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Director, Governance and Integrity Policy Unit  
Law Division  
Treasury  
Langton Crescent  
Parkes ACT 2600

Email: [pwcreponse@treasury.gov.au](mailto:pwcreponse@treasury.gov.au)

Dear Sir/Madam,

**SMSF ASSOCIATION SUBMISSION – TAX REGULATOR INFORMATION GATHERING POWERS REVIEW:  
CONSULTATION PAPER**

The SMSF Association welcomes the opportunity to provide this submission in response to the consultation paper on the reform of tax regulator information gathering powers. Regulators need to have the appropriate powers and information to allow them to meet the objectives of their respective remits. However, the extent of those powers should not extend beyond that remit.

We are concerned at the number of measures being introduced as a “response to PwC.” While the PwC matter has highlighted several concerns, the policy response must be balanced and ensure that it does not result in regulatory overreach.

The PwC case highlighted the need for significant improvements in inter-agency sharing of information and intelligence. This in turn provides opportunities for joint-agency investigations, case management which can be run in a more timely, effective, and efficient manner. Had this been in place while the PwC matter was on foot, the regulatory system, and cross agency engagement would have operated more efficiently and effectively. It is likely that this case would have been identified and addressed at a much earlier point in time.

We would caution on comparing the powers of one Government agency to another in isolation. First and foremost, the respective roles and remit of the regulators should be the guiding light on the powers that should be afforded to them. The expansion of powers should not of itself result in an expansion in remit.

Our responses to the questions raised in the consultation paper are included as an appendix to this letter.



If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

Peter Burgess  
Chief Executive Officer

#### **ABOUT THE SMSF ASSOCIATION**

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.



## Appendix: Consultation Questions

### Australian Taxation Office (Parts 2- 4)

#### *Civil Investigations*

*Are there gaps or issues that have not been identified in the ATO's existing formal powers for civil and administrative investigations?*

We are not aware of any specific issues regarding the Commissioners existing powers. They appear to be fit for purpose for the conduct of civil and administrative investigations.

*Should the minimum response period for an offshore information notice be reduced and if so, what would be an appropriate period?*

We would caution against a reduction in the 90-day period for the offshore information notices. Whilst there is a greater digitalisation of records, this does alter the requirement to obtain legal advice here in Australia and in the overseas jurisdiction to comply with and appropriately respond to the order. Time may be needed to identify and access the information requested and compile into a suitable format for delivery to the Commissioner.

If there are compelling reasons to warrant a reduction in the 90-day period, we would cautiously support. Any reduction in time must be reasonable and not punitive and would need to enable an application for an extension of time to be made.

Such a request must be granted where there are reasonable grounds. The provision must operate fairly and equitably. Noting that a balance must be struck between encouraging compliance versus any expanded enforcement powers.

#### *Criminal Investigations*

*What are the benefits or risks associated with expanding the ATO's investigation power to require the production of a documents in its investigations into tax-related criminal offences?*

*Having regard to other legislative regulatory regimes, should any further restrictions or limitations be placed on the ability of the ATO to require the production of documents in its investigations into tax-related criminal offences?*

We broadly support the expansion of the ATO's document production powers for tax-related criminal offences. The use of such powers should be subject to review to ensure that they are appropriately applied.

The broadening of these powers should not see an investigation commenced under the guise of an offence such as fraud to be used as a wedge to obtain an admission to a civil offence. There must be reasonable grounds that a criminal offence has been or are being committed.

*Should the ATO be able to independently receive stored communications while undertaking criminal investigations for the purpose of administering tax legislation?*

*If the ATO can receive telecommunications data and / or stored communications, would any additional oversight mechanisms or safeguards be appropriate?*



We acknowledge the desire of the Commissioner to access telecommunications data or stored communications to aid their investigations. We are concerned that this will capture personal and other information unrelated to the investigation. Information gathering of this nature puts at risk the privacy of those being surveilled, and other innocent parties. Because of these risks it is a power that should not be used lightly.

Where the criminal activity involves organised crime or sophisticated criminal schemes or syndicates, such investigations should be undertaken as a joint agency investigation including the Australian Federal Police. In such instances it would be appropriate that telecommunications data and other stored data can be accessed as part of that joint investigation.

#### *Assistance with Law Enforcement Agencies*

*Are there gaps or issues that have not been identified in the ATO's ability to gather information to support law enforcement agencies to investigate serious criminal offences perpetrated against the tax and superannuation systems, that are appropriate to consider further as part of this review?*

We are not aware of any gaps or issues that have not been identified.

#### **Tax Practitioners Board (Part 5)**

*What are the benefits or risks associated with expanding the TPB's investigation power to require the production of a document, or thing prior to commencing a formal investigation?*

*Having regard to other legislative regulatory regimes, should any further restrictions or limitations be placed on the ability of the TPB to require the production of documents for the purposes of administering the TASA?*

We broadly support the expansion of the TPB's investigation and document production powers. As a regulatory body, the TPB needs to have the powers necessary to fulfill its remit and meet broader community expectations. The TPB has shown to date, that despite its inherent limitations, its ability to be an effective regulator.

There must be reasonable grounds for the TPB to request information that crosses the threshold of the *Privacy Act 1988*. Noting that the outcome of any preliminary investigation may not necessarily lead to a formal investigation commencing.

The TPB plays a vital role in protecting the integrity of the system and the consumers who use it. To do this effectively, the TPB needs the ability to conduct reviews and gather information to risk profile certain individuals, firms, behaviours, or activities. Doing so will enable them to act in an effective, and timely manner, focusing resources where they are needed.

To ensure integrity in the application of any expanded powers, we would recommend that they are subject to review.