



Attention: Committee Secretary
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
Canberra ACT 2600

17 November 2023

Sent by email to: jcpaa@aph.gov.au

Dear Sir / Madam

SUBMISSION TO THE INQUIRY INTO POLICY AND PROGRAM DESIGN AND IMPLEMENTATION

1. The Tax Practitioners Board (TPB) is pleased to provide a submission to the Joint Committee of Public Accounts and Audit's Inquiry into Policy and Program Design and Implementation. In particular, the TPB welcomes the opportunity to comment on the Auditor-General Report No. 39 (2022–23) *'Implementation of the government response to the Black Economy Taskforce'* (the Report).
2. The TPB notes that the term 'black economy' has now changed to 'shadow economy', reflecting the Organisation for Economic Co-operation and Development's definition of unreported or dishonest economic activity.

Background

Role of the TPB

3. 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 in Australia.
4. The object of the TASA is to ensure that the services provided by registered tax agents and BAS agents (collectively referred to as registered tax practitioners) are provided to the public in accordance with appropriate standards of professional and ethical conduct, which includes obligations under the Code of Professional Conduct contained within the TASA. Further, the underlying policy objectives of the TASA are to enhance the protection of consumers of tax agent services and to strengthen the integrity of the tax system and the tax profession.
5. As at 23 October 2023, there were 62,702 tax practitioners registered with the TPB, which consists of 45,603 tax agents and 17,099 BAS agents.

Context of the TPB's submission

6. This submission focuses on those issues directly related to the TPB, in particular, Recommendation 7.4 of the Report which recommended that:

A strategy for tax practitioners

The Government should:

- take action against implicated advisers and promoters;
- take more visible action against egregious tax practitioners and make clearer their ethical responsibility to report suspected illegal activities and tax evasion; and
- increase the capacity of the Tax Practitioners Board (TPB) to take sufficient effective action against egregious tax practitioners by increasing its resources and interactions with the ATO

7. In response to this recommendation, the Government stated that:

The Government agrees that the Tax Practitioners Board (TPB) plays an important role in combatting the black economy. The TPB will receive additional funding to allow it to receive a greater number of black economy referrals arising from increased compliance on black economy activity.

8. In the Report, the ANAO assessed this recommendation as being 'largely implemented' since a project plan was not in place with the ATO and implementation timeframes were partly in place for this recommendation.

9. In particular this submission outlines:

- Outcomes achieved to date
- Ongoing support of the program in 2023-24
- Details of the TPB's strategies and treatment plans
- Opportunities to further enhance the TPB's contribution to the shadow economy work program

Outcomes achieved to date

10. The TPB applied the first round of funding of \$5.52 million over the 4 years to address compliance cases, which were a combination of ATO referred and self-generated cases. These cases involved key shadow economy attributes, including reckless reporting, tax avoidance, identity fraud, indirect tax avoidance and criminal activities.
11. With the additional funding, the TPB was able to self-identify relevant shadow economy cases, receive referrals and cases, including from the ATO, risk assess and applying treatment strategies to cases and manage subsequent litigation.
12. Over the life of the program, the TPB resolved over 600 cases, which resulted in 84 sanctions, including 63 terminations of tax practitioners, and 26 litigation matters. Lower risk matters were resolved via direct engagement with tax practitioners resulting in voluntary remediation of shadow economy risk.
13. The TPB, through our guidance and educative programs, also focussed on encouraging tax practitioners to report any egregious behaviour within the tax profession, which may include suspected illegal activities.

Ongoing work: 2023-24

14. Earlier this year, the ATO engaged the TPB as part of its strategic planning for the 2023-24 Shadow Economy program of work. To allow the TPB to continue to support this ongoing program, for 2023-24, the TPB has been allocated additional funding and resources of 8 full time equivalent staff (at a cost of \$923,000) and \$290,000 in supplier cost to action and litigate cases, including those arising from ATO referrals, resulting from shadow economy projects and strategies.

The TPB's strategies and outcomes

Behaviours being addressed

15. The TPB focus continues to be on addressing the following shadow economy behaviours involving both registered tax practitioners and unregistered preparers:
- Opportunistic exploitation, lax internal controls, lodge incorrect returns or make false statements to the ATO, have low capability in one or more areas
 - Involvement in non-compliant arrangements (schemes), providing false or misleading advice, failing to correctly ascertain a client's state of affairs, poor compliance in own and practice affairs.
 - Involvement in illegal activity and crime perpetuating fraud, evasion, theft, facilitating phoenix activity, misusing position of trust, providing tax agent services for a fee or reward while unregistered.
 - Emerging risks including fraud perpetuated through agent online channels and agent re-entry post termination.
16. The TPB has observed that shadow economy risks and behaviours generally manifest through:
- Incompetence – generally the tax practitioner is unaware, and shadow economy client behaviours may occur as a result of poor business practices such as lax supervisory arrangements and client verification processes, potential tame agent scenarios, lack of internal controls and lack of knowledge or unregistered preparer is unaware of registration regime under the TASA.
 - Deliberate behaviours – including tax practitioners deliberately avoiding their own tax obligations, assisting their clients to set up structures to deliberately not pay the correct amount of tax, tax practitioners using their clients for their own financial gain such as failing to account to clients for tax refunds and a key concern for the TPB, being unregistered preparers that deliberately engage in conduct prohibited by the TASA.

