

15 January 2024

Director, Tax Agent Regulation Unit  
Personal, Indirect Tax and Charities Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

Dear Director,

***Consultation paper:  
Enhancing the Tax Practitioners Board's sanctions regime***

The Institute of Financial Professionals Australia welcomes the opportunity to provide our submission on this important issue.

The Institute of Financial Professionals Australia is a not-for-profit membership association which has been serving members for over 100 years. With a membership and subscriber base of over 15,000 practitioners, our association is at the forefront of educating and advocating on behalf of independent tax, superannuation and financial services professionals.

Please note that we have only made comment on the questions that we consider are pertinent to our members.

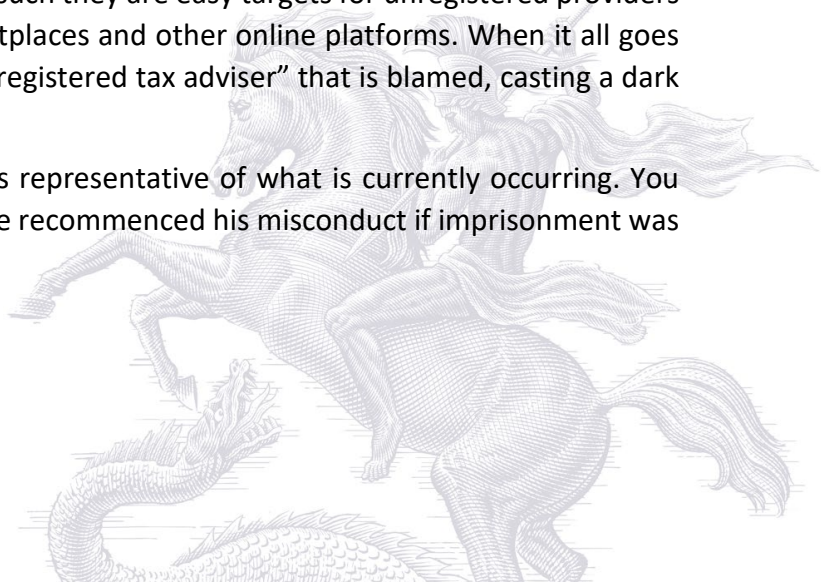
**Reintroduction of criminal penalties for unregistered preparers**

***Consultation questions***

- 1. How effective would the introduction of criminal penalties (and resultant risk of imprisonment) be in deterring unregistered preparers? Are the penalty unit amounts outlined in the previous sanctions regime appropriate?*

It is urgent and essential that unregistered preparers be removed from the tax system. For the most part, individual taxpayers do not understand the difference between a registered and an unregistered tax practitioner. As such they are easy targets for unregistered providers hawking their services on mobile marketplaces and other online platforms. When it all goes wrong it is the "tax adviser" not the "unregistered tax adviser" that is blamed, casting a dark shadow across the whole profession.

The example on page 13 of the Paper is representative of what is currently occurring. You would question if "Matthew" would have recommenced his misconduct if imprisonment was a real possibility.



We believe the introduction of criminal penalties would be effective in deterring unregistered preparers. However, given the negative impact unregistered providers have on the tax system, we believe the penalty unit amounts should more appropriately be:

Offence	Penalty
Unregistered practitioners who provide taxation services for a fee	300 penalty units (currently \$93,900)
Unregistered practitioners who advertised for tax related services	50 penalty units (currently \$15,650)
Tax practitioners who allowed unregistered preparers to perform tax services on their behalf (first offence)	25 penalty units (currently \$7,825)
Tax practitioners who allowed unregistered preparers to perform tax services on their behalf (second offence)	300 penalty units (currently \$93,900)

The impact of unregistered preparers on the system cannot be understated or over penalised.

