

[tpbreview@treasury.gov.au](mailto:tpbreview@treasury.gov.au)

Mr Nick Westerink  
Individuals and Indirect Tax Division  
Treasury  
Langton Cres  
Parkes ACT 2600

30 August 2019

Dear Mr Westerink,

**Review of the Tax Practitioners Board - Discussion Paper**

We refer to Treasury's invitation to consult on its [Review of the Tax Practitioners Board - Discussion Paper](#) released on 1 August 2019.

Our comments are contained in the Appendix to this document and focus on the following issues:

- 3. Independence of the Tax Practitioners Board from the ATO
- 5. Registration, education and qualifications
- 7. Sanctions
- 9. Safe Harbour

Should you have any questions, or wish to discuss any of the comments made in our submission, please do not hesitate to contact me on 02 9240 9736 or [lance.cunningham@bdo.com.au](mailto:lance.cunningham@bdo.com.au).

Yours sincerely

Lance Cunningham



BDO National Tax Director

## APPENDIX

### 3. Independence of the TPB from the ATO

- BDO agrees that the Tax Practitioners Board (TPB) should be, and be seen as being, independent of the Australian Taxation Office (ATO). BDO supports 'The Ethics Centre' and its view that the overarching purpose of the TPB is to ensure that tax practitioners operate with integrity but that equally, tax practitioners must also have confidence in the integrity of the system as it applies to them.
- Of the three possible options to address the options of independence outlined in section 3.22 of the discussion paper, BDO's preference is the second option (option 3.22.2) that provides for a completely independent TPB with the chair being the relevant accountable authority with its own budget and its own staff located in its own premises.
- BDO do however recognise the possible funding constraints of option 3.22.2, and would therefore accept the third option (option 3.22.3). According to this option the TPB would be the relevant accountable authority, but with the majority of staff being seconded from the ATO. BDO support this option on the basis that seconded staff are strongly guided to drop any residual obligations to the ATO and are sufficiently inducted to understand the importance of being independent.
- We also suggest that this third option be augmented by allowing for secondment of staff from the tax profession. This would help with the TPD being independent and also be seen as being independent.

### 5. Registration, education and qualifications

- The current educational qualification requirements are too limited, particularly for some specialist tax practitioners. In many instances, there are specialists that cannot be registered as tax agents because they lack the particular requisite accounting or legal educational qualifications. In order for them to provide the particular specialist tax services they, or the firms they work for, have to enter into rather convoluted supervision arrangements so there is at least the appearance of the specialists being 'supervised' by a registered tax agent even though the supervising tax agent does not have any particular tax specialist knowledge or experience. Examples of such tax specialists include specialists in research and development, transfer pricing, financial services etc.
- The above point leads to a wider issue of the Tax Agents Code of Professional Conduct requirement for the tax services to be supervised by registered tax agents. This issue is not discussed in much detail in the discussion paper, but we see it as an important issue that should be included in the consultation. Based on our experience, there is a wide divergence of interpretation of what 'supervision of tax services' means. In some firms (including some of the larger firms) there is the view that the supervision requirement can be met through an annual quality assurance process. This does not appear to be in line with the TPB guidelines of what adequate supervision means, but there does not seem to be any action taken by the TPB in relation to the firms that take this view.
- There is a suggestion that the registration of tax agents be on an annual basis instead of every three years. BDO do not support this suggestion. The current three yearly registration is already convoluted and time consuming and a move to an annual registration process would result in an even greater time and administrative burden on tax practitioners who are already stretched to the limit with work pressure.
- If an annual registration process is introduced it should be a much more streamlined and less time-consuming process than the current three year registration process.

## 7. Sanctions

- BDO refer to The Ethics Centres comments in the opening comments to the discussion paper, that the TPB must ensure the integrity of tax practitioners, but in such a way that tax practitioners have confidence in the integrity of the system as it applies to them. In this regard, any sanctions that the tax practitioners are subject to should not discourage honest and hardworking tax practitioners from assisting their clients in legally meeting their tax obligations.
- BDO support the view of the inspector General of Taxation (IGOT), that any more serious pecuniary or civil penalties be limited to instances of serious fraud by tax practitioners. We do note however that the ATO already has the ability to impose serious pecuniary penalties on tax agents through the mechanism of the Tax Promoter Penalty Regime.
- We also note that there has been very few indications of promoter penalty sanctions being undertaken by the ATO, therefore we suggest that before introducing more pecuniary sanctions on tax agents that there be a review of the Tax Promoter Penalty regime to see how it can be improved and more fit for purpose.
- We generally agree with possibility of additional sanctions, which are detailed in paragraph 7.29 of the discussion paper. These non-pecuniary sanctions appear to be well thought through and fit for purpose.
- We note that at present it is not possible to challenge the TPB's imposition of a written caution, other than on administrative law grounds. This remedy is uneconomic given the level of the sanction imposed. There should be some cost effective means for practitioners in this scenario to challenge the imposition of lower level sanctions.

## 9. Safe Harbour

- BDO note the comment in paragraph 9.22 of the discussion paper that that one submission during the consultation phase highlighted the tension between agents and taxpayers that the safe harbour exemption creates.
- BDO have borne witness to situations where the ATO has indicated to taxpayers that their tax agent has not taken reasonable care and suggested to the taxpayer that they apply for the safe harbour provisions, even in situations where the ATO could apply its penalty remission powers.
- In these cases, the ATO does not always give the tax agent any opportunity to rebut the suggestion that they did not take reasonable care and the Tax Agent then has to convince the TPB not to impose sanctions. We suggest that in such situations the ATO should be required to allow the tax agent to provide reasons why they think they have taken reasonable care.
- BDO also suggest that the current safe harbour rules not be widened. We do not agree that the safe harbour should be extended to situations where the tax agent has been reckless or having intentional disregard to the tax law. In such cases, there is a high possibility that the client is in some way complicit with the tax agent's actions. In situations where the client is not complicit with the tax agent's actions (such as in the examples contained in Appendix 3 of the discussion paper) the ATO has adequate penalty remission powers where the situation was outside the taxpayer's control. BDO note however that (in our experience) these powers are infrequently exercised by the ATO because the actions of the tax agent are taken to be the actions of the principal, therefore BDO request a reconsideration of the penalty provisions instead.
- Tax agents are able to challenge the majority of sanctions through the Administrative Appeals Tribunal, but not a caution from the TPB, which BDO feel is not appropriate. If any new lower level sanctions also are unchallengeable, this will result in even more arbitrary decisions.