

*Submission File*

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Dear Mr Westerink

**SAICA COMMENTS ON THE REVIEW OF THE TAX PRACTITIONER BOARD  
DISCUSSION PAPER**

On behalf of the South African Institute of Chartered Accountants (SAICA) we welcome the opportunity to make a submission to Australian Treasury (“the Treasury”) on the Discussion Paper on the Review of the Tax Practitioner Board.

As set out in the Terms of Reference, the review will focus on the following:

1. Examine if the legislative framework is operating as intended and continues to be fit for purpose and meet the objectives of the Act.
2. Examine if the governance framework is operating as intended and continues to be fit for purpose.
3. Consider the appropriateness of the Tax Practitioners Board’s governance arrangements.
4. Consider whether the tax agent services legislation supports the Tax Practitioners Board in responding to known and emerging issues.
5. Examine whether the powers and the functions of the Tax Practitioners Board are sufficient to enable the objects of the legislative framework to be met.



6. Consider any other matters that may enhance the regulatory environment that tax practitioners operate under, including the interaction with the regulation of relevant related professional activities.
7. Some issues may be identified that fall outside the scope of the review of the legislative framework. The government should be advised of these matters and recommend whether further examination should be undertaken.

We have set out in detail in Annexure A, our comments in relation to the matters referred to above and have mainly focussed on matters related to Tax Practitioners.

Please do not hesitate to contact us should you have any queries in relation to anything contained in this submission.

Yours sincerely

**Azhar Panchbhai**

**Senior Executive: Member Engagement**

*The South African Institute of Chartered Accountants*



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## ANNEXURE A

### Introduction

#### ***Background to SAICA***

- 1 SAICA is South Africa's pre-eminent accountancy body as well as the largest in Africa, and is widely recognised as one of the world's leading accounting institutes.
- 2 SAICA provides a wide range of support services to more than 46,000 members who are mostly Chartered Accountants and who hold positions as CEOs, MDs, board directors, business owners, chief financial officers, auditors and leaders in their spheres of business operation. Most of these members operate in commerce and industry, and play a significant role in the nation's dynamic business sector and economic development.
- 3 Approximately 1,600 of SAICA's members currently reside in Australia.
- 4 SAICA serves the interests not only of the Chartered Accountancy profession, but also of society in general through its key objective of upholding professional standards and integrity. The pre-eminence of South African Chartered Accountants [CA(SA)'s] nationally and internationally attests to the successes achieved by SAICA on a broad global canvas.
- 5 SAICA's members enjoy the privilege of using the highly regarded and prestigious CA(SA) designation which is protected and bestowed by [legislation](#) with SAICA as legal custodian.
- 6 Members of SAICA are subjected to a Code of Professional Conduct that is aligned to the IFAC Code, which provides guidelines for ethical and professional behaviour including integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. This includes the full adoption of the [Non-Compliance with Laws and Regulations](#) (NOCLAR) ethics code amendments in July 2017, with SAICA being part of only 5 jurisdictions of the 130 countries, that are represented in IFAC's 175 members, to do this.
- 7 SAICA is a founding member of the [Global Accounting Alliance](#) (GAA), [International Federation Accountants](#) (IFAC) and [Chartered Accountants Worldwide](#) (CAW).
- 8 SAICA is also proud of its globally recognised high standards of professional competence which is reflected in the 11 reciprocity agreements SAICA has with other professional accounting institutes, including with Chartered Accountants Australia New Zealand (CAANZ).
- 9 A reciprocity agreement is underpinned by equivalency principles based on the SAICA-approved undergraduate degree, SAICA-approved Honours degree and the



SAICA-approved training that potential CAs(SA) are required to undertake before being admitted as a member.

- 10 This agreement with CAANZ enables members of SAICA to be able to join CAANZ without having to undertake the full training that a potential new CAANZ applicant would have needed to undertake, and vice versa.
- 11 The migration process completed by most SAICA members arriving in Australia requires an assessment by an Australian Accounting body such as CAANZ to confirm comparability of an overseas accounting qualification.
- 12 SAICA is a TPB recognised professional association in respect of tax agents and of BAS agents and is also a Recognised Controlling Body in South Africa for Tax Professionals with more than 4800 registered Tax Practitioners and is currently the only institute recognised whose members may qualify and register as Registered Auditors in South Africa with the statutory regulator.

