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14 August 2024

KPMG submission: Review of the eligibility requirements for tax practitioner registration with the Tax Practitioners Board

KPMG Australia (KPMG) welcomes the opportunity to respond to Treasury's consultation paper in relation to the review of the eligibility requirements for tax practitioner registration with the Tax Practitioners Board (TPB).

KPMG supports a reformed registration regime that enhances community confidence in tax practitioners, but importantly ensures that appropriately qualified tax practitioners with diverse life and professional experiences are able to register and provide their services for the benefit of the community. Having a broader base of individuals registered as tax agents, not only improves the services provided but also extends and strengthens the regulatory regime by capturing a larger number of practitioners that offer tax services beyond traditional tax compliance.

The extension of the framework could be through a new registration or 'affiliate' registration that could capture tax services outside traditional 'return-based' work, for example, 'tax advice' work. In addition, we strongly support parental leave, in-house secondments and international experience being more appropriately recognized in the registration framework, allowing for more pathways to registration for experienced advisers. Importantly, ensuring the registration framework is broadened to better capture legal practitioners that provide 'tax advice' is critical for creating a level playing field and for ensuring integrity in the tax system.

Lastly, we welcome the proposal to introduce an additional registration requirement for companies and partnerships to satisfy that they have sufficient governance arrangements in place to ensure compliance with their obligations as a registered tax practitioner. It will be important for this obligation to not create additional or overlapping rules that inadvertently lead to inconsistent requirements with differing consequences.



While we support these additional governance requirements, we believe the entity should have flexibility in determining the number of registered agents who work alongside other specialists who ultimately may not qualify for registration. If the approach is too prescriptive, this may be to the detriment of quality tax advice.

Our detailed comments are set out in the Appendix. Should you wish to discuss these issues or proposals further, please do not hesitate to contact us.

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Appendix

Consultation Questions

Strengthening registration requirements for companies and partnerships

1. Will the inclusion of governance requirements in registration criteria for companies and partnerships help to meet the objectives of the TASA of maintaining integrity of the tax system and providing adequate professional and ethical safeguards to consumers?
2. Is the current policy setting requiring entities to only demonstrate that they have a 'sufficient number' of individually registered tax practitioners appropriate? Should the number or ratio of individually registered tax practitioners be prescribed, or the number expanded to include all partners or directors within the entity who provide tax services?

KPMG Response Q1-2

Inclusion of governance requirements in registration criteria

KPMG has existing strong governance and risk management policies and procedures that support the provision of tax agent services. As such, the recent additions to the Code of Professional Conduct pursuant to the *Tax Agent Services (Code of Professional Conduct) Determination 2024* that requires internal controls and quality management systems are unlikely to create significant additional regulatory obligations. KPMG understands that Treasury is also proposing to add these governance requirements to registration criteria. While we do not consider adding governance requirements to registration criteria to be problematic, additional criteria should be considered carefully as overlapping rules may inadvertently lead to inconsistent requirements with differing consequences.

More broadly, care needs to be taken in the specific formulation of the requirements. For example, the discussion paper states that applicants will be required to have these arrangements in place at the application stage for TPB registration. In the case of a new applicant, it will not be possible to demonstrate that specific internal controls and quality management systems in respect of the provision of tax agent services are in place and operating as the registrant is not yet permitted to provide those services.

Appropriateness and / or 'sufficient number' of individually registered tax practitioners

In relation to whether there should be a set number or ratio of individually registered tax practitioners prescribed, or whether registration should be expanded to include all partners or directors within the entity who provide tax services, there are a number of factors that would need to be considered. Firms will typically have a proportion of tax advisors in specialist areas that would not qualify for tax agent registration. We believe

firms should have the flexibility to determine the number of registered agents that work alongside other specialists, considering that ultimately some of these specialists may not qualify for registration. If the approach is too prescriptive, this may impact the quality of tax advice as it could constrain the number of specialists that can operate in a tax practice.

Other factors that may need to be considered are the two core elements of the overall TPB framework:

- the entry/registration requirements; and
- the regulatory framework (including the Code) together with the sanctions that those who are registered are required to operate within.

By making the registration process more “robust” you potentially limit the number of people that are subject to the regulatory framework and sanctions regime. The right policy outcome needs to be considered in the context of the registration of the entity providing the tax agent services (in our case, the KPMG partnership) and the individuals who are the registered tax agents who provide those services through that entity.

Reviewing the professional association accreditation and registration pathways

3. Is the current RPA framework (initial eligibility, ongoing eligibility and compliance framework) appropriate?
4. If not, what should that framework look like? For example, replaced with an enhanced PDB regime?
5. How should tax practitioners who are currently registered under the voting member pathway be treated if RPA pathway was to be removed?

