

BY EMAIL: TPBreview@treasury.gov.au

23 April 2019

Mr. Nick Westerink
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr. Westerink

Effectiveness of the Tax Practitioners Board and related legislation

Tax & Super Australia (TSA) is pleased to make its submission with regard to the Review of the Tax Practitioners Board and related legislation.

TSA is a member-based not for profit organization, with around 4,000 members, who are mainly tax agents. Our mission is to educate and empower our members in dealing with the Australian taxation and superannuation systems.

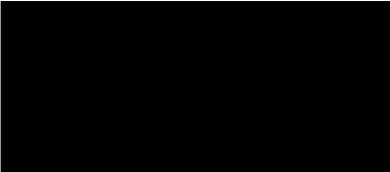
In addition, TSA's subsidiary called TAI Practitioners & Advisors Limited, is a company limited by guarantee and is a Recognised Tax Agent Association for the purposes of the *Tax Agent Services Act 2009*.

The comments in this submission should be read as being made on behalf of both TSA and TAI Practitioners & Advisors Limited.

We look forward to engaging further with The Treasury on this important review.

Please direct your queries and request for further information to Mr. John Jeffreys, Tax Counsel of TSA 

Yours sincerely,



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Review into the effectiveness of the Tax Practitioners Board and the operation of the Tax Agent Services Act 2009 (the Act) and the Tax Agent Services Regulations 2009.

Submission by Tax & Super Australia

This is the submission by TSA in relation to the effectiveness of the Tax Practitioners Board and the operation of the Tax Agent Services Act 2009 (the Act) and the Tax Agent Services Regulations 2009 (“the tax practitioners’ regime”).

General comments about the tax practitioners’ regime

The tax practitioners’ regime has been in operation for 10 years. It replaced the former regime where there were state boards of taxation. Our general comment concerning the tax practitioners’ regime is that it is working very successfully and has been a significant improvement on the former regime.

We particularly note:

- The professional manner in which the Tax Practitioners Board undertakes its role and administers the relevant legislation.
- The ease with which the registration of tax agents occurs.
- The maintenance of standards within the tax profession, including the need for tax practitioners to maintain their expertise by engaging in professional development and keeping records of this.
- The promotion of the tax agent designation by the Tax Practitioners Board.
- The way in which the Tax Practitioners Board follows through on complaints about tax agents.

It is the conclusion of TSA that the changes brought about by the tax practitioners regime has been a positive one and has helped to assist the integrity of the tax profession in the eyes of the general public. Other comments made in this submission should be seen in light of this general opinion that TSA has with regard to the tax practitioners’ regime.

The independence of the Tax Practitioners Board

TSA believes that it would be in the best interests of tax agents if the Tax Practitioners Board was seen to be completely independent of other organisations and, particularly, the Australian Tax Office (“ATO”). In our view, it is important that the Tax Practitioners Board not be seen as, in effect, an arm of the ATO. We would question whether this desirable level of independence has been achieved.

Although it could be argued that the objectives of the Tax Practitioners Board and the ATO are congruent, we believe that it is better with respect to the relationship with tax agents for the Tax Practitioners Board not to be seen as an arm of the ATO enforcing ATO policies.

It is preferable for the Tax Practitioners Board to maintain an objective frame of reference in relation to tax agents. If the ATO has formed an adverse view about a tax agent’s performance, it should not automatically follow that the Tax Practitioners Board enforces that same view with the tax agent. We are not suggesting that there be no flow of information between the ATO and the Tax Practitioners Board with respect to the performance of tax agents. However, we would expect the Tax Practitioners Board to adopt an objective view of the issue and to permit the tax agent to fully express their view about the particular matter.

For example, the ATO may conclude that a taxpayer, who uses a tax agent to lodge his/her tax return, has not taken “reasonable care” within the meaning of the *Taxation Administration Act 1953*. There could be an implied conclusion that the tax agent also did not exercise reasonable care within the meaning of the Code of Conduct issued by the Tax Practitioners Board. This conclusion should not automatically follow.

It is frequently the case that tax agents have little opportunity to verify information which has been given to them by their clients. Due to time pressures, cost pressures and other issues, it is often impractical for a tax agent to undertake verification work in relation to the information that has been given to them. Accordingly, a client of the tax agent may not be taking reasonable care, being reckless or engaging in fraudulent activity in the process of giving information to a non-suspecting tax agent.

The Tax Practitioners Board should adopt a neutral posture in relation to the investigation of tax agents. That is, a tax agent should not be seen as lacking the reasonable care in their work until it is proven conclusively the tax agent has taken deliberate decisions that would result in that conclusion. Put another way, the Tax Practitioners Board should be prepared to take into account the real world issues that tax agents face every day in relation to the completion of their work.

In saying the above, we are not making the suggestion that the Tax Practitioners Board have been acting inappropriately in relation to the investigation of tax agents. Nevertheless, we emphasise that the posture of the Tax Practitioners Board should be one of neutrality.

