



21 April 2023

Committee Secretary
Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Sent by email to: fpa.sen@aph.gov.au

Dear Committee Secretary

Inquiry into management and assurance of integrity by consulting services (Consulting services)

The Tax Practitioners Board (TPB) welcomes the opportunity to make a submission to the Senate Finance and Public Administration References Committee (Committee) in relation to the inquiry into the management and assurance of integrity by consulting services provided for by the Australian Government (Inquiry).

Background

The TPB is an independent statutory body that administers the *Tax Agent Services Act 2009* (TASA) and *Tax Agent Services Regulations 2022* (TASR). The TPB is responsible for registering and regulating entities providing tax agent services and business activity statement (BAS) services in Australia. Some of these entities also provide consulting services to the Australian Government.

The object of the TASA is to ensure that the services provided by registered tax practitioners (i.e. registered tax agents, and BAS agents) are provided to the public in accordance with appropriate standards of professional and ethical conduct.

As at 5 April 2023, there were 62,326 tax practitioners registered with the TPB, which consists of 45,283 tax agents and 17,043 BAS agents.

Obligations on tax practitioners

The terms of reference for this Inquiry have a focus on the management and assurance of integrity by consulting services provided for the Australian Government, with particular reference to conflict-of-interest management, prevention, breaches and enforcement, risks to public sector integrity, transparency and accountability of work undertaken by consultants.

Having regard to your terms of reference, the TPB has regard to "consultants" in two contexts. The first relates to contractors, providing services to government, who are not public servants. The second relates to consultants with government, often in confidential settings, to support reforms in strategy, policy or law reform. Tax practitioners, as individuals and related firms, are involved in both contexts, as contractors and in consultations. As registered tax practitioners, these consultants are subject to a number of existing obligations under the TASA. In particular:

- To be registered, and remain registered as a tax practitioner, every partnership or company must have a sufficient number of registered tax practitioners to ensure that services are being provided

competently and that there is appropriate supervision and every individual partner or director of a company or partnership is fit and proper

- All registered tax practitioners are subject to the legislated Code of Professional Conduct (Code) in the TASA. The Code has 14 items, which relevantly include Code item 1 – honesty and integrity, Code item 4 – act lawfully in the best interest of your client and Code item 5 – adequate arrangements for the management of conflicts of interest in relation to the tax services you provide.

TPB view

While the TPB's legislative framework, the TASA, provides a good foundation to deal with the management and assurance of integrity of tax consulting services, the TPB welcomes the Government's ongoing and recent support in considering and implementing reforms that will ensure the TPB's regulatory framework is fit for purpose, especially in ensuring protection for the public and supporting community confidence in the integrity of the tax system and the tax adviser profession.

In 2019, the Government announced an independent review into the effectiveness of the TPB and the TASA legislative framework (the [James Review](#)). Government supported, in full, in part or in principle, the majority of the 28 recommendations arising from the review. Relevantly, the James Review recommendations addressed the need for improvements in the compliance and enforcement regime applicable to tax practitioners. The Board welcomes support from the Government which will enhance effectiveness and system integrity.

The TPB continues to have discussions with larger tax advisor firms, which are more commonly involved in government consultation processes. Some firms have advised that they are engaging in a self-assessment evaluation of consultation integrity, and have identified areas for improvement, including better client engagement and coordination of conflict management. The TPB welcomes these steps being undertaken.

Appendix 1 provides some further detail, addressing this Inquiry's terms of reference, on the operation of the law, the TASA, that we administer, the Code and issues arising from the James Review.

Further information

Please feel free to contact me at
Assistant Secretary at

or Janette Luu, Acting
if you would like to discuss further.

Yours sincerely

Michael O'Neill
Secretary/CEO
Tax Practitioners Board

APPENDIX 1

Further information

Having regard to the Inquiry's terms of reference, we consider 'consultants' to be advisers to the Australian Government, engaged in various ways, apart from those staff employed under the *Public Service Act 1999* or similar legislation.

The TPB engages consultant contractors, from time to time, to provide specialist skills that are not within our direct capability, or more readily available to the TPB via APS wide coordination (e.g., shared services are provided to the TPB via the ATO). These engagements adhere to the Commonwealth's procurement framework to ensure assurance, accountability and transparency into Government procurement activities. Our experience of these consultancy engagements is generally positive, provided by specialist teams/firms, under contractual agreements, that have been subject to tenders or other proper procurement practices. Contract evaluation occurs whilst the service is ongoing, in advance of any variation or extension, and may include elements of subjective, objective, self and other evaluation.

TPB, as regulator of the tax profession, has insights into some consultation services provided by tax practitioners to the Australian Government. For example, in consideration of law reform, the Government may seek input from tax practitioners in general or targeted consultation, to include practical experience, detailed expertise, to ensure reforms are well targeted and to address any unintended consequences. Government consultation with tax practitioners continues to support law reform and improved public policy, provided it is conducted with integrity, managing confidential information and conflict of interest.

