

21 August 2019

Nick Westerink
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600

Attention: Keith James, Head of the Review

By email: TPBreview@treasury.gov.au

Dear Nick,

Submission on the Review of the Tax Practitioners Board Discussion Paper July 2019

Thank you for the opportunity to provide feedback and comments in relation to the Discussion Paper arising as a result of a review of the Tax Practitioners Board (TPB). My comments relate to the 'Tax Clinics' section of the Discussion Paper.

Tax Clinics

Consultation point 5.10 seeks comment on whether the eligibility criteria for registration be amended so that universities and not-for-profit organisations that run tax clinics are able to register. The preliminary view outlined in the Discussion Paper is that registration is primarily of relevance for access to the ATO's Tax Agent portal. However, the issue is much broader than that and is a matter of good governance.

First, tax agent registration does not only confer an ability to provide tax services for a fee or reward. It also provides protection from the provision of tax services constituting 'unqualified legal practice' under section 10 of the Legal Profession Uniform Law which applies in Victoria and New South Wales (I am not sufficiently familiar with the regulation of legal practice in other jurisdictions to comment on their operation). The fact that the tax services are being provided for no fee or reward by tax clinics does not alter the operation of section 10. Therefore, tax clinic registration is essential to ensure that the provision of tax services by tax clinics is not held to be 'unqualified legal practice'. The provision of almost all tax services could potentially constitute 'legal practice'.

Second, the Discussion Paper notes that several of the tax clinics employ registered tax agents. This approach has been necessitated by the inability for tax clinics to register in their own right. However, this approach lacks transparency and should be regarded as a stopgap measure during the tax clinic trial but not a preferred approach going forward. By way of comparison, the Legal Profession Uniform Law specifically recognises the category of 'community legal service' and the fact that the service is established and operated on a not-for-profit basis. It would be preferable to similarly recognise the category of 'community tax service' in the *Tax Agent Services Act*. If such a category was recognised, the university or tax clinic could register as a 'community tax service' and employ a registered tax agent to supervise the practice. Structurally, this approach better reflects the position of tax clinics. The registered tax agent is an employee of the university who supervises the clinic and the services are being provided through the clinic, not the individual. Under the current approach, universities are wholly reliant on an individual using their registration to run the clinic's operations. I note that the Melbourne Law School Tax Clinic is a registered community legal service with an appropriately qualified supervisor, a legal practitioner holding an unrestricted legal

practicing certificate. If this individual should leave his employment at the University, the Clinic will continue with a different, appropriately qualified supervisor. Further, this approach enables a more straightforward application of professional indemnity insurance as the Clinic's operations are directly covered by the University's insurance rather than the University insurance indemnifying the individual registered tax agent.

If you have any queries or would like to discuss my submission further, please contact me on sunita@unimelb.edu.au.

Yours sincerely,



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