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30 August 2019

Mr. Nick Westerink  
Individuals and Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Mr. Westerink

#### **Review of the Tax Practitioners Board**

Tax & Super Australia and TAI Practitioners and Advisers Ltd welcome the opportunity to respond to the discussion paper entitled "Review of the Tax Practitioners Board", dated July 2019.

Our organisations are member based and our members are mainly tax agents. Our mission is to support our members in dealing with the Australian taxation and superannuation systems. Our organisations are regularly in contact with over 13,000 people involved in the Australian taxation industry.

Please direct your queries and request for further information to Mr. John Jeffreys, Tax Counsel of TSA on [REDACTED] or [jjeffreys@taxandsuperaustralia.com.au](mailto:jjeffreys@taxandsuperaustralia.com.au).

Yours sincerely,

A handwritten signature in black ink that reads "Stephen Ware".

**Stephen Ware**  
**President and Chairman**  
**TSA**

A handwritten signature in black ink that reads "John Brogan".

**John Brogan**  
**President and Chairman**  
**TAI Practitioners and Advisers Ltd**

**Review of the Tax Practitioners Board  
and the operation of the  
Tax Agent Services Act 2009  
and the  
Tax Agent Services Regulations 2009**

**Submission By**

**Tax & Super Australia  
and  
TAI Practitioners and Advisers Ltd**

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## EXECUTIVE SUMMARY

Tax & Super Australia and TAI Practitioners and Advisers Ltd (together “TSA”) welcomes the opportunity to jointly respond to the discussion paper dated July 2019 into the Review of the Tax Practitioners Board (“the Review”).

The key points that this joint submission makes are:

- Significant challenges are faced by tax agents on a daily basis due to the complexity of the taxation laws, problematic administration of the taxation system, increasing administrative costs and price competition.
- The changes that will result from the Review must not result in yet more burdens being placed on tax agents. Tax agents are at the forefront of ensuring that the Australian taxation system operates. Increasing legislative and administrative pressures on tax agents will degrade the operation of the taxation system and discourage participants joining the industry.
- Unregistered agents and tax agents that repeatedly and deliberately operate outside the bounds of the law should be dealt with strongly. These types of people bring a bad reputation to the tax agent community and they need to be removed from being part of the tax industry.
- The Tax Practitioners Board must be independent of other government agencies, particularly the Australian Taxation Office. However, there must be a free flow of information between the Australian Taxation Office and the Tax Practitioners Board to enable it to function properly.
- At least half of the members of the Tax Practitioners Board should be tax agents appointed by tax agents or professional associations (including RTAA's) that represent tax agents
- There should only be a minor adjustment to the educational requirements in relation to qualifying as a tax agent.
- All tax agents should be required to be a member of a Registered Tax Agents Association.

## **TAX & SUPER AUSTRALIA**

TSA is a member based, not-for-profit organisation that has been in existence for 100 years. For most of its life, TSA was known as Taxpayers Australia. TSA now has a base of about 3,500 members but also has regular contact with around 13,000 people involved in the tax agent community. Most of the members of TSA are tax agents.

TSA supports its members with various services that assist them with dealing with the taxation and superannuation laws in Australia.

TSA sponsored the formation of TAI Practitioners and Advisers Ltd and its registration as a recognised tax agents association (RTAA). TAI Practitioners and Advisers Ltd is also a member-based organisation and continues to receive the support of TSA.

In this submission, references below to TSA are on behalf and TAI Practitioners and Advisers Ltd.

## **COMMENTS ON THE CURRENT SITUATION**

The view of TSA is that the TPB and TASA are operating reasonably well. The changes made by TASA have improved the registration requirements for tax agents and the supervision of tax agents. TSA compliments the TPB on its professional approach to its work.

## **CHALLENGES FACING TAX AGENTS**

In the view of TSA, the discussion paper dated July 2019 gives scant reference to the challenges that are facing tax agents in their day-to-day practice. It seems to us that this is a significant missing element in the review.

