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Nick Westerink
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: TPBreview@treasury.gov.au

UNSW Tax Clinic Submission – Review of the Tax Practitioners Board

Dear Nick

We appreciate the opportunity to participate in The Treasury consultation process in relation to the Review of the Tax Practitioners Board. In particular, we would like to address Consultation Point 5.10: “*Should the eligibility criteria for registration be amended so that universities and not-for-profit organisations that run tax clinics are able to register?*”.

We strongly support the view of submissions to date [at paragraph 5.49] that a new eligibility pathway for registration is the best approach. This is for three reasons, as follows:

1 Facilitating a pro bono culture

Amending the eligibility criteria to allow registration by universities and not-for-profit organisations will encourage tax professionals to undertake pro bono tax advice.

One of the key barriers for tax practitioners who wish to engage in pro bono tax advice is that they currently need to intermingle their non-clinic clients with their clinic clients. The profiles of these two groups are understandably very different and, in our experience, agents are apprehensive that their reputation may be affected by the poorer compliance records of their tax clinic clients. Further, a separate registration for university-based clinics would remove the need for professional indemnity (PI) insurance to cover them for any civil claims arising from their pro bono tax advice. The insurance burden would shift to the clinic itself.

This is not a novel idea. At present, legal professionals can engage in skills-based volunteering through Community Legal Centres (CLCs) with the added benefit of a National Pro Bono Professional Indemnity Insurance Scheme.

Unfortunately, tax practitioners do not currently have such a framework in place for skills-based volunteering. There are many benefits at both an individual-level, firm-level and community-level

of encouraging a pro bono culture in tax professionals – not least of which is the reputational benefit (improving the public’s perception not just of the firm but also of the wider profession).

2 The inability to ‘piggy-back’ off CLCs

Advising tax clinics to simply operate as CLCs would be in contravention of the legislative frameworks governing both tax agents *and* legal professionals.

Specifically, asking a registered tax agent to provide pro bono tax advice through a legal centre would be in contravention of the State-based Legal Profession legislation (*Legal Profession Uniform Law 2014 (NSW)*, etc). Similarly, legal practitioners who want to also lodge returns and/or statements to the ATO must also be registered with the TPB as a tax agent/BAS agent (see section 50-5 of the *TASA*).

3 The genuine – and otherwise unmet – need for tax clinics

We’d like to clarify that there are substantial differences between the ATO’s Tax Help Program and the operations of the UNSW Tax Clinic, in contrast to paragraph 5.45 of the Discussion Paper, which states (emphasis added):

*“This scheme, although run by universities, **might be described as providing a similar service to the Tax Help Program** that was run by the ATO when the TASA was established. That program used the services of retired tax agents, retired ATO officers and university students who were allowed to advertise that they provided tax services even though they were unregistered. The Tax Help Program is still operating though the point should be made that the Tax Help Program is aimed at assisting people with lodging their tax returns. The tax clinics also provide this assistance but **in addition provide tax advice for non-complex issues.**”*

This description of the Tax Clinic scheme is completely incorrect as is demonstrated in the difference between eligibility criteria across the two programs:

ATO’s Tax Help Program	UNSW Tax Clinic
<p>Are you eligible for Tax Help? You are eligible for Tax Help if your income is around \$60,000 or less for the income year and you didn’t:</p> <ul style="list-style-type: none"> • work as a contractor, for example a contract cleaner or taxi driver • run a business, including as a sole trader • have partnership or trust matters • sell shares or an investment property • own a rental property • have capital gains tax (CGT) • receive royalties • receive distributions from a trust, other than a managed fund • receive foreign income, other than a foreign pension or annuity. 	<p>Am I eligible?</p> <ul style="list-style-type: none"> • Are you experiencing issues with the ATO in relation to prior year returns? • Would you otherwise not have access to tax advice and support?
<p>Source: https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Tax-Help-program/</p>	<p>Source: https://www.business.unsw.edu.au/about/schools/taxation-business-law/unsw-tax-clinic</p>

Note from this that tax clinics properly run have very little to do with completing this year's tax return. They are about much more complex and usually historical issues. Our client base (i.e. at the UNSW Tax Clinic) predominantly consists of referrals from financial counsellors. It is not unusual for these clients to have complex tax issues (including company structures set up by former tax agents) and be at risk of bankruptcy.

ATO's Tax Help serves a genuine need for community assistance. However, it is clear that it is merely complementary to the role and value of tax clinics which is in supporting marginalised taxpayers with more complex issues who do not have the resources to pay for professional tax advice. There is a genuine – and otherwise unmet – need for this type of assistance which university-based pro bono clinics are uniquely positioned to fill.

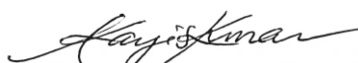
Again, we very much welcome participating in this aspect of the Review. We strongly support the view that the eligibility criteria for registration should be amended so that universities and not-for-profit organisations that run tax clinics are able to register.

Please let us know if you would like any further details or if you have any questions.

Yours faithfully



Professor Michael Walpole



Dr Ann Kayis-Kumar



Mr Gordon Mackenzie

Co-Founders, UNSW Tax Clinic

E: taxclinic@unsw.edu.au

T: +61 2 9385 8041

W: <https://www.business.unsw.edu.au/taxclinic>