



7 August 2024

██████████
Director - Tax Agent Regulation Unit
Personal, Indirect Tax and Charities Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: pwcreponse@treasury.gov.au

Dear ██████████

Tax Practitioners Board Registration Review

As the representative of over 150 large corporates that operate across 22 industries, the Corporate Tax Association (CTA) welcomes the opportunity to respond to the Treasury's *Tax Practitioners Board Registration Review* Consultation Paper.

In response to the Consultation Paper, our primary focus is on the proposal that “*certain classes of in-house tax advisers to be registered tax practitioners or including secondment services within the scope of the TASA, to ensure that there is consistency of regulation between in-house and external advisers*”¹ (**Proposal**).

In our view, we see no basis for this change. As outlined in further detail in **Attachment A** to this letter, this shift in thinking demonstrates a misunderstanding of the relationship (and roles) of members of an in-house tax team (including secondees) to external advisers who provide services to the community at large for a fee. In-house tax teams are simply employees of the company and are responsible for the tax obligations of their employer. The proposal also ignores the role and responsibilities of a public officer and the context in which in-house tax advisers are performing their duties in a large company subject to continual ATO scrutiny.

As such, we recommend that no changes be made to the *Tax Agent Services Act 2009* (Cth) with respect to in-house tax advisers and secondees.

We would welcome the opportunity to discuss this matter with you in detail. To arrange a meeting, please contact Stephanie Caredes at scaredes@corptax.com.au.

Yours sincerely,

Michelle de Niese
Executive Director

¹ P30 of the Consultation Paper

Attachment A – Additional Information

Executive Summary

Recommendation:

The *Tax Agent Services Act 2009* (Cth) (**TASA**) is not amended to expand its scope to provide for regulatory oversight by the Tax Practitioners Board (**TPB**) of in-house tax advisers and secondees employed. The current policy settings under the TASA that do not require in-house tax advisers/tax managers and secondees to register with the TPB are correct and do not need to be changed.

We note it is unclear as to the mischief that is being addressed by this proposal as the Consultation Paper is not explicit or detailed enough for us to fully appreciate the Proposal.

In-house tax advisers and secondees do not provide services to the community at large for a fee. In our view, the rationale for any regulatory oversight by the TPB is misguided. The Proposal does not identify a gap in the regulatory oversight of the TPB but appears to infer in-house tax advisers owe a broader duty to the integrity of the tax system than other employees or taxpayers. It ignores the role and responsibilities of a public officer and the context in which in-house tax advisers are performing their duties in a large company subject to continual ATO scrutiny. It also conflicts with the object of the TASA.

In our view, there is no basis warranting the need for ‘consistency of regulation’ between in-house and external advisers or secondees and external advisers. The role of an external adviser is easily distinguished from that of an in-house tax adviser and secondee and rightly falls under the ambit of the TASA.

The Objective of the TASA

It is important to reflect on the object of the TASA as provided for in section 2-5. In short, the TASA is aimed at supporting ‘public trust and confidence’ in the tax profession and the tax system by ensuring tax agent services ‘provided to the community’ meet appropriate standards of professional and ethical conduct.

That is, the object of the TASA is to regulate tax agent services that are provided to the community for a fee and not salary and wages. This was made clear in the following extract from the Explanatory Memorandum to the *Tax Agent Services Bill 2008* (Cth):

4.29 The requirement that tax agent services or BAS services be provided ‘for a fee or other reward’ allows employees (who are unregistered) to provide tax agent services or BAS services to their employer/s for a salary, wage or other benefit (such as a fringe benefit as defined under the Fringe Benefits Tax Assessment Act 1986) without contravening the civil penalty provision.

4.30 As for tax agents, an employee whose job entails the provision of BAS services to their employer will not be required to register as a BAS agent.

Example 4.1

Kylie, a bookkeeper, is employed by a business in her local area. Kylie is paid a salary and her work involves preparing and reconciling goods and services tax and pay as you go control accounts and the preparation of BASs from these accounts.

Kylie is not required to register as a BAS agent as she is an employee of the business, and is paid a salary for her work and not a fee.

In-house tax teams and secondees ensure a company can meet its tax obligations and do not provide any services to the community at large.

Should the view be that an in-house tax adviser or secondee is providing a tax agent service, then we submit that the policy intent is clear that they can do so without needing to be registered with the TPB as they are performing that service for a salary or wage. Therefore, there is no regulatory gap here.

We also acknowledge that all members of the tax profession should meet appropriate standards of professional and ethical conduct wherever they are performing their employment duties or providing tax agent services. Generally speaking, members of in-house tax teams (and secondees) are usually professional accountants or lawyers who are also members of a professional association. Those bodies have their own standards of professional and ethical conduct. Therefore, there is no requirement here for duplication of regulation of an individual's professional and ethical conduct as there are already organisations in place governing this.

For example, lawyers are subject to the standards required of them by the respective State Law Society that issues their practicing certificate. Accountants are subject to the standards required of them by the association they belong to that issues their practicing certificate.

The role of in-house tax managers and tax advisers

The role of in-house tax managers and tax advisers and their employer organisation is an employment relationship where the individuals are performing their employment duties and are not independent of the organisation. They are employed to assist the organisation to meet its tax obligations. In exchange, they receive a salary or wage directly attributable to their employment and only their employment, not for providing advice to the wider community.

No fee or other reward

The TPB has confirmed at paragraph 10 of their Information Sheet [TPB\(I\) 40/2023 What is a fee or other reward?](#) (extracted below) a specific exclusion for employees providing tax agent services by virtue of the phrase 'fee or other reward'.