Tax agents are critical to the operation of the Australian taxation system. A high percentage of business taxpayers and other taxpayers use the services of tax agents to comply with their Australian taxation obligations. Tax agents operate their own businesses and seek to make their living from providing taxation services to the business and general community at large. They seek to do this in a highly complex and highly regulated environment. TSA is concerned that the voice of the tax agent has not been heard clearly enough in this review and that the outcomes for tax agents could be adverse.

Reading the discussion paper, a view could be formed that a purpose of the review is to place greater burdens on tax agents. If tax agents perceive that the main outcome of the review of the TPB and TASA is to place greater burdens on them, tax agents will see the review process as being a failure and another imposition on overworked people trying to deal with the vagaries and complexities of the taxation laws and the administrative processes of the ATO.

## **Remove bad tax agents**

TSA fully supports any action that removes tax agents who consistently and knowingly engage in unlawful or immoral activity. Such people give a bad reputation to the vast majority of tax agents who

try to do the right thing. Nothing that is said below should be seen as detracting from the idea that bad tax agents be removed from the taxation system and be heavily penalised.

However, we would caution against the idea of immediately labelling a tax agent as being egregious because a bad error has been found in a tax return that a tax agent has prepared. There may be various reasons for this. It also may be a “one-off” error or something that the tax agent simply misunderstands with regards to the tax law. Having a misunderstanding of how the tax law operates is very common, even for tax agents due to the complexity of the law.

## **Pressure on Tax Agents**

In recent months there has been publicity concerning tax debts owed by tax agents, errors made in preparing tax returns by tax agents and the termination of tax agent registrations of certain people.

TSA fully understands that the TPB and ATO have a regulatory role, which includes a disciplinary role for tax agents. Nevertheless, TSA considers that the weight of publicity has been to denigrate the role of tax agents rather than assisting the taxpaying community to understand the significant contribution that tax agents make to the tax system.

Given the cited rates of errors in tax returns by tax agents and the amount of tax debts that are owed by tax agents to the ATO, TSA would like to see both the TPB and the ATO adopt a helpful posture towards tax agents rather than an aggressive, disciplinary approach. The statistics that have been cited in relation to tax agent errors, tax debts and other issues, should demonstrate loudly that tax agents are under stress with the complexity and frustrating administration of the Australian taxation system.

TSA considers that the adverse publicity with respect to tax agents is one-sided. There has been a recent example where the ATO’s systems were inoperative for a day. Further, every tax agent will give you multiple stories of problems, both technical and otherwise, that they have with ATO systems in trying to help their clients comply with their obligations. It is frequently the case, that tax agents cannot recover the cost of these imperfections in the tax system from their clients. Their clients simply do not understand the fact that there are so many administrative errors and technical problems in dealing with the ATO. Our members frequently complain about their frustrating dealings with the ATO.

TSA understands that the ATO is a large and complex organisation which, by and large, does an excellent job in collecting revenue for the Australian Government. We appreciate that such a large organisation will have frequent issues that need to be dealt with. However, TSA is disappointed when there is frequent publicity concerning the failings of tax agents without having due regard to the day-to-day problems that tax agents need to deal with in relation to the complexities of the taxation and superannuation laws and the administrative difficulties tax agents have with the ATO.

Both the ATO and TPB must continually strive for a posture towards tax agents that is seen as being helpful to tax agents and not being aggressive towards them. Most tax agents perceive the ATO and the TPB as a type of police that looks over their activities. TSA strongly encourages the ATO and the TPB (especially) to adopt a supportive position towards tax agents with recognition of the highly complex nature of the businesses that tax agents conduct.

It should also be understood by government agencies that tax compliance work has become a commodity service. That is, there is a great deal of price pressure on the services that are being required of tax agents. Taxpayers do not generally understand the complexities involved in preparing

tax returns and simply see it as a routine process. Tax agents know that this is not the case but it is difficult to explain this to their clients. Their clients are getting competitive quotes for providing services and the tax agent, if they wish to stay in business, must price their services along with the competition.