KPMG Response Q3-5

We support retaining the professional association criteria as one of the registration options. Retaining membership of such associations for tax agents should be encouraged, given the existing eligibility and CPD requirements that such associations typically require. As noted in our response to question 2, if the aim is to encourage more tax advisors to register as tax agents, then providing potential registrants with more rather than less pathways for eligibility would support this.

Broadening the TPB’s ability to accept alternative forms of ‘relevant experience’

6. Do you agree that the current ‘relevant experience’ settings are set at an appropriate level for both tax agents and BAS agents? If not, what changes to these settings should be made and why?

7. Do any of the proposed options, or combination of proposed options, provide a balanced and equitable method of embedding flexibility in the registration regime? Are there any other alternative options which provide a more balanced method of providing additional flexibility?

8. Do you perceive any problems or have any concerns with providing the TPB the ability to consider exceptions to the 'relevant experience' criteria on a case-by-case basis (Option 1)?

9. In relation to simulated work experience programs under Option 1, do you believe the cap of 20 per cent provides sufficient flexibility without compromising the quality of tax practitioner services that would be provided? If not, what would be a more appropriate percentage and why?

10. Do you believe that the introduction of an alternative, longer time period to obtain 'relevant experience' (Option 2) would provide sufficient flexibility to account for special circumstances? What levels of relevant experience are appropriate alternatives for each registration pathway?

11. Have any other regimes embedded similar flexibility in an effective manner? If so, how?

12. Should the definition of 'relevant experience' for registration purposes be broadened (or, contracted)? If so, why?

KPMG Response Q6-12

Given the nature of our business, we have partners and other senior staff involved in delivering tax services who do not meet the existing registration criteria. These are senior, experienced people, who often have extensive experience in their field of taxation and who the firm and its partners have determined are sufficiently qualified and experienced to provide taxation services to clients. The rigidity of the current registration requirements means:

- these individuals are not subject, as individuals, to regulation by the TPB; and
- their work needs to be appropriately 'supervised' by a registered tax agent.

In our view, it would be preferential to have broader individual registration of those providing tax agent services via the entity tax agent registration. At present, individuals may be subject to our own internal policies, but given they are not registered with the TPB, they are not subject to individual oversight of sanctions. Having a broader base of individuals registered as tax agents would strengthen the regulatory oversight of a broader group of people delivering tax services. However, this will require an adjustment to the registration pathways that we discuss further below.

The profession has changed since the registration requirements were originally introduced. With changes in the regulatory landscape as it applies to taxpayers, the number of tax returns or statements completed each year for clients is no longer an indicator of someone's ability to provide tax agent services to a competent standard.

The Consultation Paper notes that the ‘relevant experience’ requirements could be improved, noting that many practitioners are moving away from traditional ‘return-based’ work to ‘tax advice’ work, often with the aid of digital tools. Advances by the Commissioner such as pre-filled tax returns and data matching have streamlined tax returns for taxpayers.

The way in which the Commissioner enforces compliance with tax laws has also changed, such as the introduction of compliance programs such as Streamlined Assurance programs and avenues in which taxpayers can engage with the Commissioner. This in turn has impacted the nature of tax agent services provided and how a tax professional gains the relevant experience.

As also noted in the Consultation Paper, the TPB registration framework is arguably too rigid for tax practitioners in special circumstances – parental leave is provided as an example. In addition, those who have taken career breaks or international secondments are impacted, particularly where they are required to have the equivalent of 8 years full-time in the past 10 years¹.

For tax practitioners who have relocated from overseas or have undertaken an international secondment and returned to Australia, there should be recognition of the overseas experience in the qualification criteria, with a significantly reduced period of Australian tax experience required to meet the relevant experience thresholds. This is even more critical if the eligibility criteria are expanded to allow for those who provide solely tax advisory services (and not tax return services) to be registered as a tax agent, as outlined earlier in our submission. In particular, for international and transaction tax advisory, and for certain specialist tax services, the skills needed and tax frameworks which are being advised upon are becoming increasingly consistent across jurisdictions.

Noting the above, we would support proposed options that broaden the ability for people carrying out tax services to seek TPB registration, while ensuring they have relevant experience. We support a mix of Option 1 and 2, with the advantage of Option 2 being a clear set of criteria that can provide transparency on the criteria and streamline the registration process. However, even with increased flexibility in the requirements in Option 2, there are likely to be some circumstances where a case-by-case assessment is still required. As such, Option 1 should be retained as a backup. A mix of Option 1 and Option 2 would ensure that scarce TPB resources are only used to assess exceptional cases.