Integrity

The TPB supports the integrity of the tax profession, including those who provide consultancy services to Government, in a variety of ways:

- ensuring registration is reserved for those with appropriate standards (education, experience, and ethical standards)
- providing guidance for tax practitioners to support voluntary compliance with standards
- ensuring the *Tax Agent Services Act 2009* (TASA) and the legislated Code of Professional Conduct (Code) is 'fit for purpose', especially in respect of standards, such as being of good fame, integrity and character, fit and proper and acting honestly and with integrity (see additional information below under 'Related issues – fit for purpose')
- Resolving complaints, assessing data, risk management, deploying/evaluating strategies and targeted investigations to address highest risk issues (including integrity, conflict and confidentiality allegations)
- Leveraging administrative or judicial sanctions to protect the public, via a public register, media and web guidance. Leveraged sanctions support the level playing field for the majority of honest practitioners and provide more general deterrence against misconduct.

Conflicts of Interest

Tax practitioners, like other professionals, recognise that their client obligations balance with community obligations. For example, our Code articulates the need for tax practitioners to act lawfully in the best interests of the client. Tax practitioners who prioritise self-interest, or who act in furtherance of tax crime, are clearly failing their legal, ethical and professional obligations.

Codes of ethics support conflict management and prevent misconduct. They may be set in legislation or regulation, supported by practical guidance, risk assessment and targeted investigations, giving the public and profession confidence in the integrity of the system and the regulatory framework.

One example, which requires careful consideration by tax practitioners, involves remuneration which is performance based or contingent upon tax savings. Such arrangements raise an inference that the tax practitioner's financial and professional obligations may conflict, in perception if not in reality, with other obligations to their client, their ethical or legal responsibilities. For example, some tax advisers who design tax schemes, involving avoidance or evasion, may seek consideration based on a percentage of the 'tax saving'.

Legal, Contractual or Ethical breaches

Tax practitioners are supported in their services to clients having regards to their relevant contractual arrangements or 'terms of engagement'. TPB experience, and survey result analysis, supports the view that most clients of tax practitioners have high levels of satisfaction in the professional services they have received. Needless to say, those tax advisers who act with fraudulent intent, attacking the tax system and/or their clients' interests, are acting outside the law and outside their contractual remit. Some relevant cases concern tax advisers who have misused client funds, including lodging unauthorised or false returns/statements with the ATO, and withholding or diverting client funds to personal use.

Legislative and contractual standards for tax advisers are often supported by codes/ by-laws of relevant professional associations. The TPB especially recognises those associations that actively ensure members uphold high standards of ethical conduct, with appropriate investigations, sanctions and remedies.

Other mechanisms which support legal and ethical standards include on-going experience and professional development, often supported by firms, professional associations and educational institutions. Tax practitioners are similarly supported by supervision and control arrangements within firms, which may address quality and risk, including the need for senior approval for some advice.

The best tax practitioners and associated firms respond quickly and transparently to issues or concerns, sometimes arising from clients, their staff or from regulations such as the TPB. Clients of tax practitioners are also reassured knowing that the safety net of professional indemnity insurance is available in more serious cases.

Outside the civil law, tax practitioners or other consultants who are involved in serious misconduct may be exposed to criminal sanctions.

Public sector integrity

Public sector integrity controls, applicable to the TPB and other federal public servants, include legislative requirements (e.g., *Public Service Act 1999* and *Public Governance, Performance and Accountability Act 2013*), Australian Public Services values, education and awareness, monitoring and evaluation (performance and risk management, fraud prevention, internal and external audit, transparency via stakeholder engagement, planning and reporting, including to Government and the parliament (e.g., Senate inquiries, annual reporting).

TPB investigations have noted the risk that preferential contracts could be awarded to consultant tax advisers/ professional firms in return for benefits (including hospitality, accommodation, travel and employment of associates). Proper systems of leadership, capability and culture, within agencies and consultancy firms, should reduce this risk. Improved transparency, including data sharing, and corruption risk management, and external scrutiny all enhance compliance with legal and ethical frameworks.

Related issues – fit for purpose

The TPB welcomed an [independent review](#) of its performance and legislative framework. Conducted by Mr Keith James in 2019, the Review provided opportunities for stakeholder feedback, and concluded with over 30 [recommendations](#) to ensure our regulation of tax professionals continues to be 'fit for purpose'. These recommendations included that registered tax practitioners have appropriate governance arrangements in place, increasing the sanction powers that available to the TPB and expanding the information on the Public Register to assist taxpayers seeking to engage a tax practitioner. [Government responses](#) to the majority of these recommendations have been positive, in full or in part.

Review recommendations of an administrative nature have already been implemented, and some preliminary matters are before the Parliament for consideration (Treasury Laws Amendment (2023 Measures No. 1) Bill 2023. In addition, the Government has advised it is supportive of expedition of other TASA reforms, subject to appropriate consultation and Treasury advice. The TPB looks forward to working with Government and other stakeholders to ensure continued support for the public, professional standards and community confidence in the integrity of the system.