The vast majority of tax agents seek to do the right thing. They want to comply with the laws but they can be frustrated in doing this through the complexity of the laws and the time pressures that are placed upon them in order to make a profitable living from their business. Due to the complexities and time pressures involved, corners are inevitably cut to achieve profitable outcomes. This is not something tax agents want to engage in, but in order to make a reasonable living; it becomes a necessity due to the environment in which they work. The government must understand this and act accordingly.

## **Imposition of further regulations and penalties on Tax Agents**

The discussion paper proposes the imposition of further regulations and penalties on Tax Agents. TSA is not opposed to appropriate regulations and penalties; however, we believe that great caution should be exercised in relation to some of the suggestions made.

### **Increased powers for the Tax Practitioners Board**

The discussion paper notes that the TPB has insufficient sanctions available to it under its current powers. It is suggested that the TPB has sanction powers that need to reflect a more “contemporary and agile sanctions regime”.

TSA is not opposed to the TPB having a more practical sanctions regime as suggested, provided that the sanctions regime is used with an overarching motivation of the TPB trying to assist tax agents rather than penalise them. The idea of a graduated sanction mechanism would appear, on its face, to be amenable with this objective. The list of proposed additional sanction tools in paragraph 7.29 of the discussion paper would be an improvement on the current powers of the TPB. However, this increased additional range of sanctions will, no doubt, require additional resources at the TPB for these sanctions to operate effectively.

TSA is also in favour of removing any arbitrary restrictions on the TPB’s performance such as having six-month timeframes in relation to an investigation. The TPB should be given the freedom and powers to conduct investigations in whatever manner it considers necessary to give the best outcome for the tax system.

If an investigation of a tax agent is to be conducted by the TPB, TSA are strongly of the view that every chance should be given to the tax agent to engage with the problem, including in consultation with an RTAA and have it resolved quickly before the TPB becomes heavily involved. This is particularly in relation to a complaint that has come from a client of the tax agent. In our view, clients of tax agents should first try to resolve their issues with tax agents in consultation with the tax agent before there is any significant involvement from the TPB.

### **Increased administrative penalties for tax agents**

In chapter 9 of the discussion paper, under the heading “Safe Harbour”, there are views expressed by the ATO that proposes administrative penalties could be applied to tax agents where the taxpayer has

a tax shortfall owing to the tax practitioner's fault. It is proposed that this would apply in instances where the tax practitioner's conduct is more culpable than a failure to take reasonable care (as under the current safe harbour regime).

TSA believes that extreme caution must be used in relation to this proposal as it has the potential to create significant difficulties for tax agents. Unless it can be shown that this proposal will not result in unfair treatment of tax agents, which we believe is very likely, it should not be introduced.

The proposal (see "Box 9.1" on page 63) readily assumes that it can be determined whether a tax agent has acted recklessly or with intentional disregard. It must be appreciated that this can be a very difficult thing to determine, particularly where two or more parties are involved in making a statement to the ATO through, for example, a tax return.

As an example, assume that the ATO has determined that the taxpayer has decreased its taxable income through some particular treatment of the tax law which the ATO considers is reckless or has intentional disregard for the law. Under the current penalty regime, the taxpayer becomes responsible for the administrative penalty. If the new regime proposed by the ATO is introduced, it is not difficult to conclude that the taxpayer will then immediately turn to the tax agent and say that the tax agent was reckless or had intentional disregard for the law. After all, the tax agent holds themselves out as being an expert on the tax law. If the tax agent signed the return, thus agreeing with the treatment, and the tax agent is (by definition) deemed to be more knowledgeable of the tax law, will it not automatically follow that the tax agent has been reckless or has had an intentional disregard for the law? The danger is that this could become the default position where penalties are applied.

Given that the penalties could be in the order of 50% or 75% of the tax avoided, TSA can easily envisage the situation where taxpayers, when penalised, will turn to the ATO and say that it was the tax agent who was reckless or had intentional disregard for the law and that under the new, proposed, administrative penalty regime, the tax agent should pay the penalty and not the taxpayer. TSA sees this outcome as being a highly probable result of this new administrative penalty. Accordingly, TSA is opposed to this new penalty regime unless it can be clearly demonstrated that the outcome we have just described will not become yet another massive burden on tax agents.

