

**From:** [REDACTED]  
**To:** [TPBreview](#)  
**Subject:** Comments on TPB review  
**Date:** Tuesday, 27 August 2019 3:17:52 PM  
**Attachments:** [REDACTED]

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Dear Sirs,

One aspect of the tax profession which does not seem to be adequately addressed in your report is the education gap between tax agents. The issue of whether the tax agent has taken reasonable care or been reckless is closely linked to this issue. Too often we see tax agents fail to keep new clients because they apply the tax laws correctly unlike the prior tax agent. Upon becoming aware more tax was payable than had been in the past, the client soon departs back to the old tax agent. Whether the ignorance of the prior tax agent is deliberate or based on poor or inadequate knowledge of the law is always debatable. Confidentiality of client information and the concern that the party that comes to grief is ultimately the taxpayer and not the prior tax agent usually mean that no complaint is made to the TPB. Some of the recommendations will address this concern but ultimately they may not go far enough.

Common areas where some tax agents are ignorant of the correct operation of the law (whether conveniently or through ignorance) include: -

- Incorrect application of the PSI rules where there is no PSB
- Inappropriate alienation of income where there is PSI and a PSB
- Failure to identify Division 7A exposures particularly indirect Division 7A exposures (back to back loans, loans where there are outstanding distributions to companies etc.).
- Failure to understand grouping rules for CGT Small Business Concessions, Small Business Entity regime, Base Rate Entity grouping etc.
- Blindsided in areas like FBT, GST, LCT and WET.
- Inadequate understanding of international taxation issues like thin capitalisation, transfer pricing etc.
- Lack understanding on the streaming rules for dividends and capital gains out of trusts.

The list could go on.

Smart tax practitioners know when to seek expert advice when their knowledge is deficient and in a complex tax environment this is one way of solving these risks. Some tax agents just blubber their way through potentially causing exposures for their clients. Self-assessment generally protects these tax agents unless the ATO is smart enough to target risk areas. Our parliamentarians do not make life any easier for tax agents with ever increasing complexity to our laws normally driven by political expediency. The base rate entity rules for determining a lower company tax rate and dividend franking rate are a classic example of this.

Our first recommendation is that continuing professional education records of tax agents should be lodged with the TPB and they should indicate the area of expertise the education focused on.

We live in times of technology advancement and there is a second suggestion which would also make sense. Upon registration or annual re-registration, tax agents should be required to complete an on-line multiple choice test covering a wide range of tax technical issues. The questionnaire could be tailored so specialist tax agents who choose not to provide advice in particular areas like FBT, GST, international tax etc. can flag this fact upfront and not be tested in those areas. Those who do so can be provided with a restricted

registration or alternatively will be required to show any advice in those areas is outsourced to other skilled advisors. Alternatively, they can provide assurances to the TPB that they will do the appropriate research / skill up if providing advice in those areas. Multiple choice is an appropriate methodology so the participants cannot read too much or too little into the questions and merely are required to choose the most appropriate answer. This also means the process can be fully automated.

It should not be too difficult to set up a pool of questions which could be used and kept up to date. The questions could be easily tailored to determine knowledge or a lack of knowledge in specific areas. They do not have to be difficult but indicative of understanding nuances in the tax law.

A pass rate of say 70% should be required for renewal to be approved. If areas of tax show up as deficient, practitioners should be directed to focus their continuing professional education in those areas in the next year. For those that fail, they should be directed to undertake courses in the areas shown to be deficient until reapplying and be restricted to practicing in areas they are proficient in for the interim period until evidence that the course has been completed satisfactorily is submitted. Existing tax agents could complete the quiz three months before their registration ceases to ensure continuity of registration and to provide sufficient time to reskill up. The results should be databased by practitioner and shared with the ATO. This information could be used for determining fault and penalties. Ultimately it will be telling against a practitioner where: -

- They argue ignorance of an issue with the ATO or court which the annual test showed they had proficiency in.
- They provide advice in an area where they were restricted from practice or were required to outsource and did not do so.

TASA originally opened this door when it initially recognised that restricted tax agencies could be issued back in 2009/10. We need to be more sophisticated in an ever more complex world.

Whilst some tax agents may raise significant objections to this recommendation, smart tax agents will appreciate that they will be getting timely feedback on their skill base each time they renew their registration which we agree should be annually. Tax agents should remember that the registration is their livelihood and should be prepared to embrace reasonable steps that safeguard it.

We hope you find these suggestions of assistance.....

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[REDACTED] operates as a [REDACTED] and is a registered tax agent.

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