Treatment strategies

17. The TPB treatment strategies to address shadow economy behaviours exhibited by registered tax practitioners and unregistered tax practitioners includes:
- Prevention and education – supporting those tax practitioners who do the right thing and educating and guiding those tax practitioners that demonstrate incompetent behaviours to better understand their obligations as a registered tax practitioner and improve their voluntary engagement in the tax system.
 - Improved data and risk analytics – developing a risk engine to identify shadow economy behaviours and systemic risks which the TPB and ATO can develop coordinated strategies to address.

- Compliance treatment – sanctioning those registered tax practitioners that engage in deliberate shadow economy behaviours by removing them from the registration system and minimising their influence upon clients who will be encouraged to migrate to compliant registered tax practitioners who do not engage in shadow economy type behaviours.
- General deterrence and awareness – raising consumer awareness through our Public Register, media releases and client supporting programs designed to better inform, engage and support clients of registered tax practitioners and unregistered preparers.
- Reform – ensuring that the TASA regime is fit for purpose and that the TPB has the agility and powers to respond to shadow economy risks.

Outcomes

18. The outcomes the TPB has been able to achieve, and continues to expect to achieve, through the funding for this program of work is a direct and indirect returns on investment and behavioural changes including:

- Decreased shadow economy participation by leveraging the influence of tax practitioners through supporting and encouraging existing positive behaviours and driving better behaviours in registered tax practitioners that will flow through to their client base.
- Improved professional registered tax practitioner behaviour.
- A more level playing field for registered tax practitioners.
- Consumer protection.

Opportunities

19. While the TPB has been able to strongly contribute to the shadow economy program of work, there are a number of key opportunities that would allow for an acceleration of the TPB's contribution. In particular:

Improving engagement

20. Because the TPB is not a member of the Shadow Economy Taskforce, the TPB's visibility of the overall Shadow Economy program of work is limited. This could result in missed opportunities for optimal coordination between the TPB and the ATO to address Shadow Economy risks as they relate to tax practitioners and unregistered preparers (URP).

Leveraging the TPB's wider compliance program

21. To date, the funding that the TPB has received to address Shadow Economy behaviours has been primarily directed to dealing with referrals from the ATO, TPB initiated investigations and unregistered tax practitioner behaviour.
22. The TPB adopts a compliance approach aimed at both specific and general deterrence by undertaking strong compliance action against higher risk practitioners and unregistered tax practitioners and education (through for example, case studies, information sheets, webinars) for those practitioners who are either generally compliant and/or may be at risk of moving into a higher risk category. There is an opportunity for the ATO and the TPB to work more closely together to address Shadow Economy behaviours, both through educative programs as well as targeted compliance programs. Such targeted compliance programs include:

- TPB's expanded Client Support Program (CSP)

The CSP, which is scheduled to commence by the end of the year, will provide transparent information, in a timely way to taxpayer clients associated with tax practitioners subject to TPB regulatory action.

The goals of the CSP include more timely and effective engagement with clients of sanctioned tax practitioners, improved support to impacted clients in addressing their tax affairs, in particular, advice on how they can engage another registered tax practitioner if they require assistance in managing their tax affairs and improving the level playing field for tax practitioners, recognising that the majority of the profession act ethically and legally.

Implementing the CSP will improve client behaviour and higher risk practitioner behaviour over time through demonstrated reengagement in the tax system such as voluntary disclosures, and increase in revenue through compliant lodgements as well as encouraging clients to migrate to compliant practitioners who do not engage in shadow economy type behaviours.

- TPB's Expanded Compliance Program (ECP)

In the October 2022-23 Budget, the Government committed additional funding of \$30.4 million to increase TPB compliance investigations into high-risk tax practitioners and unregistered preparers, from 1 July 2023. The TPB's ECP is being driven by new risk engines to better identify tax practitioners who engage in poor and unlawful tax advice, to improve tax compliance and raise industry standards. As our risk engines develop, the TPB will be in a strong position to identify and address tax practitioners engaging in shadow economy type behaviours.

Leveraging the law reform program

23. There is a significant amount of law reform that will amend the TPB's legislative framework. A number of the proposed amendments will assist in the TPB's ability to treat shadow economy type behaviours. This includes:
 - Additional items in the legislated Code of Professional Conduct (Code) to prevent tax practitioners engaging, and being engaged by, 'disqualified entities' in the provision of tax agent services. Commonly, those entities who seek to operate through a 'tame agent' have been previously sanctioned by the TPB for engaging in Shadow Economy type behaviours.
 - Giving the relevant Minister the power to expand the Code to addressing emerging issues and risks.
 - Extending the tax whistleblower protections to eligible whistleblowers who wish to disclose alleged misconduct to the TPB and authorising the ATO and the TPB to share information they have received from whistleblowers with the Australian Charities and Not-for-profits Commission, as well as each other, where the information received relates to their regulatory responsibilities.
 - A Treasury led review to consider what additional sanctions and investigatory powers to the TPB requires to be able to appropriately regulate the tax profession.
24. There is ongoing consultation by the Attorney General's Department about the scope of anti-money laundering and counter terrorism financing rules, and whether they should apply more generally to financial or professional advisers including lawyers and accountants, including tax practitioners.

Further information

25. The TPB welcomes any questions that the Joint Committee of Public Accounts and Audit may have and looks forward to the outcomes of this inquiry.
26. If you would like to discuss, please do not hesitate to contact the TPB's Secretary and CEO, Michael O'Neill at [REDACTED] or Assistant Secretary, Janette Luu at [REDACTED].

Yours sincerely

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Peter de Cure AM
Chair
Tax Practitioners Board