If we are correct in that the above outcome we describe will become frequent, it will become necessary for tax agents to "cover" themselves through extensive work, disclaimers and the frequent seeking of advice from other advisers including tax lawyers in order to "lay-off" the risk. This will result in greatly increased costs of compliance with the taxation laws.

### **Appreciation of market realities**

There must be an appreciation within the TPB and ATO that tax agents can only charge relatively low fees for many tax returns due to market forces. Due to this, there is a high level of time pressure placed on tax agents to complete tax returns quickly and efficiently. Of necessity, tax agents must rely heavily on the accuracy and integrity of the information that is provided to them by their clients. There is little time available to question information in detail. To do so can double or treble the time it takes to complete and lodge a tax return. This makes it almost impossible for a tax agent to make a profit from undertaking the work.

Tax agents cannot be made responsible for holding or checking client documents. In most cases, the documents and information must be accepted "as is" and the tax return lodged on that basis.



Tax agents should be able to go about their work fully protected from false or mistaken information given to the tax agent by the client that the tax agent has been unable to check.

## **Safe harbour for tax agents**

If a new administrative penalty regime was to be introduced, as discussed above, TSA would strongly recommend there be a safe harbour for tax agents. That is, to protect the tax agent from the prospect of significantly increased administrative penalties, the tax agent should be able to protect themselves from these administrative penalties by undertaking certain procedures.

For example, the taxpayer may want to claim a significant deduction for legal expenses over which there is some doubt as to their deductibility. If, under a procedure that is designated in the law, the tax agent advises the taxpayer that there is doubt over whether the legal expenses are deductible, this would protect the tax agent from the new administrative penalties. In other words, if the tax agent puts the taxpayer on notice that there are aspects of the taxpayer's tax return to which the ATO could disagree, this would protect the tax agent from the further administrative penalties.

In the above situation, it may be argued that this is only dealing with issues over which the dispute is about something that is reasonably arguable. However, a review of recent AAT cases will reveal that positions are being argued to the ATO and, indeed, in the courts (including the Full Federal Court) by taxpayers, that are considered to be reckless or have intentional disregard for the law. Presumably, a tax professional has advised such taxpayers that their position should win in a court of law. Does this automatically mean that the tax agent has been reckless or had an intentional disregard for the law?

If a tax agent has advised their client, under a procedure under the tax law that a particular item could be disagreed with by the ATO and the client wishes to proceed with declaring that item in their tax return in a manner which is debatable, then the tax agent should be able to claim a safe harbour position from the administrative penalties.

### *Tax agents are rarely 100% responsible*

From the perspective of our members, it is rarely the case that a tax shortfall is caused 100% by the tax agent. That is, it is rarely the case that a tax agent decides, of themselves, to make a false or misleading statement in a tax return prepared by the tax agent. In most cases, the false and misleading statements that are made in taxation returns are made through the taxpayer giving the tax agent deliberately false information or information containing mistakes, with the tax agent not being aware of the errors.

It is understood that tax agents do not need to audit the information that is being given to them by their clients. It is expected that tax agents will exercise a reasonable degree of care with the information that is being given to them. Nevertheless, in practice, tax agents have little opportunity to interrogate information that is being given to them. To do so risks offending the client relationship (due to questioning the client's integrity) and also requires further time that the tax agent, in most cases, will not be able to invoice. In the vast majority of cases, tax agents, of necessity, must simply accept the information that is given to them by their clients and, unless there is a glaring anomaly, will use that information to complete tax returns. When a tax agent does this, there should be no penalisation of the agent.

TSA recommends that there be a safe harbour for tax agents. This is particularly so if tax agents are to be subject to a higher and more sophisticated penalty regime resulting from the review of the TPB and TASA.

## **INDEPENDENCE OF THE TAX PRACTITIONERS BOARD**

There has been much discussion about and, indeed, it is raised strongly in the discussion paper, the fact that the TPB needs to be independent from the ATO. TSA agrees with this proposition. The issue is how this independence, in practice, should be implemented.

TSA recognises that the TPB does need to have a strong working relationship with the ATO. The TPB cannot undertake its work without obtaining a great deal of its information from the ATO and TSA supports any process or legislative change that would enable the TPB to have whatever information it requires to undertake its legislative responsibilities.

