

Amending the tax practitioner code of conduct instrument

MYOB Submission

2 October 2024

Director
Tax Agent Regulation Unit
Personal and Indirect Tax and Charities Division
Treasury
Langton Cres
Parkes ACT 2600
Sent via email: PwCResponse@treasury.gov.au

Re: Amending the tax practitioner code of conduct instrument

Thank you for the opportunity to share MYOB's feedback on draft amendments to the *Tax Agent Services (Code of Professional Conduct) Determination 2024* and its updated explanatory material. We appreciate the Government reopening consultation on these important changes and exploring their potential implications with industry.

MYOB is a fully integrated, cloud-based business management platform that helps Australian small businesses start, survive and succeed. For more than 30 years, MYOB has been a fearless champion for small businesses across Australia and New Zealand.

While many of these small businesses are accounting practices, MYOB is also an important partner to accountants and bookkeepers across Australia who use our platform to manage the tax affairs of their clients.

Many of these customers have expressed their concern that the *Tax Agent Services (Code of Professional Conduct) Determination 2024* signed by the Assistant Treasurer on 1 July 2024 was unworkable and contained changes that were not included in the original consultation.

We commend the Minister for registering an amendment to this original determination on 9 September 2024, which gave industry more time to understand and comply with the changes, and recognised that smaller firms required greater time still.

Throughout our discussions with both customers and industry, accountants and bookkeepers have consistently raised concerns with two specific sections of the determination: sections 15 and 45. We are heartened to see government reopen consultation on these two sections and have enclosed our feedback below.

Again, I commend the Assistant Treasurer's willingness to engage with stakeholders and the expedience with which he has responded to constructive feedback. Should you have any questions about this submission, please contact Courtney Sloane at courtney.sloane@myob.com.

Yours sincerely

Kim Clarke
Executive, Enterprise and Practice

MYOB submission

General comments

MYOB acknowledges the important work the Government and parliament have done to investigate and address unethical conduct within Australia's tax profession; the events that the PwC response necessitated stood to undermine consumer, business and investor confidence in Australia's tax and audit system. However, it is important to remember that PwC is a large, multinational company. It is appropriate to consider the disproportionate impact any new regulations could have on smaller accounting and bookkeeping practices, many of whom are trusted advisors to small and medium businesses, and the vast majority of which, have been conducting their business in a manner that has reinforced the high ethical standards the industry expects. MYOB encourages the Government to consider a more proportionate approach to applying any new regulations so as to avoid any unintended consequences or downstream impacts. For example, cost increases for SMEs to access qualified tax advice or a decrease in competition due to disproportionate compliance standards for smaller accounting practices.

Section 15

Commonly referred to as the "dob-in" provisions by our customers and partners, the changes proposed in section 15 have been of particular concern for our stakeholders. MYOB acknowledges that the Government has come some way in addressing the feedback from industry, however we remain very concerned that individuals and SMEs may not understand this nuance, and may no longer see their tax agent as their trusted advisor who acts in accordance with their best interests.

SMEs are heavily reliant on their tax/BAS agents to ensure they are compliant with their tax obligations. Knowing that these advisors could be required to 'dob-in' clients who have made false or misleading statements (albeit with the updated qualification that the statements were made due to recklessness or intentional disregard, and that these actions have caused substantial harm) could deter SMEs from having full and open conversations with their tax/BAS agent. MYOB is concerned that this could lead to inadequate advice (and therefore the risk of penalties), or SMEs avoiding professional advice altogether.

Tax agents are required to act in the best interests of their clients *and* be compliant with the law. We would argue that the rules outlined in section 15 are moot and that including these rules only adds to the regulatory burden for tax agents without necessarily achieving the outcome government seeks. We believe greater consideration should be given to the consequences of tax agents not acting in the best interests of their client(s).

MYOB also recommends greater harmonisation of language in this section with APES 110 360.5 A3, which clearly defines 'substantial harm'.

Section 45

Many of our accounting and bookkeeping stakeholders expressed concerns to us that the original wording of section 45 could require tax/BAS agents to disclose *any* matter that could influence a current or prospective client's decision to engage an agent, and that without comprehensive guidance could be interpreted to include matters of a personal nature such as relationship status, political affiliation or health diagnoses. While the Tax Practitioners Board indicated that it would take a 'pragmatic and practical approach' to applying these provisions, we were relieved to see a reworking of this section to provide greater clarification and direction. We believe this section could be further strengthened by acknowledging that clients will often be clients of a firm, and not an individual tax agent. Firm level disclosures may be more appropriate.

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