



# Government response to PwC tax leaks scandal

## Summary of measures

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On 6 August 2023, the Government announced a significant package of reforms that will crack down on misconduct and rebuild people's confidence in the systems and structures that keep our tax system and capital markets strong. These reforms will:

- strengthen the integrity of the tax system;
- increase the powers of our regulators; and
- strengthen regulatory frameworks to ensure they are fit for purpose.

Legislation to strengthen the integrity of our tax system and increase the powers of regulators will be introduced in 2023 following consultation on exposure draft legislation.

## Strengthening the integrity of the tax system

The promoter penalty laws were introduced in 2006 to deter tax practitioners from promoting tax avoidance and evasion schemes to their clients, where the benefit to be claimed is not permitted under the law. The promoter penalty laws also prohibit scheme promoters from misrepresenting arrangements as being endorsed by the Australian Taxation Office (ATO), as though they are covered by a product ruling, where the scheme is being implemented in a materially different way.

The promoter penalty laws were introduced to respond to the mass marketed tax avoidance and evasion schemes prevalent in the 1990s and were designed primarily to capture these schemes. Over time, the nature of tax promoter activity has evolved as tax exploitation schemes have become more bespoke, sophisticated and complex, often operating across jurisdictional boundaries.

The promoter penalty laws have not kept pace with these developments and require reform. Importantly, existing safeguards in the law will remain. The Commissioner of Taxation must still apply to the Federal Court to impose a civil penalty or obtain an injunction. The amendments do not limit the power of the Court to order the imposition of a civil penalty, including deciding the appropriate amount of penalty to impose having regard to all the circumstances, nor do they affect safeguards available, including defences for merely providing advice about tax exploitation schemes.

## Tax promoter penalties – broaden scope

- The reforms will address shortcomings in the law which have made it difficult for the ATO to address promoter behaviour in circumstances where it ought to be possible, especially the promotion of tax exploitation schemes to large market taxpayers, such as multinational companies.
- The Government will make it easier for the ATO to apply the promoter penalty laws by broadening the scope of important definitions, including:
  - broadening the meaning of a ‘promoter’ to capture those that receive ‘benefits’ from their promotion of a scheme (‘benefits’ is a broader concept than the current ‘consideration’ requirement);
  - expanding the meaning of ‘tax exploitation scheme’ to cover schemes that breach, or would breach, the multinational anti-avoidance law or diverted profit tax rules; and
  - expanding the coverage of the rules prohibiting the misrepresentation of a tax scheme’s conformance with an ATO product ruling, whether the scheme is implemented or not, to all types of ATO rulings – private, public and oral rulings.
- Collectively, these changes will ensure promoters of tax exploitation schemes face significant consequences for their actions and make it uneconomic to engage in this behaviour.
- This will deter tax practitioners from making unauthorised disclosures of confidential information, or misusing confidential information, as occurred in the case of PwC, for financial gain.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft legislation.

## Tax promoter penalties – more time for the ATO

- The Government will extend the time the ATO can commence civil penalty proceedings related to the promotion of tax exploitation schemes or schemes not conforming to ATO rulings.
- Generally, the ATO can commence proceedings up to four years from the last time the conduct was engaged in. The reforms will increase this period to six years.
- The law currently provides that no time limitation applies for promotion of schemes involving tax evasion. This will remain unchanged.
- The ATO often becomes aware of the promotion of schemes during client audits, which can occur after the four-year limit ends. This change provides a longer time for the ATO to identify and penalise promoters, ensuring promoters do not avoid consequences of their actions.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft legislation.

## Tax promoter penalties – higher penalties and extending penalties to significant global entities (SGEs)

- The Government will significantly increase the maximum civil penalties for promoters of tax exploitation schemes, consistent with the penalties in the *Corporations Act 2001*.
- The penalties applying to corporate entities will also be extended to non-corporate significant global entities (SGEs) to ensure that large entities engaging in the promotion of tax exploitation schemes will be exposed to the same potential penalties, regardless of how they structure their business.
- SGEs include global parent entities, and members of groups which have global parent entities with annual global income of more than \$1 billion. An SGE can be a public or private company, a trust, a partnership or an individual. This will ensure that large multidisciplinary firms, including accounting partnerships, are held accountable.
- The increase in maximum penalties will deter tax practitioners from treating the civil penalties imposed under the promoter penalty laws as a cost of doing business, making it uneconomical to promote tax avoidance.
- The Commissioner of Taxation must still apply to the Federal Court of Australia to impose a civil penalty. The Court determines whether a civil penalty is appropriate to impose, and what level of penalty is appropriate, having regard to the circumstances.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft legislation.

	<i>Current maximum civil penalty</i>	<i>New maximum civil penalty</i>
<i>Individuals (other than significant global entities)</i>	Greater of: <ul style="list-style-type: none"> <li>- \$1.57 million (5,000 penalty units)</li> <li>- twice the consideration received or receivable</li> </ul>	Greater of: <ul style="list-style-type: none"> <li>- \$1.57 million (5,000 penalty units)</li> <li>- 3 times the benefit received or receivable</li> </ul>
<i>Bodies corporate (including those that are significant global entities)</i>	Greater of: <ul style="list-style-type: none"> <li>- \$7.8 million (25,000 penalty units)</li> <li>- twice the consideration received or receivable</li> </ul>	Greater of: <ul style="list-style-type: none"> <li>- \$15.7 million (50,000 penalty units)</li> <li>- 3 times the benefit received or receivable</li> <li>- 10 per cent of aggregated turnover, up to a cap of \$782.5 million (2.5 million penalty units)</li> </ul>
<i>Significant global entities</i>	The current maximum civil penalty on significant global entities is that of either individuals or bodies corporate and will depend on the relevant structure of the entity	Greater of: <ul style="list-style-type: none"> <li>- \$15.7 million (50,000 penalty units)</li> <li>- 3 times the benefit received or receivable</li> <li>- 10 per cent of aggregated turnover, up to a cap of \$782.5 million (2.5 million penalty units)</li> </ul>

## Increasing the power of our regulators

### Secrecy laws – disclosure of breaches of confidence relating to government information

- The Government will amend the secrecy provisions that apply to the ATO and Tax Practitioners Board (TPB) to enable the regulators to disclose suspected breaches in confidence against government agencies to the Treasury.
- Treasury can then take necessary action to properly and quickly respond to the breach, including by disclosing information to other agencies and certain Ministers, as required, where such disclosure is required as an appropriate response.
- The PwC matter has highlighted that the ATO and TPB secrecy laws can prevent the regulators from disclosing serious misconduct even where it would be in the public interest to do so. The reforms will enable any similar misconduct to be reported and acted on in a timely way.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft legislation.

### Secrecy laws – disclosure of potential misconduct to professional associations and professional disciplinary bodies

- The Government will amend the secrecy provisions that apply to the ATO and TPB to enable the regulators to disclose suspected misconduct of professionals to their professional associations or professional disciplinary bodies.
  - The misconduct that can be referred includes, but is not limited to, confidentiality breaches.
- The professional associations or professional disciplinary bodies can then take appropriate disciplinary action under their respective professional codes of professional conduct.
- The PwC matter has highlighted that the ATO and TPB secrecy laws prevent the regulators from disclosing serious misconduct to professional associations or professional disciplinary bodies.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft.
- Applications by professional associations and disciplinary bodies who wish to be covered by the new scheme will also be sought in the coming months. A separate fact sheet on this application process is available on the Treasury website.

## Whistleblower reforms – TPB as a recipient

- The Government will extend the tax whistleblower protections to eligible whistleblowers who wish to disclose alleged misconduct to the TPB.
- The Government will also authorise the ATO and the TPB to share information they have received from whistleblowers with the Australian Charities and Not-for-profits Commission, as well as each other, where the information received relates to their regulatory responsibilities.
- The proposal responds to a key recommendation of the Independent Review into the Tax Practitioners Board and the *Tax Agent Services Act 2009*, by enabling the Tax Practitioners Board to receive whistleblower disclosures and protecting those who make disclosures. The reforms will protect those willing to blow the whistle on professional misconduct by tax advisers.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft legislation.

## Enhancing TPB investigations

- The Government will extend the timeframe the TPB has to complete investigations into tax practitioners suspected of misconduct and breaching registration requirements from six months to 24 months. This will enable the TPB to conduct more thorough investigations, better decision making and ensure appropriate consultations and procedural fairness for impacted tax practitioners.
- Currently, the TPB is required to complete formal investigations within six months. The short timeframe has negatively impacted TPB investigations, forced the TPB to gather evidence during preliminary enquiries and limited the scope of investigations (to fit within timeframes) rather than addressing underlying risk.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft legislation.

## TPB Register

- The Government will invest to lift the functionality and utility of the TPB Register and enhance information about tax agent misconduct, improving transparency of the regulation of tax advisers. The TPB Register is published on the TPB's website.
- The TPB will be able to publish more decisions and more detail about these decisions, and it will be required to publish decisions for five years. Through better use of filters, the changes will also improve searchability on the TPB Register to identify misconduct and increase transparency by linking individual tax agents with the companies or partnerships they represent, where they have supervisory arrangements on behalf of the entity.
  - These reforms will make it clear which tax agents perform a supervisory role and have an additional level of accountability within a firm.

- These reforms will ensure that details of the PwC and Collins sanctions will remain on the TPB Register for five years (up from 12 months) to the end of 2027.
- The TPB will also be empowered to publish information on the TPB Register related to findings of misconduct in connection to current or former PwC partners, as a result of the TPB's further inquiries, even where their registration as a tax practitioner has expired.
- Legislation to implement this reform will be introduced this year, following consultation on the exposure draft legislation.

## Strengthening our regulatory arrangements

### Stronger TPB sanctions for misconduct – Treasury review

- The Government has tasked Treasury to undertake a review of the sanctions available to the TPB to discipline tax practitioners who have engaged in misconduct.
- The PwC matter has highlighted the need for the TPB to have access to a range of disciplinary powers to address contemporary forms of misconduct which match the circumstances and magnitude of breaches.
- A policy discussion paper with proposed policy reforms will be released for public consultation in late 2023.

### TPB Review – Registration requirements – Treasury review

- The Government has tasked Treasury to undertake a review of the TPB's registration requirements for tax practitioners, with a particular focus on the education, qualification and experience requirements for new entrants and existing practitioners.
- The objective of the review is to consider whether the regulatory framework ensures that registered tax practitioners possess the knowledge and skills required to assist clients with their tax affairs in a modern world.
- A policy discussion paper with proposed policy reforms will be released for public consultation in 2024.

### Tax promoter penalties – Treasury review

- In addition to the immediate changes to tax promoter penalty laws, the Government has tasked Treasury to conduct a comprehensive review of the promoter penalty laws to ensure the ATO has the tools to adequately address the types of promoter activity today, that is where tax avoidance schemes are bespoke, complex and/or operate across jurisdictional boundaries.
- The PwC matter has highlighted shortcomings in the promoter penalty laws and will be carefully considered as part of the comprehensive review.

- Policy discussion papers will be released for public consultation in 2024, with the first paper due to be released in early 2024. Industry, regulators and community stakeholders will be engaged on potential reforms stemming from the review to ensure complexities are worked through.
- The reforms of the promoter penalty laws will not prevent tax advice on minimising tax within the bounds of the law – this intention is unchanged.

## Tackling fraud against the ATO and the tax and superannuation systems – Treasury review

- The Government has tasked Treasury with developing a package of reforms to respond to emerging fraud threats, which will improve the ATO's ability to detect, prevent and address fraud.
- Fraud is often perpetrated by, or with the assistance of, rogue tax practitioners, intermediaries, as well as other third parties.
- The Government will prioritise investment in ATO IT and systems changes to address emerging fraud threats, supported by law reform, as required.
- The Government is also considering broader policy reforms to address gaps and challenges in the current framework which are enabling fraudulent behaviour against the tax and superannuation systems. This process will consider fraud risks from all sources.
- The Government will consult with industry, regulators and community stakeholders on reforms through the course of 2024.

## Legal professional privilege in Commonwealth investigations – Joint review

- The Government has tasked the Attorney-General's Department and Treasury to jointly review the use of legal professional privilege in Commonwealth investigations, and present Government with options for possible reform.
- While the Government recognises the fundamental role of legal professional privilege in the legal system, the PwC matter has highlighted a growing concern amongst regulatory agencies that legal privilege claims are being misused to slow down or obstruct federal investigations and regulatory action. Such delays may result in harm being suffered by innocent third parties where regulatory action was unreasonably delayed and undermine confidence in regulatory frameworks more broadly.
- The joint review will have regard to previous reviews and inquiries, and consult with stakeholders, including with the states and territories, to ensure that any reforms maintain, as much as is possible, consistency of legal professional privilege laws throughout the country.
- The Government will release a policy discussion paper for consultation in the second half of 2024. This discussion paper will be informed by consultation with relevant investigative and regulatory agencies beginning this year.

## Governance and integrity – large consulting, accounting and auditing businesses – Treasury examination

- The Government is responding to community concerns about adequacy of regulatory frameworks applying to the large accounting, assurance and consultancy firms.
- Treasury will examine the legal, policy and governance frameworks of the firms to identify gaps and potential improvements, informing advice to Government. This includes whether there are appropriate governance obligations on these firms in areas such as transparency, executive responsibility, management of conflicts of interest and dealing with misconduct. This examination will be progressed through the release of a consultation paper in coming months.
- Treasury will also engage with the Parliamentary Joint Committee on Corporations and Financial Services inquiry, *Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*.
- The Government will consider recommendations made by the committee, informed by Treasury advice.
- States and territories are key partners in this work, Treasury will engage with them throughout the process. We will engage with them on the regulation of these firms and identify ways forward, to fast-track and coordinate the implementation of any changes.