We would recommend the TPB to accept alternative forms of relative experience for tax agents, this should include overseas secondments. Parental leave should not limit an individual when seeking registration.

¹ [Relevant experience for tax agents | Tax Practitioners Board \(tpb.gov.au\)](https://www.tpb.gov.au/relevant-experience-for-tax-agents)

Primary qualifications settings

13. Do you agree that the current primary qualification requirements are struck at a level that remains fit for purpose? If not, why not and what changes do you believe are required?

14. Do you agree that short-form credentials should not be included within the primary qualification settings? If not, how should they be included?

15. Are there any unintended consequences, benefits or issues that should be considered in granting the TPB additional flexibility to accept short-form credentials?

KPMG Response Q13-15

As we have previously outlined, we would support proposed options that broaden the ability for people carrying out tax services to seek TPB registration, while ensuring they have relevant experience. We consider that the primary qualification requirements are suitable and that micro-credentials should be considered on a case-by-case basis for now. However, with firms increasingly employing staff with different educational backgrounds and overseas experience, we expect the popularity of short-form and other alternative education to only increase. Accordingly, further thought could be given by Treasury or TPB over the longer term on how these might be recognised (such as through an accreditation process for particular courses).

'Fit and proper person' in the TASA context

16. Is the fit and proper test currently fit for purpose? If not, what needs to be included in this test?

17. Should the matter of conflicts of interest be incorporated into the fit and proper person requirement? (Option 1)

18. What considerations or requirements should be included in the TPB's conflict of interest test? Are APRA's and ASIC's conflict of interest considerations appropriate for the TPB to model their conflict-of-interest requirements?

19. Should the management of an individual's personal income tax affairs, and that of their associated entities, be a relevant statutory consideration under the fit and proper person requirement?

20. Should disclosure of spent convictions in applications for registration be mandatory? (Option 2)

21. Do you believe the TPB should be required to consider the events listed in subsection 20-15(b) from within a different period of time? Should this be a longer or shorter period, or regardless of when the events occurred?

22. What other matters should be considered in assessing fitness and propriety? Are there any considerations used by other Government regulators that should be included in the TPB's fit and proper test?

KPMG Response Q16-22

Across multidisciplinary professional services firms, there are a number of different 'fit and proper' standards that may apply, causing complexity in the regulatory environment. For example, the Australian Prudential Regulatory Authority (APRA) Prudential Standard CPS 520 fit and proper for 'responsible persons' has a requirement that relates to certain registered company auditors and appointed actuaries. When applying for ASIC's Australian financial services (AFS) licence, applicants also need to demonstrate fit and proper person requirements. To reduce fragmentation and confusion, a single definition of 'fit and proper' could be developed by a body like the Australian Professional and Ethical Standards Board and other regulatory regimes could refer to this standard.

Other proposals for consideration

23. Should the Code be amended to require individual tax practitioners to establish and maintain a contingency/succession plans to ensure there is continuity of services to clients in the event of a significant disruptive event?

24. Should the TASA be amended to give the TPB greater flexibility to accept other qualifications outside the traditional tax practitioner course of study?

25. Should the TASA be amended to capture existing and emerging tax intermediaries?

26. Should the TASA be amended to capture in-house tax advisers such as employees or secondees? If so, which classes of in-house advisers should be required to register with the TPB?

27. Should the TASA be amended to require legal practitioners who provide tax agent services, as defined in section 90-10 of the TASA, for a fee or reward, to be registered with the TPB?

KPMG Response Q23-27

As we have previously outlined, we would support proposed options that broaden the ability for people carrying out tax services to seek TPB registration, while ensuring they have relevant experience.

In response to question 26, it is not appropriate for in-house advisers to be required to register with the TPB, given the nature of their role as an employee of an organization. A number of the new requirements that are currently or will soon be imposed on registered tax agents would be challenging practically in an in-house role. It would also be challenging for some in-house tax managers to meet the registration requirements.

KPMG would support the broader registration to apply to legal practitioners under the TASA as it would ensure advisers carrying out tax agent services (outside traditional



tax returns) would be captured under the regulatory regime. If accounting firms are subject to regulation, but others such as legal firms providing the same advisor services are not, there is a risk of taxpayers who are engaging in more aggressive activities having a bias towards seeking out advisors who do not have the reporting obligations imposed on them. Gaps in regulatory oversight for firms or individuals that are providing the same services risks eventually result in a loss of integrity in the tax system.