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[REDACTED]
A/g Director
Tax Agent Regulation Unit
Personal, Indirect Tax and Charities Division (PITCD)
Treasury

25 January 2024

Dear [REDACTED]

Re: Enhancing the Tax Practitioners Board's sanctions regime consultation

KPMG Australia (KPMG) welcomes the opportunity to respond to Treasury's consultation paper on the Enhancing the Tax Practitioners Board's (**TPB**) sanctions regime.

KPMG has previously welcomed the broader package of measures announced by the Federal Government designed to restore confidence in our tax system as a significant, sensible, and constructive step in restoring trust in our profession.

KPMG is supportive of an update of the sanctions regime to address the existing gaps identified in the Independent Review of the Tax Practitioners Board (**2019 TPB review**) by Mr Keith James. While we appreciate that recent events have resulted in the proposed revisions extending beyond the recommendations of that review, we consider that certain aspects may require further clarification or amendment to ensure uniformity and fairness across the profession and consistency with existing obligations.

We commend the fact that Treasury have sought early engagement to consult on these measures.

Timing of the proposals

Given the significance of the new sanctions and their interaction with a number of other regulatory changes across the profession, KPMG would support an extended grace period or safe harbour provision to ensure tax agents are ready to comply with the new obligations.

Given the additional responsibilities the TPB is taking on, allowing for sufficient time before the reforms commence is also important to give adequate time for the TPB to develop external guidance, train existing staff and recruit new resources.



Reintroduction of criminal penalties

We agree that unregistered practitioners should be appropriately sanctioned. Under the proposals, tax practitioners who allowed unregistered preparers to perform tax services on their behalf will now be subject to criminal penalties. It should be made very clear in legislation and/or guidance on the types of activities that could be caught under this provision to ensure that ordinary or low-risk activities are not caught.

We understand that in looking to ensure that entities employ or use tax practitioners have the appropriate ethical and professional attributes, the recent changes to the Tax Agent Services Act 2009 (Cth)¹ and the TPB Exposure Draft D51/2023² confirms that an entity will not be a “disqualified entity” for these purposes where there has been a rejection of an application to be a tax agent due to not meeting the qualifications or relevant experience requirements. Such practitioners instead are allowed to provide tax services under the firm’s tax agent registration, noting the supervision and control requirements for a company or partnership that is a registered tax agent. It should be made clear that criminal sanctions would not apply in such circumstances.

In the increased civil penalties section of the consultation paper, there is clarity provided on how the proposals would apply to companies and partnerships (broadly that where there is misconduct perpetuated by a number of limited directors or partners of a firm, without all directors or partners being aware, it may be inappropriate to terminate registration of the firm). Similar clarification provisions should be included in the criminal sanctions proposals.

Increased civil penalties

Given a significant increase in the maximum amount of penalties is proposed, there is a need for clear objective guidelines to be established on when the maximum penalties could be applied. For example, for lower-level breaches a warning may be sufficient for the first offence. Application of the penalties could be tiered according to severity, accompanied by clear examples of triggers for such tiers and with discretion given to the TPB to reduce or remit the penalty where appropriate (such as for voluntary disclosures). Even if the intention is the maximum penalties will only be applied in the most egregious of circumstances, without clear guidance and/or a tiered approach, the open possibility of them being applied can impact the desirability to enter or stay in the profession and professional indemnity insurance premiums. The penalties may make the profession unattractive in comparison to other like professions.

¹ *Treasury Laws Amendment (2023 measures No.1) Bill 2023*

² *Exposure Draft TPB Information Sheet TPB(I) D51/2023*



In addition, the penalties do not extend to legal practitioners dealing in tax advice and therefore does not address the entire tax advisor community (e.g. law firms and legal practitioners). As a result, the penalties may introduce a bias in the market. This may require further consideration by Treasury to assess any unintended consequences.

Given the number of different tranches and consultation processes underway to regulate the tax profession, we encourage Treasury to consider holistically how the various proposals integrate and which body is most appropriate to enforce the changes. For example, there is a possibility that significant penalties (up to 10% of aggregated turnover) could be double counted for the same incident such as where a penalty is also applied under the proposed new promoter penalty provisions introduced in *Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023*.

Infringement sanctions and TPB orders

Care must be taken to distinguish between offenses that go on the TPB register (which should be limited to more serious misconduct) and those that do not, ensuring a fair and proportionate approach. This is particularly the case given the proposals in the *Tax Agent Services (Code of Professional Conduct) Determination 2023* Exposure Draft (ED) to impose an obligation on tax practitioners to advise all prospective and current clients, in writing, of any matters that are reasonably relevant and material to a decision by a client to engage a tax agent. Depending on the final form of those proposals, it may require sending a link or highlighting any items on the TPB register that applies to the firm. It would seem disproportionate for minor infringements or honest mistakes to be included.

Interim suspensions

The nature of suspensions, whether full or partial, and the ability to appeal interim suspensions require further consideration given the potential reputational damage associated with interim suspensions and potential risk through interruption of client service. Instant appeal mechanisms and guidelines with illustrative examples are necessary to rectify potential findings based on incorrect information or administrative errors.



KPMG would welcome the opportunity to be involved in any further consultation as the proposed measures are refined. Should you wish to discuss this matter further, please do not hesitate to reach out.

Yours sincerely

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