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**Submission from the Tax Justice Network Australia to the
consultation on amending the tax practitioner code of conduct
instrument
2 October 2024**

The Tax Justice Network Australia (TJN-Aus) welcomes the opportunity to comment on the *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024*. We are disappointed that the amended Determination will weaken the obligations of tax practitioners to have to report when their clients have made false or misleading statements to the ATO or TPB. We have been troubled by the very public campaign waged by several of the peak bodies for tax practitioners that, in our view, have demonstrated their lack of commitment to the public good in favour of the interests of their clients who wilfully make materially false and misleading statements to the ATO and TPB.

The behaviour exposed by the misuse of confidential information by PwC tax partners and staff¹ demonstrated that the current principle-based Code of Professional Conduct was not explicit enough, and amendments were needed to ensure registered tax agents and BAS agents understand their ethical obligations explicitly. As evidence of the lack of understanding of the ethical standards expected in actual conduct, Mr Chenoweth from *The Australian Financial Review* told the International Consortium of Investigative Journalists, in the context of the PwC in Luxembourg working with the Luxembourg tax authorities to slash the tax contributions of their multinational corporate clients to almost nothing:²

In Australia, PwC was assuring me that they'd never get involved in tax avoidance advice, they'd never try to influence the tax office, that their habit of embedding PwC staff to work at Treasury at PwC's expense while they paid their salaries, was just part of the firm's public-spiritedness. What their quote was: "There was no conflict of interest in providing advice to the tax office whilst also providing professional advice to clients."

Tom Seymour, the head of tax at PwC, in April 2015 told the Senate Economics Committee at the inquiry into corporate tax avoidance: "I have the utmost faith in the ethical standards of the people we employ. And I think we have a great contribution to make to how we make

¹ See for example Carman Molina Acosta, "Behind the scenes of the PwC tax leak scandal with Neil Chenoweth", *International Consortium of Investigative Journalists*, 24 October 2023.

² Ibid.

Australia's tax laws work better.”³ Sitting beside him was Peter Collins. In the words of Mr Chenoweth, “That kind of says it all about the ability to say one thing in public, and in private to do exactly the reverse.”⁴

Under Subsection 15(2) in Column 1 under point 3(b), we believe that if the client has not provided proof to the registered tax agent that the statement has been corrected or adequately explained to the ATO or TPB, then the tax agent should be required to report the matter to ATO or TPB. An honest client should not have any difficulty proving to their registered tax agent that a mistake that resulted in a false and misleading statement to the ATO or TPB has been corrected or explained. Thus, rather than the registered tax agent having to decide if they are reasonably satisfied that the client has corrected the statement or otherwise adequately explained the basis for the statement, the tax agent should have an obligation to report the false or misleading statement to the ATO or TPB. Such an obligation safeguards against a client engaged in wilful illegal activity who is willing to lie to the ATO or TPB and their registered tax agent to conceal their illegal activities. Suppose such a client can deceive their registered tax agent that the statement has been corrected or explained to the ATO or TPB. In that case, the ATO or TPB may be left unaware of the false or misleading statement as no one will have reported it to them.

In the case of an honest client who has corrected the statement or provided an adequate explanation and the registered tax agent also reports the statement to the ATO or TPB, there is no harm to the client as the matter has been rectified.

Further, under Subsection 15(2), our view is that where the registered tax agent detects a materially false or misleading statement by their client and the client is unwilling to correct the statement or adequately explain it, the tax agent should be required to report the statement to the ATO or TPB (whichever is relevant) without having to assess if the false or misleading statement will cause “substantial harm to the interests of others”. It should be the regulators that decide if a matter is serious enough to warrant follow-up with the client. A materially false or misleading statement by a client might be a red flag for more serious criminal activity by the client that the registered tax agent cannot know of. Thus, a registered tax agent might decide a false or misleading statement by a client will not cause substantial harm to the interests of others due to incomplete knowledge. Suppose the matter had been reported to the ATO or TPB. In that case, it may have resulted in an investigation by the regulator that would have uncovered the client's substantive harm inflicted on others through their actions.

It should not be an option for a registered tax agent not to have to report the materially false and misleading statement their clients have made to the relevant regulator when the client refuses to correct or adequately explain the statement by simply withdrawing from engagement with the client.

The current laws allow for inconsistency between businesses that detect signs of possible tax evasion. Businesses that are reporting entities under the *Anti-Money Laundering Counter-Terrorism Financing Act 2006* are required to report to AUSTRAC suspicious activity that might indicate money laundering where tax evasion is the underlying predicate offence. By contrast, registered tax agents have not been required to report to the ATO or TPB when they become aware that a client has made a materially false or misleading statement that may indicate a tax evasion predicate offence.

³ Ibid.

⁴ Ibid.

We note that the UK Chartered Institute of Taxation states that “returns with deliberately incorrect statements or deliberately omitted income” are indicators of possible tax evasion.⁵

The TJN-Aus is disturbed by those tax advisers who appear to argue their loyalty is to their clients through preserving confidentiality even when the tax adviser believes the client has made a materially false and misleading statement to the ATO or TPB and not to the public interest by assisting law enforcement agencies to ensure their clients are operating in compliance with the law.⁶

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⁵ <https://www.tax.org.uk/reporting-tax-avoidance>

⁶ Miranda Brownlee, ‘TASA determination ‘still problematic’ despite improvements, specialist warns business’, *Accountants Daily*, 1 October 2024.

Background on the Tax Justice Network and Tax Justice Network Australia

The Tax Justice Network (TJN) is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. But under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogram their tax and financial systems.

The Tax Justice Network Australia (TJN-Aus) is the Australian arm of TJN.

In Australia, the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Publish What You Pay Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers' Union (UWU)
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia