



21st November 2024

Tax Practitioners Board
GPO Box 1620
Sydney NSW 2001

Email: tpbsubmissions@tpb.gov.au

Dear Sir/Madam

SMSF ASSOCIATION SUBMISSION: TPB(I) D57/2024 FALSE OR MISLEADING STATEMENTS

The SMSF Association welcomes the opportunity to provide this submission in response to exposure draft *TPB Information sheet TPB(I) D57/2024 False or misleading statements* (D57/2024 ED).

The SMSF Association is generally supportive of the guidance in D57/2024. These new obligations are broad and have been contentious, and as such we appreciate the detailed guidance aiming to explain common words or phrases that are critical to both understanding and applying the obligations in practice.

However, there are two key concepts that are not discussed in either the Explanatory Statement to the Determination or D57/2024 being 'permit' and 'in any other capacity'. The SMSF Association recommends that these concepts are explained in D57/2024 and additional practical case studies are included to demonstrate the application of these concepts in practice

Our detailed responses to the consultation paper are contained in the Attachment.

If you have any questions about our submission, please do not hesitate to contact Keddie Waller, Policy Manager via email keddiewaller@smsfassociation.com

Yours sincerely,

Tracey Scotchbrook
Head of Policy and Advocacy



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.

TPB Information sheet TPB(I) D57/2024

Are there additional types of statements routinely made or prepared by registered tax practitioners (or under the direction of registered tax practitioners), that should be specifically addressed by the guidance (including case studies)?

The SMSF Association does not believe there are additional types of statements that need to be specifically addressed in the guidance, noting that the guidance does not limit the potential statements that could be captured under section 15 of the Determination.

Are there additional examples of further action in the public interest that tax practitioners should take in certain circumstances (paragraph 73)?

We do not believe there are additional examples of further action in the public interest that tax practitioners should take in certain circumstances. However, the obligation applies to statements made in any capacity, not just as a tax practitioner, and given this further, actions that demonstrate this fact should be considered for inclusion.

Are there additional examples of risks to the personal safety of registered tax practitioners, their family members or at risk staff members that should be listed at paragraph 123?

The examples of risks to the personal safety of tax practitioners and others are appropriate, noting that the guidance also makes it clear that the examples provided are not limited to those listed.

Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations apply practically? If so, what types of scenarios should be addressed?

Case study scenarios play an important role in demonstrating how obligations will apply practically.

We believe two further case study could be included.

First, where an employee, who is a tax practitioner, discovers that their employer, for example a company tax agent, has made false statements on behalf of a client.

The second is where an employer directs an employee, who is a registered tax practitioner, to make a false statement on behalf of a client. This could include verbal pressure by the employer to act as directed given the registered tax practitioner is an employee.



Are there additional practical considerations for registered tax practitioners relevant to the obligations in section 15 of the Determination that should be addressed in the guidance?

The Determination includes several broad and subjective terms that are not discussed in the Explanatory Statement, or D57/2024. These must be clarified to support tax professionals understand and comply with their statutory obligations.

Section 15 prohibits a tax practitioner from permitting someone else to make or prepare a statement that is false or incorrect or misleading. However, the concept of 'permit' is not explained in the Explanatory Statement to the Determination or D57/2024.

Paragraph 25 does note that 'permits' would include statements that a registered tax practitioner permits to be made by individuals working under the supervision and control of the registered tax practitioner. Does this mean that 'permit' requires the tax practitioner to 'officially allow' another individual they are supervising to prepare the statement to be captured under section 15? Or is the failure by the tax practitioner to prevent a false or misleading statement being made also considered to 'permit'?

Importantly, the obligations of section 15(1)(c) also apply to the tax practitioner 'in any other capacity'. We believe the guidance should explain this concept further, as previously noted, and include a case study to demonstrate how this statutory obligation may apply in practice.

The SMSF Association recommends that the concept of 'permit' and 'in any other capacity' are explained in D57/2024 and additional practical case studies are included to further demonstrate these concepts in practice.