



18 October 2024

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Committee Secretary

Inquiry into Australia's taxation system

The Tax Practitioners Board (**TPB**) welcomes the opportunity to make a submission to the Senate Economics References Committee (**Committee**) in relation to the inquiry into Australia's taxation system (**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 (which includes business activity statement (**BAS**) services and tax (financial) advice services) in Australia.

The object of the TASA is to support public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct.

As at 2 October 2024, there were 63,347 tax practitioners registered with the TPB, which consists of 46,406 tax agents and 16,941 BAS agents.

On 6 August 2023, the Government announced a significant package of reforms to address misconduct and rebuild the community's confidence in the systems and structures that keep our taxation system and capital markets strong. The TPB welcomes these reforms as they will:

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

TPB view

The Inquiry's terms of reference focus on matters relating to Australia's taxation system. This submission provides general comments relating to the role of tax practitioners in the Australian taxation system.

Registered tax practitioners have a critical role in the taxation system by ensuring community confidence in the integrity of the taxation system. It is noted that the majority of Australians and businesses rely on registered tax practitioners to support their engagement with the taxation and superannuation systems.

This includes approximately over 60 per cent of all individual tax returns and over 90 per cent of business tax returns were lodged by tax agents. It is therefore important to recognise the importance that tax practitioners play in Australia's taxation system.

In the current environment, there has been increased scrutiny and community awareness of unacceptable behaviours in the tax profession and, in turn, a rise in community expectations of the professional and ethical standards placed on registered tax practitioners. The TPB is committed to enhancing the reputation and performance of the tax profession.

The TPB notes that the vast majority of registered tax practitioners are compliant with their professional and ethical obligations under the TASA. However, where a registered tax practitioner breaches their professional and ethical obligations, this can have a significant impact on taxpayers' confidence and trust in the integrity of the broader taxation system. For example, the TPB's investigations have highlighted the risk that registered tax practitioners may help clients actively minimise, avoid or evade taxation obligations through artificial and engineered business structures to leverage different taxation systems around the world. This type of misconduct can have a disproportionately large impact on the trust that the broader public have in the integrity of the taxation system. It can also create a competitive advantage for tax advisers acting unlawfully and encourage or result in other registered tax practitioners engaging in misconduct in the taxation system.

The TPB's investigations address a range of tax adviser misconduct, including facilitation of the shadow economy, income misstatement (under reporting or alienation schemes), overclaiming benefits (work related expense deductions and Research & Development credits) and profit shifting by multinational enterprises.

An increase in the TPB's ability to collaborate, share intelligence and coordinate compliance action on registered tax practitioners who pose the highest risk to the taxation system would assist with reducing the number of registered tax practitioners involved in the provision of advice that enables/facilitates multinational tax arbitrage and the misallocation of government resources.

The TPB's collaboration includes working closely with the Australian Taxation Office (**ATO**) on shared risks in the taxation system. Both agencies exchange information, advise each other on risks and matters of common interest, and work together on initiatives to improve the quality of tax agent services and the compliance of taxpayers. A more recent example of the TPB's collaboration with other agencies is the TPB recently becoming a member of the Fraud Fusion Taskforce. This enhances the TPB's ability to collaborate and support whole of government responses to current and emerging tax risks. There may also be opportunities and benefits for the TPB to be included in other relevant taskforces where registered tax practitioners are facilitating risks to the integrity of the taxation system.

More broadly, 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 the integrity of the taxation system and tax profession.

In particular, a commitment by the Government to implement reforms, arising from the independent review into the TPB ([James Review](#)), that will ensure our regulatory framework is fit for purpose. The TPB supports measures to improve the integrity of the tax system, including consideration of:

- enhanced administrative sanctions,
- review of the registrations framework,
- review of the secrecy exceptions to support whole of government coordination,

- enhanced co-regulatory collaboration and information sharing,
- expanded Code of Professional Conduct (**Code**),
- new breach reporting requirements,
- extended whistleblower protections, and
- greater transparency of the TPB Public Register.