## GENERAL SUBMISSIONS

### ***Future of the tax profession***

- 13 As a point of departure we agree with the Ethics Centres views that states:

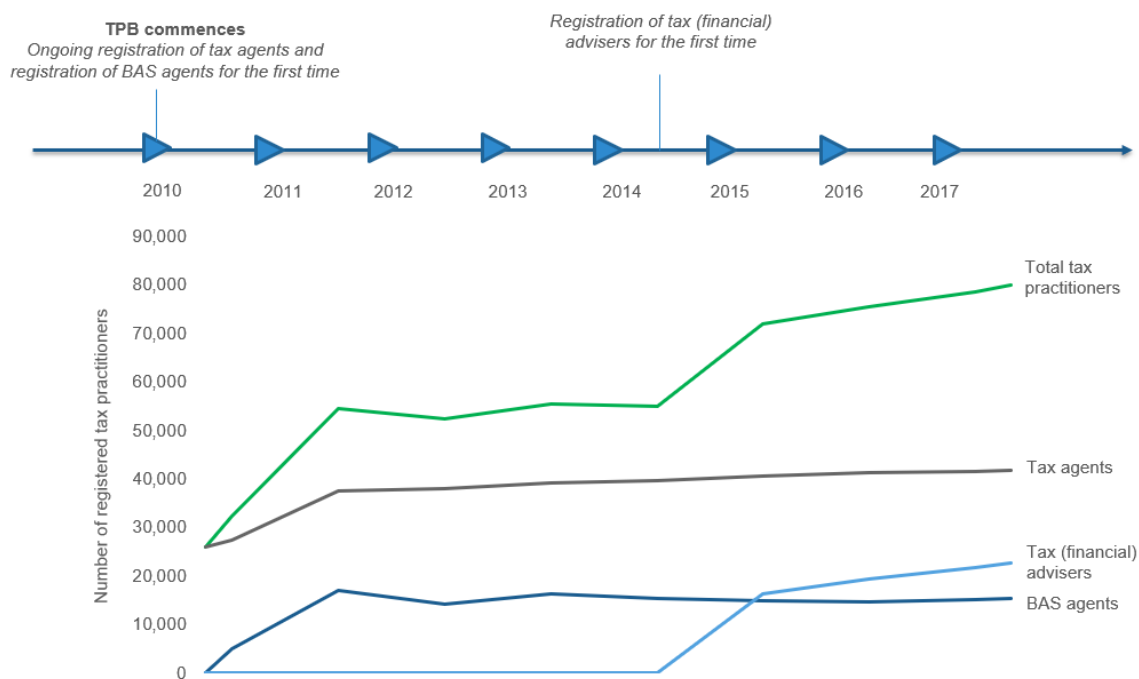
*“The taxation system is only efficient and effective if it is trusted by all concerned to serve the public interest through means that are lawful, fair and in accordance with the highest standards of integrity.*

*Tax practitioners play a vital role in ensuring that the system as a whole is efficient and effective. Thus the overarching purpose of the TPB is to ensure that tax practitioners operate with integrity. However, it is equally important that tax practitioners have confidence in the integrity of the system as it applies to them - especially as it has a bearing upon their conduct.”*

- 14 In this regard a healthy and growing tax profession that conforms to the above norms serves the public interest.
- 15 However, it is noted that the tax profession for tax agents and BAS agents is generally stagnant in the last few years with only the addition of TFA increasing the numbers as seen below in the statistics from the discussion document and the IGT report:



## Registered tax practitioners – population growth since 2010



**Table 6.2: Total numbers of registered tax practitioners**

Financial Year	Registered Tax Agents	Registered BAS Agents	Tax (Financial) Advisers	Total registrations
2010-11	37,435	16,990	–	54,425
2011-12	38,100	14,247	–	52,347
2012-13	39,080	16,270	–	55,350
2013-14	39,606	15,333	–	54,939
2014-15	40,593	14,936	16,329	71,858
2015-16	41,227	14,715	19,494	75,436
2016-17	41,532	15,235	21,826	78,593
2017-18	42,561	15,638	19,550	77,749

