

Janette Luu
Acting Assistant Secretary
Policy, Governance and Reform
Tax Practitioners Board
Email: tpbsubmissions@tpb.gov.au

14 September 2022

Dear Janette,

Consultation on draft guidance – Exposure Draft TPB Information Sheets TPB(I) D48/2022, TPB(I) D47/2022 TPB(I) D49/2022 and D50/2022

CPA Australia, Chartered Accountants Australia and New Zealand (CA ANZ), the National Tax and Accountants' Association (NTAA) and the SMSF Association make this joint submission in response to the four draft guidance documents issued for public consultation by the Tax Practitioners Board (TPB).

What is a tax or BAS agent service?

The TPB's draft guidance provides tax practitioners and those potentially providing tax or BAS agent services with greater clarity of the TPB's interpretation of sections 90-5 and 90-10 of the *Tax Agent Services Act 2009* (TASA).

We support the proposed form and wording of [Exposure Draft TPB Information Sheet TPB\(I\) D48/2022 - What is a tax agent service?](#) (TPB(I) D48/2022) and [Exposure Draft TPB Information Sheet TPB\(I\) D47/2022 - What is a BAS service?](#) (TPB(I) D47/2022). The exposure draft information sheets and examples are practical and clear.

In relation to item number 45 – 'Providing non-tax advice relating to salary sacrificing arrangements and salary packaging' in TPB(I) D48/2022 and item 31 in TPB(I) D47/2022, we seek to better understand the distinction being sought to be made with this example. Item 17 in TPB(I) D48/2022 states that advising on salary sacrificing arrangements and salary packaging is a tax agent service and **conditional registration** is available to salary packaging providers. Further clarity with regards to the types of non-tax advice that might be provided would be appreciated.

We also note the increasing level of discussion in the profession regarding the ability of tax practitioners to advise on state taxes and the interaction with the TASA, particularly following the inclusion of the tax practitioner designation in the design of state based COVID business support payments.

We suggest that the guidance clarify that providing advice on state taxes is not a tax agent or BAS agent service and explain the restriction of the TASA to federal taxation laws and the interaction with the Code of Conduct. This could be based on previous guidance issued by the TPB in on [Frequently asked questions – COVID-19 state and territory assistance packages](#).

What is a fee or other reward?

We support the proposed form and wording of [Exposure Draft TPB Information Sheet TPB\(I\) D49/2022 - What is a fee or other reward?](#). The information and examples are practical and clear.

Confidentiality of client information

We thank the TPB for updating [Exposure Draft TPB Information Sheet TPB\(I\) D50/2022 - Code of Professional Conduct – Confidentiality of client information](#) (TPB(I) D50/2022) following discussions with CPA Australia in relation to the non-compliance with laws and regulations (NOCLAR) requirements set by the Accounting Professional and Ethical Standards Board's (APESB) standards, and the interaction with the TASA and the tax whistleblower laws contained in the *Taxation Administration Act 1953*.

The new guidance contained in paragraphs 29 to 41 is clear, and the clarification at paragraph 40 that states, "a disclosure that is contrary to a law or regulation, such as Code item 6, is not required or permitted under the NOCLAR framework" is particularly helpful.

The examples are also useful in highlighting that the whistleblower protections ensure that a tax practitioner will not be subject to any findings or sanctions under the TASA, specifically Code item 6, for disclosing confidential information to the Commissioner.

Further comments

In relation to the emerging range of digitalised tax services provided by digital service providers (DSPs) entering the market, we note that they do not appear to currently fall within the scope of the definition of tax or BAS agent services, nor are they subject to the client confidentiality requirements.

The prior Inspector-General of Taxation (IGoT) raised this issue in his 2018 report on the [Future of the Tax Profession](#). Chapter 2 provides an excellent outline of the anticipated technological developments that are driving digital transformation of the tax system and its future administration. Chapter 6, in particular sections 6.70 and 6.71, is especially relevant as it examines the future challenges impacting the role of the TPB in regulating the tax profession, as many non-traditional tax service providers, including DSPs, enter the field of taxation services.

The TPB could consider future possible scenarios that are not covered in the present draft, such as:

- tax calculators such as those for cryptocurrency that identify transactions on the blockchain and could, in time, be automated to classify data with reference to their treatment under taxation laws
- evolving versions of accounting apps where data are automatically collected and classified for income tax, withholding or GST purposes, and where, in the future, they are transmitted directly into tax forms or ATO systems
- online automated digital services and standardised business reporting, such as those provided by some banks, that potentially include the calculation of a BAS return or other tax element without human oversight.

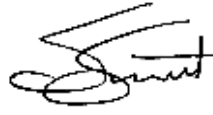
We recommend that the TPB monitors the market for tax services, closely considers the relevant parts of the IGoT's report and continues to work with the Government, Treasury and all stakeholders to ensure that consumer protections are well maintained as the environment evolves.

If you wish to discuss this submission, contact Elinor Kasapidis, Senior Manager Tax Policy on +61 466 675 194 or elinor.kasapidis@cpaaustralia.com.au in the first instance.

Yours sincerely,



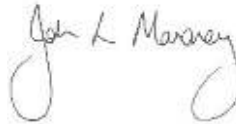
Dr Gary Pflugrath
Executive General Manager, Policy & Advocacy
CPA Australia



Simon Grant FCA
Group Executive – Advocacy & International
Chartered Accountants Australia and New Zealand



Geoff Boxer
CEO
National Tax and Accountants' Association



John Maroney
CEO
SMSF Association