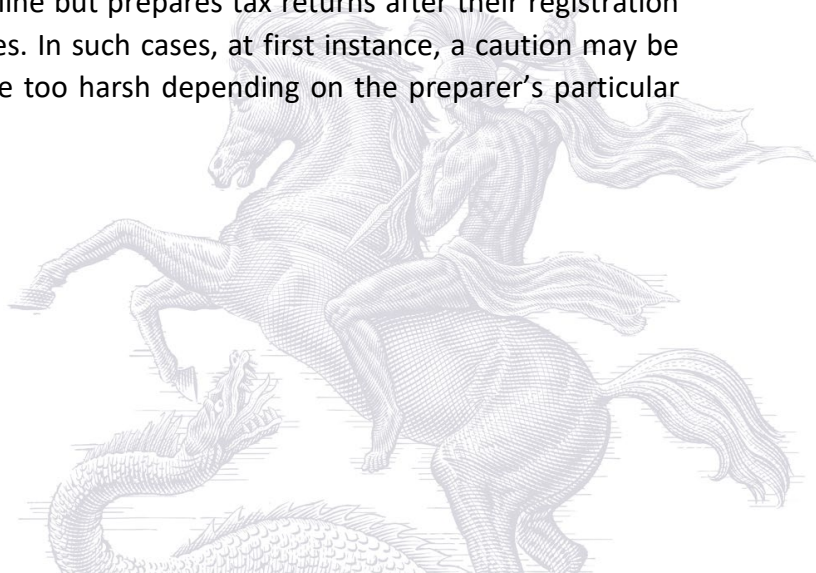
2. *Having regard to other legislative regimes, what would be an appropriate intent threshold to attach to the proposed criminal offence (e.g. intentional disregard, recklessness, etc.)?*

Despite what we have said above, there are also unregistered preparers who do not understand the requirements of the TASA and the need to be registered. Therefore “intentional disregard” would seem to be the appropriate threshold at which criminal offences are applied.

3. *Are there any limitations, risks or unintended consequences that may result from implementing a criminal penalty for unregistered preparers who provide taxation services for a fee?*

Care must be taken to ensure that criminal penalties are only applied to those unregistered preparers who demonstrate an intentional disregard for their legal obligations.

For example, an otherwise registered and compliant tax preparer who, for serious family reasons, misses their TPB renewal deadline but prepares tax returns after their registration lapses, should not face criminal penalties. In such cases, at first instance, a caution may be appropriate, and even a caution may be too harsh depending on the preparer’s particular circumstances.



## Broader and increased civil penalties in the TASA

### *Consultation questions*

6. *What are the benefits or risks associated with expanding section 50-20 of the TASA to address registered tax practitioners and unregistered preparers who make false and/or misleading statements to the Commissioner and/or the TPB?*

Unregistered preparers providing (or advertising for the provision of) tax agent services for a fee or reward, or falsely represent to others that they are a registered practitioner, and registered tax practitioners who make false or misleading statements to the Commissioner, employ or use the services of individuals or firms that have been deregistered by the TPB, or sign off on documents that have not been prepared by them (or someone under their supervision) should face the harshest penalties.

We believe that the proposed changes to civil penalties are appropriate and will have a positive impact in curtailing this unacceptable behaviour.

However, we caution that every case, particularly relating to individual offenders, should be considered on its merits and such penalties (\$782,500, and soon to be \$825,000, for individuals) should be a last resort to correct recalcitrant behaviour, lest we risk the actions of a few inappropriately imposing potentially practice ending penalties on otherwise compliant preparers.

7. *Would the proposed increase in civil penalties serve as an effective deterrent to protect consumers and prevent breaches of the code and the TASA more generally? Are the proposed penalties appropriately scaled to adequately address individuals, bodies corporate, trusts, partnerships and SGEs?*

We consider that the proposed increase in civil penalties would serve as an effective deterrent to protect consumers and prevent breaches of the code and the TASA more generally, in most cases. There will always be bad actors looking to circumvent the system, regardless of the level of potential penalties.

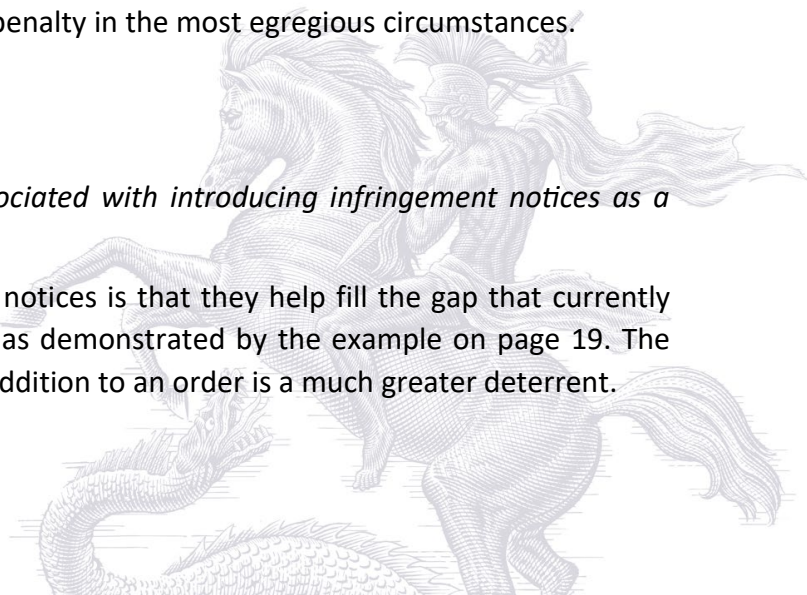
The proposed penalties are appropriately scaled to adequately address individuals, bodies corporate, trusts, partnerships and SGEs if, as mentioned above, they are used as a last resort to correct recalcitrant behaviour or as a penalty in the most egregious circumstances.