- 16 In fact, we see in some areas an actual decline for BAS agents since 2012/2013. Tax Agents have only grown 4,6% in total over the last 4 years. In context, the [5 year jobs growth projections to 2023](#) for Professional/Technical /Scientific services is projected to grow by 10.2% and for accounting/legal 8,5%. The historical trends in tax, excluding TFA's, do therefore not seem to share the optimism of these future projections.



- 17 A similar trend is experienced in South Africa especially as Tax Practitioner regulation has been made more stringent over time. The South African Revenue Service (SARS) estimated about 60000-80000 tax practitioners before regulation, which reduced to about 32 000 after the initial phase and has reduced and maintained an average of 18 000 over the last 4 years after even stricter regulation was introduced. SARS Tax Statistics reveal that over the same period of regulation (2011-2018) registered taxpayers required to submit income tax returns increased from 5,59 million to 7,25 million.
- 18 Introduction of complex modernised processes and law complicates and increases risk and where they don't enhance but detract from efficiencies for tax practitioners, reduces reward. The latter is especially true with the amount of data disclosures and data processing that needs to occur which is not standardised at taxpayer level.

19 Submission: Regulation of the tax profession and enhancements to this three-way relationship should not just consider more punitive measures or more regulatory red tape for the tax profession but also more value-add services (including additional incentive for tax compliant practitioners and those who apply tax morality) and ensuring there is a business case to be in the profession where risk and reward is matched. Though recent media articles paint a picture of a “fluffy pillow” regulated profession, the actual statistics show that the added challenges and risk for entering the profession does impact on its sustainability.

### ***Legislative integration of the tax profession as intermediaries***

- 20 *The need to regulate* tax practitioner stems from a need to protect the fiscus and taxpayers. However, there is also a need through this process that the service levels to taxpayers by intermediaries are enhanced.
- 21 What seems to be missing within the regulatory process is the full legal and operational integration of tax intermediaries into the tax administrative system.
- 22 For example, when a person appoints an attorney, all other parties to the litigation are compelled by law to correspond through the attorney, whether it is the state or other persons. Non adherence to this renders the delivery of communication unlawful and invalid.
- 23 This lack of full integration also creates in itself difficulties as to allocating “fault” and the very penal consequences for fault that is contained in tax systems globally. This seemed evident from the discussion paper on this specific subject matter.
- 24 Submission: It is submitted that the role of the tax intermediary should be conclusive and clear and enforceable against third parties, even the ATO. By properly integrating the legal roles of tax intermediaries into the tax administrative system it becomes easier to allocate fault by removing variables (i.e. excuses). For example, if correspondence is compelled to be sent to the tax intermediary to his or her



nominated contact address, then such person not informing the client places him or her automatically at fault with no excuse that sometimes ATO spoke to/contacted the taxpayer and sometimes the intermediary.

- 25 Similarly, if an intermediary is appointed to submit tax returns or information, filing late should only occur after timeous notification has been made to the authority and the “fault” assigned formerly in the same manner as an attorney would have to explain and excuse himself from appearing in court and allocating “fault” to him or herself or the client formally. Sanction could then follow “fault” in a transparent manner.
- 26 We have experienced the same challenge in South Africa with the tax regulatory space and have also made similar proposals to the South African Parliament to rectify the position.

## **SPECIFIC SUBMISSIONS**

### ***Independence of the TPB***

- 27 Independence of a regulator from the Executive arm of government remains the ideal in our view.
- 28 As a body that has to act in the interest of both government and the profession and must adjudicate matter in an impartial and fair manner, real and perceived independence from the executive remains important.
- 29 However, the reality of real and perceived independence is an increase in cost and financially this can plan an additional burden on the State.
- 30 We support the view and proposal of a “mixed” representation board though believe that ATO exclusion would not make it properly representative in serving the objectives of the TPB.