It is our proposition that the Tax Practitioners Board should see itself, in one sense, as a partner with tax agents, in assisting tax agents to provide the highest level of service to the community. We encourage the Tax Practitioners Board to adopt a culture that promotes a non-accusative approach to tax agents, while it still maintains its statutory function of requiring tax agents to meet relevant standards.

We believe the above culture and posture discussed, can only be achieved through the Tax Practitioners Board being an independent body that is not unduly influenced by the ATO.

The relationship between tax agents and the Tax Practitioners Board

Related to the above point is the relationship that should exist between tax agents and the Tax Practitioners Board. We encourage a consultative and helpful approach from the Tax Practitioners Board towards tax agents. It is our strong belief that the vast majority of tax agents, including our members, are individuals who desire to comply with the law and who also desire that all of those, to whom they provide tax services, also comply with the law. Both parties to the relationship (the Tax Practitioners Board and tax agents) will obtain a better outcome for the community if it is seen that both parties are working together towards a common goal.

Tax agents should feel free to be able to discuss concerns with the Tax Practitioners Board without the fear of possibly breaching the Code of Professional Conduct. The approach of the Tax Practitioners Board should be to assist the tax agent to deal with the particular problem and enable the tax agent to proceed with their business without concern.

Recently, many tax agents were concerned with the adoption by the Tax Practitioners Board of a 72 hour response time policy in relation to complaints made about tax agents. There was also a view that this approach, adopted without consultation, was the Tax Practitioners Board being “heavy-handed” with tax agents. In fairness however, the Tax Practitioners Board has acknowledged to various professional bodies that their approach and communication in relation to this policy could have been improved. Nevertheless, it is an example of where, we believe, the Tax Practitioners Board has not adopted a partnership approach with relation to tax agents.

Unregistered providers of tax services

TSA applauds the role of the Tax Practitioners Board in singling out, and prosecuting where needed, those who are providing tax services without meeting the standards of the legislation. Unregistered providers of tax services continue to be a thorn in the side of appropriately qualified tax agents. We encourage the resourcing of the Tax Practitioners Board to continue this work. Also, public education of the need to use an appropriately certified tax practitioner should be undertaken to a greater extent.

Cohesion between the ATO and the Tax Practitioners Board

While we encourage independence between the ATO and the Tax Practitioners Board, it is also important that necessary interactions between the ATO and the Tax Practitioners Board be seamless with regards to tax agents. For example, where a tax agent updates their details with the Tax Practitioners Board, this should be automatically and seamlessly updated with the ATO. Tax agents should be entitled to assume that relevant information that has been updated with the Tax Practitioners Board is automatically submitted and updated in the ATO's database.

Services that are not tax agent services

We are aware that some submissions in relation to the tax practitioners regime will raise the issue of tax agents providing services that may be construed as legal services. Strictly, we do not consider the review of the tax practitioners regime covers this issue. However, we wish to make some comments about the point.

Under the Legal Profession Uniform Law Application Act 2014, unqualified entities are prohibited from engaging in legal practice. Also, broadly, under the *Tax Agent Services Act 2009*, there is said to be a contravention of the Act where a person who provides a service that is a "tax agent service", charges a fee for that service and the person is not a registered tax agent or a legal practitioner. Accordingly a "carve out" is provided to tax agents in relation to providing legal services under a "taxation law". Broadly "taxation law" is an Act (law) of which the Commissioner of Taxation has the general administration.

TSA is concerned that an amendment to the *Tax Agent Services Act 2009* which, specifically seeks to reinforce the prohibition of legal services that are not specifically covered by this Act, will have adverse practical consequences.

As just about anyone who is engaged in business understands, tax agents (who are frequently accountants) provide a range of services which the ordinary business person has come to expect will be provided by tax agents/accountants. These services include advising on taxation imposts, imposed by state governments (e.g. payroll tax, land tax and stamp duty). They also include, on one view, the creation of documents such as minutes of directors and trustee distribution minutes. In providing these services, tax agents/accountants may engage in what some might consider legal services. These services can include interpreting the deed of a trust estate, interpreting the provisions of a will, interpreting the provisions of the constituent documents of a company and so forth.

It would be impractical, inefficient and a huge cost to the business community if tax agents/accountants were prevented from undertaking this type of work. If this were to occur, it would substantially increase the cost, and decrease the speed, of compliance with the taxation laws in Australia.

We implore the Government not to place a restrictive and impractical burden on the business community and tax agents/accountants by making amendments to the *Tax Agent Services Act 2009* in relation to this matter.

Registered Tax Agents Association

These comments relate to the operation of Registered Tax Agents Associations ("RTAA").

- The Tax Practitioners Board has requested that RTAAs publicly name members that have contravened the rules of the RTAA. TSA does not approve of this requirement as it creates difficulty with members and creates issues in relation to privacy laws.
- The Tax Practitioners Board is of the view that 40% of tax practitioners are not members of an RTAA. We consider that this statistic is misleading and is due to the way data is collected by the TPB when a person registers or re-registers as a tax practitioner. The Tax Practitioners Board should implement new procedures that enable the gathering of this data to be more accurate.

- It is currently not mandatory that tax practitioners are a member of a RTAA. TSA is of the view that membership of a RTAA should be mandatory.