### **Introduction of infringement notices**

#### *Consultation questions*

9. *What are the benefits and risks associated with introducing infringement notices as a sanction?*

The benefit of introducing infringement notices is that they help fill the gap that currently exists in the TPB's arsenal of sanctions, as demonstrated by the example on page 19. The ability to impose a monetary penalty in addition to an order is a much greater deterrent.



The risk is whether “on the balance of probabilities” is a sufficiently high enough bar for the issuance of an infringement notice. It is noted that the TPB would be responsible for developing guidelines as to where it would use infringement notices for contraventions of civil penalty provisions, however what of the reputational risk to the preparer where it is ultimately found that they did not breach the provisions?

*10. Does the ability to impose infringement notices in certain circumstances adequately address the perceived gaps in the TPB’s sanction powers for low to medium level contraventions?*

Yes, where issued appropriately.

*11. Are the 12-penalty unit (individuals) and 60-penalty unit (bodies corporate) default levels for infringement notices appropriate? Is the proposed infringement notice regime fair and practical for individuals and bodies corporate?*

The minimum and maximum amount of penalty units should be prescribed. Between those amounts the TPB should have discretion as to the amount of penalty units imposed, to better address the gap in the TPB’s sanction powers for low to medium level contraventions.

### **Clarifying TPB orders**

#### **Introduction of enforceable voluntary undertakings with tax practitioners**

##### ***Consultation questions***

*14. Are enforceable undertakings an effective regulatory feature to enhance standards and behaviour?*

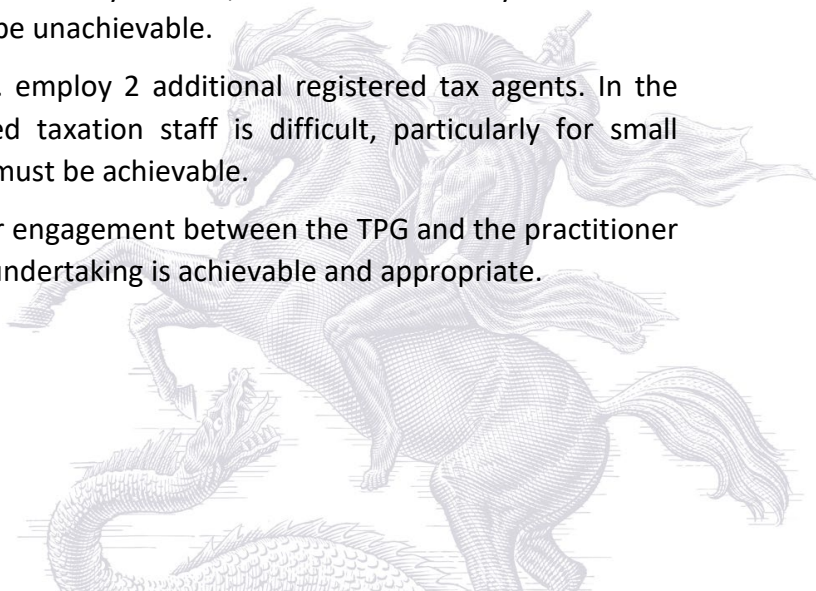
From the brief explanation provided in the Treasury paper, enforceable voluntary undertakings would appear to be an appropriate addition to the TPB’s enforcement options.

*15. What implementation issues could arise from the use of enforceable undertakings?*

The example on page 22 of the Paper draws out some of the practical issues around enforceable voluntary undertakings. For example, requiring staff to successfully complete courses in the *Income Tax Assessment Act 1997* is, like the Act itself, very broad. Such an enforceable undertaking would need to be clearly defined; else it would be easy to make the enforceable undertaking so broad as to be unachievable.

Similarly, the requirement that XYZ Co. employ 2 additional registered tax agents. In the current environment hiring experienced taxation staff is difficult, particularly for small practices. The enforceable undertaking must be achievable.

We would expect there to be some prior engagement between the TPG and the practitioner to ensure the scope of the enforceable undertaking is achievable and appropriate.