31 Submission: To ensure a balance of interest, it may be possible to achieve a more acceptable level of independence by ensuring that Strategic oversight of the TPB i.e. the Board is balanced between State and civil representation and similarly employing a balance of persons from such constituencies. Any mind set of adversarial rather than collaborative for common benefit is not supported by SAICA.

### ***Objects of TASA***

- 32 The proposal to expand the objectives of TASA is supported as it formalised the 3-way relationship of tax intermediaries, ATO and the public. It is both the latter 2 parties who would be potential complainants in matters before the TPB.
- 33 Tax practitioners acting lawfully and ethically is already paramount within the objects and the code of conduct.





- 34 Where we caution is the confusion between wanting ethical tax intermediaries (i.e. comply with the letter of the law) with moral tax intermediaries (i.e. complying with the Spirit of the law or purpose of local tax policy).
- 35 It is the latter where more concern seems to vest especially from the State as shown in the OECD BEPS project and its “Spirit of the Law” approach. Illegal and unethical conduct is already subject to numerous civil and criminal sanction.

36 Submission: We do not believe that expanding the TASA objects further with lawful and ethical criteria enhances the outcomes sought and behavioural changes intended as no oversights seem to have been specifically identified in this sense. It in many instances a moral obligation sought which is far more difficult to define and implement.

### ***Public register***

- 37 The expansion of disclosure as to why a person was removed from the register is supported as in many instances negative inference is made when none apply or the reason was not substantial.
- 38 Such disclosures will therefore also protect the standing of tax intermediaries.

### ***Education Standards***

- 39 SAICA supports the affording of a discretion to TPB as to education standards as it allows it to align to more modern thinking of these matters, for example moving away from input based CPD to competency based CPD models.
- 40 However, it should also ensure that education and qualification standards apply equally to classes of tax intermediaries rendering the same services.

### ***Qualifications and Experience***

- 41 The current entry pathways contained in the Tax Agent Services Regulations (TASR) for individuals seeking registration as a tax practitioner are problematic for SAICA's members permanently resident in Australia, and from experience appear to cause TPB some considerable difficulty in processing applications from members who are by virtue of their globally recognised chartered accountant qualification highly trained (including in ethics) and experienced professionals.
- 42 Whilst TPB provides an entry pathway (Item 206, 102, and 304) for voting members of recognised professional associations which includes those SAICA members wishing to be registered as a tax agent and as a BAS agent (and therefore has previously assessed and accepted the value of the training and qualification attained by SAICA members), in practice it has proved extremely difficult and time consuming for members to meet the TPB's 'relevant experience' requirement, and for TPB to appreciate the equivalence of that experience within the Australian context. This



experience (for example, 8 years full time experience in the past 10 years in the case of an application to be registered as a tax agent) may at TPB's discretion be satisfied in part with relevant experience gained overseas where that relevant experience is in respect of comparable tax law regimes such as those of other Commonwealth countries, including South Africa. In practice a member's overseas experience is difficult to 'mould' to the TPB's requirements as set out in the application form and therefore difficult for TPB to assess.

- 43 Consequently, SAICA members, being eligible, generally consider Item 201, 101, and 301 as the simpler entry pathway as the 'Relevant experience' requirement is reduced (for example, in the case of an applicant tax agent to 12 months full time experience in the past 5 years of which generally a maximum of six months' experience may be gained overseas). For a recently migrated SAICA member in particular, this appears to be more readily achievable.
- 44 Meeting the 'primary qualification' requirement (particularly under Items 201 and 301) then causes applicants and the TPB further considerable difficulty, in that TPB requires the applicant to have a degree or post-graduate award from an Australian tertiary institution or a degree or award that is TPB approved from an equivalent institution 'in the discipline of accountancy' (Item 201), 'in bookkeeping or accounting' (Item 101) and 'in a relevant discipline' (Item 301).
- 45 TPB's process for recognition of a SAICA member's Bachelor degree in Accounting as equivalent to a Bachelor degree from an Australian tertiary institution is problematic and costly (particularly in terms of time) to both the applicant and the TPB. It appears each applicant's degree must be individually assessed for equivalence by TPB through the relevant government department. Changes of name of degree awarding institutions compound delays.
- 46 Having established degree equivalence, the TPB then has to consider whether the overseas degree is in a relevant discipline. Apart from being a subjective criterion, the evidence required is a transcript of the various courses completed for the award of the member's degree. It is noted that some overseas universities (particularly in respect of degrees awarded many years previously - which adversely impacts older and retiree applicants) did not issue academic transcripts. Replacement transcripts may not be readily obtainable. Course content changes over time require TPB to conduct a detailed assessment of every applicant's qualification. While SAICA members are required to have completed a SAICA-approved Honours degree in Accounting prior to commencing their training to qualify as a chartered accountant, members of other recognised professional association do not - perhaps in recognition that the perceived value of some degrees may have been diminished in recent years and the need to avoid accumulation of significant debt. Such accumulated debt is seen to be particularly unattractive to disadvantaged members of society and restrictive of entry to the chartered accounting profession.