## Enhancing the ATO's investigation and information gathering powers – Treasury review

- The Government has tasked Treasury to undertake a review of the ATO's information gathering powers to ensure they remain fit for purpose and operate to allow the ATO to properly assist the Australian Federal Police (AFP) to investigate serious criminal offences perpetrated against the tax and superannuation system.
- The work of the 2016-17 Black Economy Taskforce and the PwC matter have highlighted potential gaps in the ATO's investigation powers when serious tax and superannuation matters are referred to the AFP for investigation of possible criminal conduct.
- The Government will release a policy discussion paper for public consultation in 2024.

## Secrecy laws – Treasury review

- In addition to the immediate reforms to our tax secrecy laws, the Government has tasked Treasury to undertake a review of the secrecy provisions that apply to the ATO and TPB to consider whether there are further circumstances in which it is in the public interest for information obtained by the ATO or TPB to be shared with other regulatory agencies.
- The PwC matter has highlighted that the ATO and TPB secrecy laws prevented the regulators from disclosing serious misconduct to the right agency to take the right action in response. The review will consider whether further reforms to the secrecy laws are necessary.
- The Government will release a policy discussion paper for public consultation in 2024.



## Confidentiality agreements and conflicts of interest in procurement – Whole of Government review

- The Department of Finance will undertake a review of confidentiality and conflict of interest procedures across government. The review will cover procurements, grants and other financial arrangements. This will include:
  - reviewing existing confidentiality provisions and processes;
  - creating fit for purpose and enforceable confidentiality clauses to strengthen Commonwealth contracts; and
  - considering opportunities to enhance conflict of interest disclosure processes for tenderers and suppliers.
- The review will support greater consistency across government for confidentiality and conflict of interest procedures and will commence this year.

## Reporting of contract terminations – Whole of Government approach

- The Department of Finance, with support from the Attorney-General's Department, will scope options to improve the transparency of contracts which have been terminated due to material breach.
- Improved transparency will enhance the ability of the Commonwealth to make more informed procurement decisions and will act as a deterrent against unethical behaviour by suppliers.
- The Government will consider this matter further, once the initial scoping work has been completed.

## Other relevant action

- This strong and substantial action builds on work already underway to improve government processes in the wake of the PwC scandal, including:

## Additional funding for the TPB to increase scrutiny of tax practitioners

- In the October 2022-23 Budget, the Government committed additional funding of \$30.4 million to increase TPB compliance investigations into high-risk tax practitioners and unregistered preparers, from 1 July 2023.
- The TPB will use new risk engines to better identify tax practitioners who engage in poor and unlawful tax advice, to improve tax compliance and raise industry standards.
- The measure will strengthen protections for 425,000 taxpayers who use tax agent services.

## First tranche of TPB reforms already before Parliament (Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023)

- Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023, currently before Parliament, will lift standards in the tax profession by:
  - modernising the objects clause of the *Tax Agents Services Act 2009* to better align them with the TPB's role and responsibilities;
  - creating financial independence for the TPB from the ATO (and allow the TPB to control its own budget) by establishing the TPB Special Account;
  - requiring tax practitioners to not employ or use someone disqualified from providing tax agent services without the TPB's approval;
  - converting the three-year registration cycle for tax practitioners to an annual registration cycle, to ensure the TPB has ongoing and regular visibility as to whether it is appropriate for a tax practitioner to remain registered; and
  - enabling the Minister to supplement the existing Code of Professional Conduct to ensure that emerging or existing behaviours and practices by tax practitioners are properly addressed.

## Supplementing the TPB Code of Professional Conduct

- Following the passage of Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023, the Government will supplement the TPB Code of Professional Conduct to address behaviours and practices exhibited in the PwC/Collins matter.
- Proposed changes include:
  - expanding the confidentiality requirement on tax practitioners to not disclose information received from Australian government agencies, unless the information was obtained for broader dissemination; and
  - requiring tax practitioners to take reasonable steps to avoid any conflict (real or apparent) in connection with their engagements with Australian government agencies, as well as require tax practitioners to disclose to Australian government agencies any material conflicts of interest where they arise in connection with their engagement by that agency.

## Procurement

- Action to strengthen Commonwealth procurement frameworks by directing PwC to remove any staff involved with the confidentiality breach from contract work until the outcomes of the Switkowski review are known and by enabling Australian government agencies to terminate contracts with parties that receive adverse findings against them from a legal or professional body.

- The Department of Finance is also developing a Supplier Code of Conduct which will outline the behavioural standards expected from suppliers during procurement processes and while under contract. The Supplier Code of Conduct is expected to be finalised before the end of this year.

## Tax and corporate whistleblower laws – Statutory review

- A statutory review of the tax and corporate whistleblower laws is legislated to commence in late 2024.
- The Government will announce further details of the proposed review closer to its commencement.