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Mr Nick Westerink
Principal Adviser
Individuals and Indirect Tax Division | Revenue Group
The Treasury, Langton Crescent, Parkes ACT 2600
30 August 2019

Dear Nick

The Australian Services Union has set out below our submission in response to the 'Review of the Tax Practitioners Board Discussion Paper', July 2019.

Please contact me if there are any questions about our submission or if we can assist further.

Yours sincerely

Jeff Lapidos

Australian Services Union submission on Review of the Tax Practitioners Board

We do not agree that there is any reasonable basis for the alleged perception raised in paras 3.11, 3.12 and 3.16 that TPB is not independent of the ATO. There is nothing that Government can do to deal with perceptions that are not founded in reality or reasonableness. We have found that the TPB is independent of the ATO in reality and that is what any informed person would find. There is no point making changes merely to cater to uninformed, incorrect perceptions.

We have no concerns about the TPB being separately accountable under the PGPA Act as discussed in para 3.13.

We agree with the ATO's position as outlined in para 3.15.2 that the TPB should have the flexibility to delegate certain reviewable decisions to TPB staff. This would create more interesting and rewarding career paths within the TPB and allow the Board more time to focus on strategic issues.

We do not agree with the views of The Ethics Centre, as outlined in para 3.20. Their positions of high principle need to be balanced against the practical realities of funding and staffing the TPB. Our enquiries have found no concerns amongst the staff of the TPB that the performance of their duties as TPB staff are compromised in any way by their continued employment by the ATO.

We do not have any concerns with the Government retaining the status quo as outlined in para 3.22.1. We are strongly opposed to the complete separation of the TPB from the ATO. It would result in a massive increase in the cost of providing accommodation and people and IT systems. It would inhibit ATO staff from applying to work for the TPB. It would need its own enterprise agreement and separate funding and as a very small agency would be unable to provide the level of employee benefits and support that is available through its current relationship with the ATO.

We have significant concerns about the option outlined in para 3.22.3 where a minority of staff would be directly employed by the TPB with a shared services arrangement with the ATO. We do not agree that this approach should be taken to address unfounded perceptions that the TPB is not independent of the ATO. In any case, the proposal to have a minority of staff employed directly by the TPB is not a good one. The TPB would have to arrange a separate enterprise agreement or determination for its directly employed staff. ATO employees who are seconded to the TPB would still be covered by the ATO Enterprise Agreement. This would create two classes of TPB employee. This is undesirable in principle.

ATO staff have a clear interest in retaining their employment with the ATO when working for the TPB. We expect the only way the TPB could get employees to work directly for it would be to offer them a superior employment package, which would be difficult to fund. Alternatively, the proposal involves the directly employed employees undertaking higher classification work if they are to be allowed to make decisions regarding sanctions and litigation. This would also have funding implications. ATO employees on secondment to the Board would be quite capable of making decisions on sanction and litigation if that is to be allowed.

We do not agree with the proposal in para 3.25. Our experience is that ATO employees who work for the TPB are fully capable of making decisions regarding sanction and litigation, subject to appropriate delegation and authorisation. It would be counter-productive to have two categories of operational employees. We have found there will be a reluctance of ATO employees to join a small TPB if they are not covered by the relevant ATO Enterprise Agreement and have the ability to easily transfer to and from the ATO and the TPB.

We believe the current arrangement of the TPB being located in ATO offices should continue. It promotes the movement of staff between the TPB and the ATO. Tax Officers are able to work for the TPB and still maintain personal and professional relationships with their colleagues in the ATO.

We feel confident that the TPB and the ATO will be able to negotiate a new MOU as mentioned in para 3.28.1.

We do not see any issues in the direction outlined in para 3.28.5. It is fully enforceable through the APS Code of Conduct.

We are strongly opposed to the proposal in 3.28.7 that ATO employees take leave without pay from the ATO while seconded to the TPB. This would have an impact on the accrual of service benefits for employees under the ATO Enterprise Agreement and could impact on employee's superannuation arrangements, particularly with the CSS and PSS Funds.

We agree with para 3.29 that co-location encourages and facilitates a good and important working relationship between the TPB and the ATO.