- 47 Anecdotal evidence suggests that SAICA (and other overseas qualified and experienced applicants) withdraw their application in frustration, and many more determine not to apply. This represents a significant loss to Australia and to the tax profession of well qualified and experienced chartered accountants.
- 48 It is suggested that the Review emphasise the loss of such potential tax agents, BAS agents, and TFAs caused by an unnecessarily complex and costly application process for SAICA members, for members of overseas recognised professional associations generally, and for the TPB, noting as well that this process represents a potential loss of economic return to the Australian Federal government (and State and Territory governments) and taxpayers from the various eligible skilled occupations migration programs.
- 49 SAICA therefore suggests that simplification of the entry pathways is required incorporating an Item comprising voting membership of recognised professional associations as satisfying the TPB's 'primary qualification', either eliminating or reducing the Board approved courses required to reflect the training previously completed by SAICA members, and giving formal recognition to overseas experience gained in comparable jurisdictions such as South Africa. Thus the current barriers to entry to the tax profession would be significantly reduced with minimal risk to the integrity of the tax system, consequent considerable savings to applicants and to the TPB, and enhancement to the economic returns from migration. It is noted that those applicants who have migrated (including SAICA's members) have previously satisfied Australian Government's stringent vetting procedures including qualification assessment and verification, criminal history and no doubt other checks, and should be included within the scope of the 'modern landscape' to which the Discussion Paper refers.
- 50 SAICA notes that the comments above are in line with those of the TPB at 5.5.3 in that the TPB is of the view that it should be allowed greater flexibility 'to determine what is, and how much, relevant experience is required' of applicants. Whilst TPB makes reference to various groups with 'special circumstances' including those applicants with career breaks, on maternity leave, and partial retirees, SAICA's view is that it is appropriate to also include those applicants with overseas qualifications and experience. Other submissions referred to at 5.10 also support removal of barriers to becoming a tax practitioner.
- 51 We have been verbally advised that while this level of detail as to entry pathways likely lies outside the Review's scope, inclusion of the detail outlined above was specifically requested of SAICA's TPB Consultative Forum representative, Mr Richard Stokes, by Mr Keith James during the public consultation held on 15 August 2019.
- 52 Whether the pathway for recognised professional associations is removed, amended or a new recognised professional association pathway initiated, the role of recognised professional associations outlined at 11.8 by the TPB is supported by SAICA.



However, the preliminary view of the Review expressed at 11.13 whereby the TPB could be allowed 'to approve programs of the professional associations' is likely to be problematic in its application both for a recognised professional association and for the TPB with its limited resources. SAICA notes that an existing mechanism adopted by the chartered accountant bodies for assessing comparability of qualifications between them is already available and suggests that its adoption be supported by the Review.

- 53 SAICA notes at 5.9 that some submissions to the Review suggested increased minimum education standards for tax practitioners to align with FASEA's standards for financial advisers, and at 5.13 the Discussion Paper appears to support a baseline educational qualification for registration for items 206, 102, and 304. SAICA has concerns with alignment of TPB entry pathways for members of recognised professional associations with FASEA's requirements (which may have the disadvantages described above in respect of overseas qualifications) and points out that TPB's accreditation of a voting member of a recognised professional association already represents a significant baseline educational qualification.

