



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) D60/2024 SUPERVISION, COMPETENCY AND QUALITY MANAGEMENT UNDER THE TAX AGENT SERVICES ACT 2009

The SMSF Association welcomes the opportunity to provide this submission in response to exposure draft *TPB Information sheet TPB(I) D60/2024 Supervision, competency and quality management under the Tax Agents Services Act 2009* (D60/2024 ED).

The SMSF Association is generally supportive of the proposed guidance on the obligations under section 35 of the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (Determination). We believe the inclusion of the specific case examples provide real-life context to understand and demonstrate what is appropriate supervision.

However, we believe that proposed guidance on the obligation under section 40 of the Determination is inadequate and will not support tax practitioners comply with their requirement to establish and maintain a system of quality management.

The actual process of establishing and documenting a quality management system that encompasses all the required elements can be a significant exercise. Whilst quality management systems are scalable based on a firm's size and the nature of the services provided, they nonetheless impose a disproportionate administrative burden for sole traders and small to medium entities (SMEs).

Given this, and the unfamiliarity of this obligation for tax practitioners who are not professional accountants, we recommend the TPB develop more comprehensive guidance to support sole traders and SME tax practitioners comply with their statutory obligation. The guidance should include specific considerations for the different elements relevant to tax practitioners with reference to Tax Agents Services Act 2009, the Code and the Determination.



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) D60/2024

Do you have any general comments regarding the guidance on the obligation under section 35 of the Determination, contained within paragraphs 73 to 77 of this draft TPB(I)?

The SMSF Association is generally supportive of the guidance on the obligations under section 35 of the Determination and note that the case examples provided in the Appendix provide further real-life context to demonstrate what is appropriate supervision.

We note footnote 46 states that the considerations listed have been drawn from guiding principles established by other regulators. This includes reference to the Financial Adviser Standards and Ethics Authority (FASEA). FASEA was a standard setting body and not a regulator, ceasing operation on 1 January 2022. We therefore recommend this reference is removed from the guidance.

Do you have any general comments regarding the guidance on the obligation under section 40 of the Determination, contained within paragraphs 78 to 86 of this draft TPB(I)?

The development of quality management systems is an effective mechanism to support both compliance with relevant obligations, including the Code of Professional Conduct (the Code), and ensure consistent quality advice and services are provided to clients.

However, the actual process of establishing and documenting a quality management system that encompasses all the required elements can be a significant exercise. Whilst quality management systems are scalable based on a firm's size and the nature of the services provided, they nonetheless impose a disproportionate administrative burden for sole traders and SMEs.

In addition to the standards issued by the Accounting Professional & Ethical Standards Board (APESB), the professional accounting bodies have issues tailored guidance and tools to support its members establish and document their own compliant quality management system.

Given this, and the unfamiliarity of this obligation for tax practitioners who are not professional accountants, we recommend the TPB develop more comprehensive guidance to support sole traders and SME tax practitioners comply with their statutory obligation.

The guidance should include specific considerations for the different elements relevant to tax practitioners with reference to Tax Agents Services Act 2009, the Code and the Determination.

The Tax Practitioner Governance and Standards Forum could play a key role in supporting the development of this guidance, including identifying and addressing the specific considerations relevant for tax practitioners who are sole traders or working in SMEs.



Do you consider the suggested internal controls outlined at paragraphs 79 and 80 of this draft TPB(I), in relation to quality management systems for large firms and individual tax practitioners respectively, to be adequate and appropriate? If no, please provide further detail including any additional suggestions of internal controls that should be included.

We believe that the internal controls listed are appropriate. However, several of the internal controls listed as examples for a large firm are just as relevant for individual tax practitioners including:

- regular training of on their obligations under the TASA when providing tax agent services, and
- risk management processes considering potential conflicts of interest prior to accepting new clients.

If the individual tax practitioner employs unregistered staff, contractors or the services of outsourcing service providers, then additional measures such as documented reporting lines and responsibilities to ensure staff duties are effectively segregated and prevent the incidence of fraud for example.

Further to our previous comments, we believe this example highlights the challenge many tax practitioners will be faced with when developing their own quality management system.

The SMSF Association recommends that detailed and specific guidance is developed to support tax practitioners comply with their obligations under section 40 of the determination.

Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations under sections 35 and 40 of the Determination apply practically? If so, what types of scenarios should be addressed?

We believe the case studies are relevant to demonstrating the expectations of supervision, yet only briefly touch on the elements of policy and procedures that would be relevant to a compliant quality management system.

This is to be expected given the concepts of supervision and sufficient numbers are not new for the tax profession yet having a documented and established quality management system is.

We reiterate our previous comments that documenting and establishing a quality management system is a significant undertaking, even for a sole trader, and further guidance and tools are essential to support tax practitioners comply with this obligation.