## Introduction of contingent and interim suspensions

### ***Consultation questions***

*16. Given how significant suspensions are likely to be for registered tax practitioners, should interim suspensions be limited to certain circumstances?*

As noted on page 24 of the paper, interim suspensions pose “the risk of unfairly damaging careers and livelihoods of tax practitioners if used inappropriately or incorrectly”. The fact that the interim suspension is a reviewable decision does not necessarily overcome this issue as the reputational damage may have already been done. Therefore, it is essential that interim suspensions only be used in very limited circumstances.

We would also question whether “reasonable” is a significantly high enough bar for the use of such suspensions.

*17. Are there any risks as to whether an interim suspension may affect clients/taxpayers and are there any additional safeguards that can be put in place to mitigate these risks?*

Yes.

As above, interim suspensions should only be used in the most egregious cases where there is a high degree of certainty that one of criteria on page 23 has been met.

*18. Are the safeguards proposed above sufficient to protect tax practitioners?*

No, the bar for the use of interim suspensions needs to be higher than that proposed in the Paper.

## **Sanctions not considered in this paper**

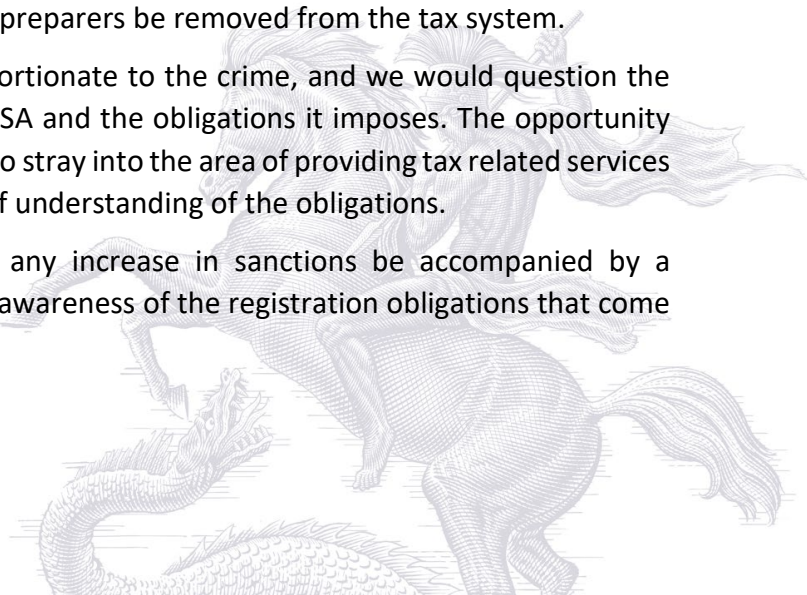
### ***Consultation questions***

*19. How could unregistered tax practitioner behaviour be best addressed?*

Where a tax practitioner is acting while knowingly unregistered and with no intention of becoming registered, rather than a usually compliant tax practitioner who misses a registration renewal due to factors beyond their control and rectifies the situation at the earliest opportunity, the action by the TPB should be swift and severe. As we stated earlier, it is urgent and essential that unregistered preparers be removed from the tax system.

However, the punishment must be proportionate to the crime, and we would question the general community awareness of the TASA and the obligations it imposes. The opportunity currently exists for well-meaning people to stray into the area of providing tax related services while unregistered simply due to a lack of understanding of the obligations.

Therefore, we would recommend that any increase in sanctions be accompanied by a community education campaign to raise awareness of the registration obligations that come with providing tax related services.



20. Are there any other unethical practices or behaviours that are not adequately addressed under the proposed regulatory framework?

The proposals would appear to address all unethical practices or behaviours.

21. Does this proposed package of changes collectively strike the right balance in promoting the integrity of the system, protecting consumers' interests, and facilitating access to quality tax advice?

Please see our comments in earlier questions regarding the need to ensure the punishment fits the crime.

22. Does the proposed package ensure the TPB as regulator has the right tools to deter, detect and punish bad behaviour by tax practitioners?

The proposed package certainly greatly increases the TPB's armoury to address inappropriate and undesirable behaviour. Whether it provides the right tools will only be known once they are available to the TPB and have been applied to practical situations.

However, in addition to providing the TPB with additional weapons, we would urge that the TPB be appropriately resourced to use those weapons.

21. Are there any other sanctions, **including** from the 2019 TPB Review, that should be considered?

For the most egregious cases, permanent disbarment should also be an option.

\* \* \* \* \*

If you have any questions in relation to this submission, please contact Neville Birthisel on (03) 8851 4509 or [n.birthisel@ifpa.com.au](mailto:n.birthisel@ifpa.com.au).

Yours faithfully,



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