10. The phrase 'fee or other reward' is not defined in the TASA. As a result, it takes on its ordinary meaning. However, the phrase 'fee or other reward' **specifically excludes employees (who are not registered with the TPB) who provide tax agent services, BAS services or tax (financial) advice services on behalf of, or to, their employer(s) for a salary, wage or other benefit.** Other benefits paid to employees which do not constitute a 'fee or other reward' include, but are not limited to, fringe benefits, commissions, bonuses and incentives.

This is because employees do not receive a fee or other reward. They receive a salary, wage or other benefit.

Tax Assurance – ATO Justified Trust reviews and Internal assurance of tax teams

The tax affairs of large corporates in the ATO's Top 100 and Top 1000 Justified Trust program are subject to the scrutiny of the ATO. The persons responsible for the corporate's tax affairs (e.g. a Head of Tax) are indirectly subject to the ATO's scrutiny as part of governance processes and management level controls (equally, this applies to any entity in the ATO's Justified Trust program e.g. Next 5000 private groups program). Any matters of concern or tax positions taken that may be indicative of a behavioral concern or unethical behavior would be uncovered during Justified Trust reviews and negatively impact the corporate's Justified Trust rating².

Separately, internal and external audit functions within large corporates scrutinise tax governance processes and material tax exposures. When taken together with the assurance provided by the ATO, this should provide a high level of comfort that tax functions are operating responsibly and ethically.

In-house tax advisers in tax consolidated groups and other corporate arrangements

In 2010, then Assistant Treasurer Nick Sherry [confirmed](#) the TASA regime would also not capture tax agent services within a tax consolidated group and other services where the service is effectively an 'internal service' (such as services provided between entities in a GST group, with the same or similar owners or joint venture partners among others).

The announcement confirmed "[i]t was not the Government's intention in developing this national regime that in-house advisers would be required to register if they are only providing advice within the context of running a common economic enterprise."

This supports the notion the TASA was not designed to capture in-house tax advisers.

² There could also be repercussions for employees involved if any behavioral concerns amount to a breach of their employment contract.

Promotor penalty provisions

Paragraph 1.43 and Examples 1.2 and 1.3 of the Explanatory Memorandum to [Treasury Laws Amendment \(Tax Accountability and Fairness\) Bill 2023](#) explain how the recently amended promoter penalty provisions could be applied to in-house tax advisers. This is another 'safeguard' in place such that should an in-house tax adviser (or secondee) be involved in promoting a tax exploitation scheme, they would be suitably penalised under these provisions.

The role of secondees

In a typical secondment arrangement, the secondee performs tasks under the direction of the organisation, not the advisory firm. The organisation takes on responsibility/liability for the individual secondee's actions. For all intents and purposes, the secondee is treated as an employee of the organisation during their time with the organisation. They are usually brought into an organisation to fill a resourcing gap (such as a maternity leave or long service leave cover) in an in-house tax team, not for any other reason.

While the Consultation Paper suggests there are 'secondment services' being provided, secondment arrangements are generally not regarded as a 'services arrangement'. Secondees are paid for the direct engagement in employment obligations to that one organisation and no others. This is different to the engagement of an external adviser to provide advice on a particular matter or provide some other service (e.g. preparation or review of an income tax return) under a 'services arrangement' to a multitude of clients.

The role of the Public Officer

All companies are required under section 252 of the *Income Tax Assessment Act 1936* (Cth) (**1936 Act**) to appoint a public officer. The public officer is answerable for the doing of everything required to be done by the company under the tax law and in case of default shall be liable to the same penalties (section 252(1)(f)). Everything done by a public officer is deemed to have been done by the company (section 252(1)(g)).

In this regard, the individual appointed as a public officer of a company has personal responsibility for anything done that impacts on the company's tax position and can be penalised in the case of a default. This requirement alone would strongly influence the behaviour of an individual appointed as public officer and effectively deter them from engaging in any untoward behaviour that may lead to a default on the company's tax obligations.

When the role of a public officer is overlaid over the role of in-house tax advisers / tax managers and secondees, in practice, this means the public officer ultimately bears responsibility for any actions taken by an in-house tax adviser / tax manager or secondee.

Companies have risk strategies in place to manage any risks that might arise from activities an in-house tax adviser or secondee may engage in, which would include the public officer signing off on any tax positions taken. Indeed, a public officer must sign the company's tax return.

It is highly unlikely a public officer would permit any activities affecting a company's tax position that could trigger personal penalties to arise for them. For any material tax issues, more than likely they would seek advice / sign-off from an external adviser which would put that matter under the scope of the TASA in any event.

Tax agent service

The Proposal suggests that the definition of tax agent service could be amended to require in-house tax advisers / tax managers and secondees be required to register with the TPB because of 'services' they provide. A 'tax agent service' is defined as:

Section 90-5 TASA

Meaning of tax agent service

(1) A **tax agent service** is any service:

(a) that relates to:

(i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a * taxation law; or

(ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or

(iii) representing an entity in their dealings with the Commissioner; and

(b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:

(i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;

(ii) to claim entitlements that arise, or could arise, under a taxation law.

(2) A service specified in the regulations for the purposes of this [subsection](#) is not a **tax agent service** .

Note: For specification by class, see [subsection](#) 13(3) of the [Legislation Act 2003](#) .

A 'BAS service' is also a 'tax agent service' – section 90-10 TASA.

However, an in-house tax adviser / tax manager is an employee required to perform employment duties. Preparation of tax returns and Activity Statements, ascertaining liabilities, obligations or entitlements under a tax law form part of the in-house tax adviser's employment. Similarly, where a secondee is brought into the organisation to fill a resourcing gap, they are simply fulfilling duties and obligations of their role. These activities are not 'services'.