From the perspective of tax agents, it is critical that the TPB is, and is seen to be, independent from the ATO. The reason for this is that there is a different set of principles used in relation to:

1. The legislative process of deciding the taxable income of a taxpayer; and
2. Determining whether a tax agent has complied with the requirements of TASA.

The principles used in deciding the taxable income of a taxpayer are set out in the various pieces of taxation law which are interpreted by case law, ATO rulings and other matters. This is an objective, technical decision-making process.

The principles used in deciding whether a tax agent has complied with the requirements of TASA, including the code of professional conduct, is based less on prescribed principles and more on a judgement about a human being's behaviour. Further, the judgement about the behaviour of a tax agent can lead to that tax agent having his or her registration terminated and therefore his or her livelihood removed from them. The judgements that are made by the TPB under TASA should not use the same principles that are used by the ATO in determining the taxable income of a taxpayer and the degree of culpability.

It is critical for tax agents to understand and be confident that those who are making decisions about whether they can continue to earn their livelihood are not being made by the same people (or organisation) that makes decisions about the taxable incomes and behaviours of their clients. Further, those who are making the decisions about tax agents in the TPB, should be people who are uniquely placed and qualified to make such decisions about how tax agents operate in practice.

### **Structure of the board**

The ultimate decision-making power is vested in the individuals that constitute the TPB's board. These individuals should have a very strong knowledge of the way that a tax agent should conduct their business and the particular pressures that are imposed upon tax agents. For this reason, TSA recommends that the majority of members of the TPB's board should be registered tax agents.

TSA would also recommend that there be a consumer representative on the TPB board as well as other individuals, such as lawyers, who understand the process of procedural fairness. Along with the ATO, TSA does not believe that any member of the TPB board should be a present or past employee of the ATO.

TSA also recommends that not all Board appointments be made by the Minister. At least half of the members of the Board should be elected by tax practitioners or appointed by professional bodies (including RTAAs) that represent tax practitioners.

## **Funding**

TSA is strongly in favour of the TPB not being funded by the ATO. Given the increased workload of the TPB (including that which will come from this review) the TPB needs to be able to petition the Treasurer to obtain the funding it requires and to request the staff it requires.

TSA notes, with some concern, that the number of employees of the TPB has significantly decreased over time. It is difficult to understand how that could have occurred given the increased workload of the TPB. The unbiased observer may readily conclude that that is due to budget cuts.

## **Utilisation of ATO staff**

In the consultation process, it has been made clear that if the TPB were to be a completely independent organisation with its own offices and own staff that this would significantly increase the costs of the operation of the TPB. TSA makes no comment on this point but understands the logic.

TSA is generally in agreement with what is proposed in paragraph 3.22.3 of the discussion paper. All of the senior (decision-making) staff of the TPB should be employees of the TPB and not seconded from any other organisation, including the ATO. In addition, where the TPB can, it should try to employ staff in its own right and not have them seconded from other organisations.

TSA understands that efficiencies will be achieved if there are ATO employees seconded to the TPB. TSA is not opposed to this idea provided it is the case that those who are permanently employed by the TPB, who are the real decision-makers, actually make the decisions and recommendations to the Board.

## **Delegation of reviewable decisions**

At paragraph 3.15 of the discussion paper, the ATO has suggested that the TPB should be able to delegate certain reviewable decisions to TPB staff (for example, a decision rejecting registration or renewal). TSA does not agree with this proposal. Such significant decisions should be made by the Board and not by staff of the TPB, particularly if they are seconded ATO employees (see below). This would impair the independence of the Board and could reduce the Board to having a “rubber stamp” function.

TSA appreciates that this recommendation is to facilitate speeding up the processes of the TPB, but it reduces a significant safeguard for tax agents. Accordingly TSA is opposed to this idea.

## **EDUCATION REQUIREMENTS FOR TAX AGENTS**

TSA appreciates that tax agents must have the appropriate skills to be able to undertake their work. There is a suggestion that the education requirements for tax agents should be increased. TSA is not opposed to this idea provided that there is grandfathering available to those who are currently tax agents and who will not meet the new requirements. There should be an appropriate lead time before new education requirements are introduced.

