Administrative	Inter-agency discussions	
3.4	TPB-ATO information sharing and co-operation	Administrative	Inter-agency discussions	

4.6	Declaration of close associates and unregistered practitioners as part of registration	Administrative	Early stages of consideration	
5.2	LPP protocols adapted for tax practitioners	Administrative		LPP protocols being finalised with ATO and next step will be application to tax practitioners
8.1 (a)	Expansion of details published on the register	Administrative	Early stages of consideration	

Pending consultation

No.	Description	Legislative or administrative	Status	Comments
4.3(b)	BAS agent experience requirements	Legislative	Consultation to commence	
6.1	Increased sanctions powers for the Board	Legislative	Consultation to commence	

Subject to other activities

No.	Description	Legislative or administrative	Status	Comments
3.1	TPB established as a separate agency	Legislative	Pending	Charging Arrangements Review still underway
4.1	Primary qualification requirements	Legislative	Pending	TPB Education Working Group Review still underway
7.2	Review of advice provided by accountants in respect of superannuation	Legislative	Pending	Will be part of Recommendation 2.3 of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Future consultation

No.	Description	Legislative or administrative	Status
3.5	TPB defined as an eligible recipient under tax whistleblower laws	Legislative	Future consultation
4.2	Accreditation of recognised professional associations	Legislative	Future consultation

4.4	Governance requirements for company and partnership tax practitioners	Administrative	Future consultation
4.5	Amend fit and proper person test, 5-year period and spent convictions	Legislative	Future consultation
6.2(b)(c)	TPB information gathering prior to commencement of investigation and removal of six-month timeframe	Legislative	Future consultation
6.3	Publication of further details of sanctions	Legislative	Future consultation

No further action

No.	Description	Comments
1.1	TPB retained as statutory authority to regulate tax practitioners	No action required by the recommendation
3.6	(a) TASA requires the Board to include a community member (b) Non-Board members can make appealable decisions	No action required by the Government's response
4.8	Review issue of Tax Clinics and TPB	No action required by the Government's response
6.4	Introduce ATO-administered administrative penalty regime for practitioners	Any action contingent on effectiveness of 6.1
6.5	Extension of safe harbour penalties to recklessness or intentional disregard	Any action contingent on whether 6.4 is progressed
8.1(b)(c)	Creation of unregistered tax practitioner register and removal of register time limits	Not supported by Government
8.2	TPB register included on the Modernising Business Register	Not part of current MBR program