### ***Tax Intermediaries***

- 54 The "scope" of who is a tax intermediaries and whether a broader or narrower definition is required is a policy decision as to what will realise the policy objective.
- 55 However, our experience with "de minimus" exclusions has been that it creates an unequal playing field and that excluding specific services would be more appropriate.
- 56 In this context tax modernisation and big data brings its own challenges.
- 57 For example, a Bank or insurer providing estate tax advisors as part of your banking package, is that incidental to their banking business? Or a software provider that creates an advisory overlay for a tax return or "tax calculator", is that outside the scope of TASA? Is an attorney's advice in anticipation or during tax litigation a tax service or just legal advice?

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| <p>58 <u>Submission</u>: It is submitted that exclusions should be created that exclude persons who are actually not rendering services, whether in historical or modern forms, that in principle is conduct that TASA should regulate in relation to ATO and taxpayers.</p> |
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### ***Sharing of information***

- 59 Absolute confidentiality has always been a cornerstone of most modern tax systems and up to recently banking systems as well.
- 60 However, with the expansion of tax modernisation and big data and society rejecting the globalisation and mobility of unlawful activity in "safe harbours", the appropriateness has been recently questioned.



- 61 Absolute confidentiality has been raised as a defence to disclose even in the South African parliament by the executive arm of government to not disclose investigative progress on matters such as the HSBC leaks and Panama papers.
- 62 Similar criticisms have been made against the confidential “tax deals” made in Ireland between the Revenue and taxpayers but also as to “confidential settlements” in with taxpayers in Canada (though this practice prevails in most modern revenue services).
- 63 The sharing of information regarding criminality has always been seen as acceptable practice though it is seldom compelled (i.e. revenue may and not must share). Sharing of information on civil matters such as tax non-compliance status or other necessary data such as service satisfaction, operational support levels etc. has not received much support.
- 64 For example, if there is a specific Tax Intermediary channel at ATO and specific tax intermediaries abuse such service or show non-professional conduct like not arriving for meetings, then such information should be reported. Similarly, information on service levels to taxpayers and intermediaries from timeous of service to communication should also be available to enable collaboration on enhancing the system.
- 65 We have started this engagement and collaborative approach in South Africa with SARS as well which includes joint research. For example, analysing and creating solutions on why in certain SARS Tax Practitioner offices it takes 6 weeks to get an appointment and where do tax practitioners conduct contribute to the challenge. The latter can then be addressed by the professional bodies and on the other by revenue.
- 66 The latter is becoming specifically important where regulators want to collaborate with civil society such as professional bodies who form part of the regulatory regime. In South Africa such empowering legislation has been enacted though both tax intermediaries and SARS have been hesitant to fully utilise it for even positive collaboration given the tax culture of confidentiality.

67 Submission: The sharing of tax compliance information of tax intermediaries with professional bodies to assist in enhancing compliance of members as an ethical obligation should be considered. Furthermore, the compelled sharing of information by IGT or ATO with TPB and Professional Bodies on information that is required to enhance their service levels to tax intermediaries should also be considered.

### ***Terms of Reference***

- 68 SAICA endorses and supports the published submission made by Mr Richard Stokes in response to the Review’s Terms of Reference.



- 69 In particular, items 108, 209 and 309 set out a requirement that the applicant organisation has at least 1 000 voting members of whom at least 500 are registered as BAS agents, as tax agents, or tax (financial) advisers (as the case may be).
- 70 To potentially exclude a professional association that meets the TPB requirements other than in respect of the de minimis requirement could be considered counterproductive.
- 71 We support the view of Mr Richard Stokes in that the de minimis requirement fails to meet the Object of the TASA (section 2-5) in that a recognised professional association supports and augments the work of the TPB ensuring tax agent services (as defined) *are provided to the public in accordance with appropriate standards of professional and ethical conduct.*
- 72 The de minimis requirement should therefore be considered unreasonable in that it fails to protect consumers of tax services.
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| 73 <u>Submission:</u> The de minimis requirement be excluded from the Regulations for the reasons provided. |
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