On a prospective basis, every tax agent should have studied basic accounting principles. Currently this is not required for those tax agents that have qualified through the method shown as Item 206 in the Table on page 34 of the Discussion Paper.

TSA believes that the path to being a tax agent should still be open to a person who is a voting member of a recognised tax agent association, has not undertaken board approved courses (except as stated above on a prospective basis) and has the relevant experience. There are still many people operating in the tax services industry that can be very effective tax agents even without certain designated qualifications. There should remain a path open to such people to become tax agents.

TSA recommends that there be a further path to enable a person to become a tax agent. The TPB should either by itself or authorise RTAAs to set and supervise an examination that could enable people to be qualified as a tax agent if they met a certain “pass” criteria set for the examination. This examination should not be easy to pass and should require rigorous learning to achieve the desired pass rate.

This extra pathway would also enable some individuals who currently do not offer “tax agent services” but are still expert in tax law. Under section 90-5 of TASA, a “tax agent service” must be provided in circumstances where the person receiving the service can reasonably be expected to rely on the service to (broadly) satisfy tax obligations or claim tax entitlements. It can be difficult for some people who are skilled in taxation issues to become a tax agent due to this definition.

For example, a person who spends their time training others in taxation topics would not be able to meet this definition. They could not become a tax agent even though their taxation knowledge may be significantly above the average tax agent. This issue also extends to those employed by the ATO and professional tax associations. The extra (examination) pathway would enable such individuals to be able to satisfy the TPB that they had the skills to be a tax agent.

TSA supports:

- The idea that there be a periodic review of the educational requirements by the TPB in consultation with practitioners, professional associations (including RTAAs), tertiary institutions and the ATO.
- The TPB being given the flexibility to determine what, and how much time is required, for experience to be relevant.
- The current eligibility requirements for a company or partnership to remain unchanged.
- The primary educational qualification requirement for a tax agent to remain unchanged. TSA believes that increasing the educational qualification requirement will inevitably result in increased compliance costs for little practical benefit.
- The primary educational qualification for BAS agents to remain unchanged.

## **Avoid repetitions of qualifications**

When creating new educational measures, or if there is a review of existing measures, there must be a concerted effort to reduce tax professionals needing to repeat educational qualifications or topics that have been studied under other regimes. The TPB needs to take a holistic view of educational requirements and not place extra burdens on tax agents to repeat learning taken in other places. An example of this is the need to study ethics. Due to the requirements of various institutions, a person may be required to study ethics 4 – 5 times. This is an unnecessary burden on busy professional people. Wherever possible, the educational requirements of the TPB should give recognition and exemptions for prior study.

## **ROLE OF THE RECOGNISED TAX AGENTS ASSOCIATIONS**

TSA believes that the RTAAs are an under-used resource in the TASA regime. It is clear that the TPB is challenged with its responsibilities of supervising the integrity of the tax agent industry. Some of this work could be taken over by using RTAAs to maintain standards.

The role of the RTAAs could be likened to the ability of an external auditor of a company relying on the work of an internal auditor. The role of the RTAA could be seen as akin to the role of the internal auditor and the TPB the external auditor. The tax agent must maintain the standards of the RTAA. The TPB should be able to rely on the fact that a RTAA considers one of its members to be of good standing and compliant with TASA.

TSA considers that it should be mandatory for all tax agents to be members of a RTAA. Further, all employees of a tax agent that are involved with providing tax agents services should also be members of an RTAA. This would ensure that any tax agent firm, and their tax services staff, comply with the CPD requirements of the TPB. TSA believes that involving the employees of tax agents sets a strong foundation and precedent for those employees that will later conduct their own tax agent businesses.

TSA considers that the TPB's register of tax agents are not up to date. The TPB must rectify this situation. It is appreciated that the information on the TPB's registers is only as good as what tax agents enter onto those registers. Nevertheless, the TPB should have an ongoing process of ensuring that it contacts tax agents to make sure the registration details are correct and complete. This should be a priority before requiring anything further of RTAAs.