In relation to the expanded Code, it is noted that the Assistant Treasurer finalised a legislative instrument on 8 October 2024 to add an additional 8 obligations to the Code. These additional obligations supplement the existing Code obligations and strengthen integrity and accountability in the tax profession. New Code obligations include upholding the integrity of the tax profession, confidentiality and managing conflicts of interest when dealing with Government, competency, addressing false and misleading statements, and having quality management systems in place.

Appendix 1 provides some further detail on the operation of the law, the TASA, that we administer and the law reforms arising from the James Review.

Further information

Please feel free to contact me at [REDACTED] or on [REDACTED] or Janette Luu, Assistant Secretary at [REDACTED] or on [REDACTED] if you would like to discuss further.

Yours sincerely

[REDACTED]

Michael O'Neill
Secretary/CEO
Tax Practitioners Board

Further information

Regulation of registered tax practitioners

Registered tax practitioners are subject to a number of existing obligations under the TASA. All registered tax practitioners are subject to the legislated Code in the TASA which contains 17 items that regulate the personal and professional conduct of registered tax practitioners.

Current TPB reforms

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'. [Government responses](#) to the majority of these recommendations have been positive, in full or in part. Key recommendations have been highlighted below.

Recommendations of an administrative nature have already been implemented, and some other recommendations are under consideration. 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 tax system.

Enhancing administrative sanctions

The Treasury conducted a consultation process on a consultation paper about enhancing the TPB's sanctions regime as part of the Government's response to the PwC matter, announced on 6 August 2023. The consultation process closed on 21 January 2024.¹

Review of the registrations framework

The Treasury conducted a consultation process on a consultation paper about a review of the eligibility requirements for tax practitioner registration with the TPB. The consultation process closed on 14 August 2024.²

Review of the secrecy exceptions, enhanced co-regulatory collaboration and information sharing

The Treasury conducted a consultation process on exposure draft legislation that amended the *Taxation Administration Act 1953* and the TASA to deliver part of the Government's response to the PwC matter.

The draft legislation aimed to:

- remove limitations in the tax secrecy laws that were a barrier to regulators acting in response to PwC's breach of confidence, and
- enable the ATO and TPB to refer ethical misconduct by advisers (including but not limited to confidentiality breaches) with prescribed professional associations for disciplinary action.

The consultation process closed on 4 October 2023.³ The TPB notes that a broader review of the secrecy exceptions would assist in ensuring that it remains fit for purpose.

¹ See [Response to PwC – Enhancing the Tax Practitioners Board's sanctions regime | Treasury.gov.au](#).

² See [Response to PwC – Tax Practitioners Board registration review | Treasury.gov.au](#).

³ See [Response to PwC – information sharing | Treasury.gov.au](#).

Expanded Code of Professional Conduct

The Treasury conducted a consultation process on draft amendments to the *Tax Agent Services (Code of Professional Conduct) Determination 2024* and updated explanatory material. The original Determination was registered in July 2024, with the Minister making amendments to the Determination on 8 October 2024.

New breach reporting requirements

The TPB has implemented the new breach reporting requirements which support the majority of registered tax practitioners in their voluntarily compliance with professional and ethical standards.⁴

Extended whistleblower protections

The TPB has implemented the extended whistleblower laws which commenced on 1 July 2024. These laws extended whistleblower protections to individuals who 'blow the whistle' about a related entity to the TPB, where they believe the information may assist the TPB in performing its functions or duties under the TASA.⁵

Greater transparency of the TPB Public Register

The TPB is implementing the changes to the TPB Public Register which commenced from 5 July 2024. This enables publication of additional information on the TPB Public Register.

⁴ See [Breach reporting | Tax Practitioners Board](#) and TPB Information Sheet [TPB\(I\) D53/2024 Breach reporting under the Tax Agent Services Act 2009](#).

⁵ See [Whistleblower legislation | Tax Practitioners Board](#).