

1 October 2024

Director
Tax Agent Regulation Unit
Personal and Indirect Tax and Charities Division
Treasury
Langton Cres
Parkes ACT 2600

By email: *PwCResponse@treasury.gov.au*

Dear Director,

Re: Amending tax practitioner code of conduct instrument

We are a group of regular tax practitioners – and by that we mean:

- Our firms are small – either sole practice, one person with some staff or two partners.
- Our clients are usually individuals or small or medium businesses. We interact with a lot of regular people.

We have formed a group called Tax Practitioners Against the Ministerial Determination (***TPAMD***).

Throughout this letter we will refer to ourselves as Ordinary Tax Practitioners (***OTP***).

The proposed regulations seem to us to be completely out of step with the reality on the ground for the majority of Australians.

We make the following comments on the Ministerial Determination, including the proposed amendments:

Section 10 - Upholding and promoting the ethical standards of the tax profession

The spirit of the section is a given. We will do the best job we can, as we always have, and will continue to do, but will not accept being gagged.

For example, the dob in provisions which we will get to later. Under this rule, we won't be able to advocate against these rules because we are required by law not only to accept them, but to take a step further and actively promote them.

Further, the way these ministerial determinations have been issued previously give us no confidence that the changes made in future that we are required to promote will be desirable or achieve their intended effect.

We do not want this gag to be imposed on us.

The entire section must be withdrawn.

15 - False or misleading statements

This section presumably takes on the definition of “false or misleading” from the tax legislation in relation to penalties. The way this is applied in practice is that any error in a tax return is “false or misleading” which automatically triggers penalties which the ATO applies based on a scale and then considers whether to remit. The fact is that any mistake or error, even an honest one, is “false or misleading” regardless of intent – this is how it is applied in practice on the smaller end of town.

For larger clients and multinationals, you will find that the rules are not applied in this way. For smaller businesses, it is always applied this way. In fact, it is part of the standard ATO audit template.

It is also fairly routinely the case that any error will be classified as either reckless (50% penalty) or intentional disregard (75%). This is because, like the term “false or misleading”, the ordinary meaning of the phrase and the tax meaning of the phrase are different. Another example of ordinary words vs technical words in tax law is the phrase “fraud or evasion” which, in tax language actually just means you made a mistake you shouldn’t have. This is different to how the ordinary person understands it.

Therefore, using the words which derive their meaning from the tax legislation must be completely avoided, unless there is a conscious understanding of what they mean and how they are applied in practice.

The additional overlay here is that OTP clients tend to have limited financial resources and either do not want or cannot pay for a detailed examination of their affairs each year. Often these clients are reluctant to part with funds to pay fees in the first place – which they perceive to be in addition to the taxes they already need to pay.

This will require a higher level of engagement than most of the clients will be willing to pay for, which will only result in conflicts and difficult situations. Our clients may even seek to simply do their own tax returns if they cannot afford the price – and our experience is that this means they may not bother to do them at all. As our business depends on people completing their returns, we have an incentive to ensure that they lodge their returns in a timely way. If our clients are not interested in paying the additional costs for the additional work, then we may not even have them as clients, and there will be no one assisting them with their compliance.

Now to the more alarming point – we have asked regular people what they would think if they knew their tax agent might be required to report them. It was deeply unpopular, and we are worried it will destroy the trust relationship we have with our clients. This trust is the foundation of our business. There is a real possibility that many people would simply not lodge tax returns any more, and because they will no longer trust us, they will not tell us anything and we will be frozen out and unable to help them.

This provision imposes significant risk on OTPs and must be withdrawn.

20 - Conflicts of interest in dealings with government

This section has nothing to do with OTPs or even tax agents generally. As we understand it, this is a contractual issue between the Government and whoever they seek to hire as a consultant – whether the consultant works for fees or is paid.

It is the Government's responsibility to prepare contracts with those people it engages with which set out these types of rules. It does not belong in the code. From our understanding, no one was ever providing a *tax agent service* to the Government. If this is so, why are these provisions in the Code? Even if someone was providing a tax agent service to the Government, then that should be dealt with in their contract, and it should already come with confidentiality obligations which have already been breached.

Government mainly (or perhaps exclusively) gives business to non-OTPs.

Therefore, this rule does not belong in the Code and must be withdrawn.

30 - Keeping of proper client records

These rules duplicate the record keeping requirements that are already in the tax legislation – see section 262A of the Income Tax Assessment Act 1936. The consequence of failing to keep records and not being able to substantiate claims is that the tax deduction or GST credit will be disallowed. This is already dealt with in the legislation.

This rule must be withdrawn.

35 - Ensuring tax agent services provided on your behalf are provided competently

The heading of this rule makes sense and we endorse it. However, we don't understand what the point of the two paragraphs are. Firstly, we are required already to do a certain level of CPD. Secondly, of course we try to provide a good quality service. That is already a given. This is something that is done already and covered somewhere else.

This rule should be reconsidered in light of the existing rules, and if it does not add anything must be withdrawn. This rule gives the impression that the rules are being made without regard to existing rules, which is an issue we will come back to later.

40 - Quality management systems

The same comment as rule 35.

45 - Keeping your clients informed of all relevant matters

This work is already done by others – for example google reviews and the other investigations people do before they hire someone for anything. People are intelligent, and prospective clients can and do shop around. People should not be treated like idiots. They are not.

A quick internet search will reveal any issues with the tax practitioners board already. Further, we are aware that the ATO tends to contact clients of tax practitioners where there are difficulties.

After considering the above, we now come to the rules. Presumably these rules are here because there is some “gap” in the information flow that is already very easily available. We do not see what this gap may be, but the existence of this grey area and how it may be used or applied in future is unacceptable for OTPs.

When Government makes these rules, the existing framework of how OTPs operate on a day-to-day basis needs to be considered first.

This rule must be withdrawn.

Tax Agent Services Act

Section 30-12 allows the Minister to determine obligations. This section must be repealed.

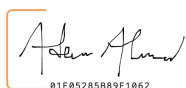
Giving one man the ability to make his own legislation which affects millions of Australians is unacceptable. It is clear to us that many of these rules have been created without regard to existing rules or indeed how OTPs operate in practice. Further, there is nothing wrong with the current parliamentary process for legislation which has served this country well.

If any changes are necessary, then we are sure the Government has nothing to fear from the parliamentary process to have them passed.

Saying that a consultation process exists is not acceptable, because most OTPs do not have time to engage in that on top of their existing work commitments. It is a testament to how extreme these rules are that OTPs were able to organise and form TPAMD in the first place.

If you have any questions, please do not hesitate to contact us on 02 7200 8200.

Signed by the Organising Committee of Tax Practitioners Against the Ministerial Determination



01E85285889F1062

Adam Ahmed



32CC7784885D5360

Madan Rautela



A4CCF8005B97B11E

Ahmad El Masri




2594299470471712

Bachir Zreika



B195B8CD855FA76D

Sultan Ahmed



43F1A389E40AAD85

Nazih Naboulsi



387FE20BCE7E3FF2

Rabie Skaf




D660F481E59CE085

Adam Qablawi



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Mahesh Agarwal



D86C82D08709F14F

Nezar Naboulsi



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Mohammad Rajab



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Mohamad Zreika



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Ben Collins