## **REGISTRATION AND UNREGISTERED AGENTS**

### **Compliance and red tape**

TSA would be very disappointed if one of the main outcomes of the review of the TPB and TASA was for more compliance and red tape to be placed on tax agents.

TSA knows that when we get a group of tax agents together, the topic of conversation will quickly get around to how much compliance, pressure and regulations are placed on tax agents. The added compliance burden adds to the cost of providing tax services and, frequently, these extra costs cannot be recovered from clients due to pricing pressures in the market. In turn, this lowers the profitability and increases the risk/reward proposition of being tax agent.

TSA is concerned that the voice of the tax agent is not being properly heard in this review. Due regard must be had to the role of tax agents in the taxation system as they are critical to its success. Many tax agents are in their mature years. The burden of regulations, compliance and the frustrations of dealing with the administration of the tax system by the ATO means there is little attraction for new participants to enter the industry. The continual process of layering burden after burden on tax agents must stop. The government and government agencies must realise that most tax agents are bearing the main burden of ensuring the tax system works effectively in Australia. Any outcomes of this review must take this into account.

## Unregistered agents

The TPB has only prosecuted a very small number of people operating as unregistered agents. TSA is very concerned about the inroads that unregistered agents are making into the client bases of registered agents. This is particularly so with the improvements in technology that surrounds the lodging of tax returns.

TSA appreciates that it can be very difficult to “discover” an unregistered agent as, by definition, such people are operating “below the radar”. When unregistered agents prepare tax returns on a basis that reduces taxable income by illegal means, they may be discovered through an audit. However, for example, an unregistered agent that uses the myGov account of a taxpayer can be very difficult to uncover.

TSA believes that the way to tackle the unregistered agent problem is by a continued public awareness campaign. Many people do not understand that there is a system of registering tax agents and that a tax agent must comply with various regulations in order to continue to conduct their business. The general public must be made aware of the role of tax agents and the dangers of using unregistered agents. The TPB should be given funding to undertake this activity.

Particular emphasis on communications should be made during the period of July to September each year. There should be a mainstream advertising campaign that encourages taxpayers to use registered tax agents. It is in the best interests of the TPB, the ATO, Treasury and the taxpaying community for tax agents to be promoted as the experts that can deal with taxpayer’s taxation issues.

TSA does not recommend making the tax agent logo mandatory on all public correspondence of a tax agent.

TSA is not in favour of “greater visibility over firm governance arrangements and the use of supervisory agents” (consultations point 4.3). TSA considers that the current governance and rules in place through the TPB and RTAA’s is sufficient. Further governance arrangements would increase costs with little benefit.

TSA recommends that all tax agents be required to be a member of a RTAA. Tax agents would then need to comply with the requirements of membership of the RTAA, including CPD. TSA believes that this is one of the best paths to ensuring that all tax agents comply with their regulatory obligations.

TSA is not in favour of increasing the regulatory requirements for tax agents. Accordingly we do not agree with the proposals by the TPB in paragraph 5.34 with regard to modifying the fit and proper person test. Tax agents often have a level of conflict of interest that they need to deal with that will

not impair their professionalism. For example, many tax agents commence their business by completing tax returns for their family, friends and business colleagues. If these types of conflicts of interest were brought into the consideration of whether a tax agent was a fit and proper person, many entrants to the industry would be discouraged from commencing practice. The ethics and professionalism of tax agents should be respected in this regard.

### **Other actions**

Among other things, the following actions could be considered:

- Place a warning on the myGov account of taxpayers with regard to using unregistered agents. (Along with a warning that if you are using a tax agent and you lodge the tax return through using your myGov account, that you will break the relationship with your tax agent).
- There should be increased penalties for unregistered agents. The current penalty regime is insufficient to deter people from conducting this business activity.
- A more sophisticated method of identifying properly registered tax agents could be implemented. For example, a phone app could be developed that would assist taxpayers in knowing whether the preparer of their tax return is a registered tax agent.
- The tax agent search platform should be updated and made more sophisticated. This would include an ability to look up partial names and show a list of potential matches.

There should be a link on the ATO website to the TPB agent search with a message akin to “Check here to see if your tax agent is registered”.

### **Tax clinics**

TSA is concerned with the entrance of tax clinics into the tax industry. We appreciate that the clinics are operated with the intention of assisting those that would otherwise not be able to afford the services of a tax agent. However, TSA is against any organisation providing tax services that is not registered with the TPB. This is whether for a fee or otherwise.

There is a risk that the tax clinics could develop to providing substantial amounts of unregistered, unqualified advice as they become more well-known, including through the use of the internet. The demand for a free service is unlimited by price. Accordingly there is a strong risk that taxpayers will gravitate towards a free, unregistered service. TSA believes that this would be detrimental to the tax system.

TSA considers that a new form of registration for tax clinics would be adverse to the tax system. Any organisation providing tax advice in the form of tax clinic (which is the same as a tax agent) should be required to maintain the same standards as tax agents.

## **LAWYERS GIVING TAX ADVICE**



Currently, lawyers do not need to be registered as a tax agent if they are not preparing or lodging a return or a statement in the nature of a return. When providing tax advice, it is assumed that legal practitioners have the necessary skills to be able to advise on taxation matters through their legal training. TSA does not agree with this policy and recommends that legal practitioners who give taxation advice be required to obtain registration with the TPB. A new designation “Tax (Legal) Advisor” should be created to cater for this requirement. Such people would then be required to maintain relevant tax CPD to maintain their registration.

## **TAX INTERMEDIARIES**

TSA’s view is that any person or organisation that:

- provides tax advice; or
- prepares a tax document; or
- lodges a tax document with the ATO

should be registered with the TPB in an appropriate manner and be required to comply with all TASA regulations, including CPD.

Depending on the services they provide, this could include quantity surveyors, novated lease providers, salary sacrifice advisers and other organisations. However, TSA does not consider that providers of tax software should be registered with the TPB as the integrity of the software products produced is, in effect, reviewed by the ATO. This occurs when the ATO tests the software for compatibility with its systems.

## **OTHER MATTERS**

### **Annual registration**

The discussion paper suggests the introduction of annual registrations for tax agents. TSA does not support this idea. Rather than reducing the term for the registration of agents, it should be extended to 5 years. TSA believes that the proposal to register agent’s annually could easily result in a method to increase registration fees. Further, administration costs will increase. Inevitably, these extra costs will need to be passed on to the agent’s clients (if possible).

TSA warns against increased costs for tax agents. These costs will need to be borne by taxpayers, which may result in the services of tax agents becoming too expensive for many taxpayers. The result of this will be more poorly prepared tax returns that create additional costs to revenue and additional administrative costs to government agencies. Poorly prepared returns could result in unfair outcomes for taxpayers and ATO statistics being unreliable.

### **Tax Agent fees**

Our members complain about the need to have a registration fee for themselves as an individual and also a registration fee in relation to the entity that conducts their practice. This is seen as being an unnecessary doubling up of tax agent registration fees.

### **Whistleblower legislation**



The discussion paper notes that the TPB is not an eligible recipient for the purposes of the recently enacted whistleblower legislation. This is an anomaly and should be corrected by legislation.

## **Legal professional privilege**

Currently, lawyers (often non-registered tax advisers) are provided with a major marketing advantage over most tax agents through the availability of legal professional privilege. It is appreciated that the ATO has provided the accountant's guidelines in relation to the access by the ATO to working papers and advice provided by non-lawyer tax advisers.

To level the playing field, a form of legal professional privilege should be enacted for all tax agents. Those whom tax agents are advising should be able to provide advice to their clients in the knowledge that the advice will be kept confidential to all parties.

Tax agents should be required to undertake some form of CPD in relation to legal professional privilege with the view to ensuring that claims for privilege are not overstepped by tax practitioners.

## **Closing**

Jointly TSA and TAI PAL would like to thank you for the opportunity given to put forth our views and opinions in relation to this review on the TPB.

Should you wish to further this discussion, please note that we would welcome this opportunity