

20 October 2017

Tax Practitioners Board
GPO Box 1620
Sydney NSW 2001
By email: tpbsubmissions@tpb.gov.au

Dear Sir/Madam

RE: TPB's Exposure Draft TPB Practice Note TPB(PN) D38/2017 *Outsourcing, offshoring and the Code of Professional Conduct*

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the Tax Practitioners Board's (TPB) Exposure Draft *TPB Practice Note TPB(PN) D38/2017 Outsourcing, offshoring and the Code of Professional Conduct*.

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the members of the three major Australian professional accounting bodies (Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants).

APESB's views set out in this submission are based on knowledge gained from the development and consultation process undertaken during the development process of APES GN 30 *Outsourced Services* and our interest in ensuring consistency in the guidance available to accounting and tax professionals.

Overall comments

APESB is generally supportive of the proposed TPB practice note to provide guidance and help tax practitioners to better understand their obligations in respect of outsourcing and offshoring under the Code of Professional Conduct in the *Tax Agent Services Act 2009*. We are of the view that the proposed guidance will assist tax practitioners in fulfilling their professional obligations when they make use of outsourcing and/or offshoring in their business operations that impact upon the delivery of taxation services to clients.

APES GN 30 Outsourced Services

APESB appreciates that the proposed practice note recognises APES GN 30 *Outsourced Services* (APES GN 30) as a source of useful guidance to tax practitioners in respect of providing or utilising outsourced services. As you are aware, APES GN 30 provides guidance to members of the professional accounting bodies on their professional and ethical obligations when providing or utilising outsourced services, and sets out key considerations for accountants, including managing risks, terms of outsourcing arrangements, monitoring and managing performance of outsourcing arrangements and documentation.

We would like to make the TPB aware that the APESB Board is developing a project to further consider the use and effectiveness of APES GN 30, including whether there is a need

to transform it from a guidance note to a standard. The aim of the proposed project would be to ensure that APES GN 30 remains relevant in view of the increasing use and provision of outsourced services in the market and greater complexities in outsourcing arrangements in recent years. As part of the proposed project, APESB will engage with key stakeholders including the TPB to gather views on the future directions of this project. Project developments and updates will be available on our website at www.apesb.org.au in due course.

Providing Outsourced Services

While the proposed TPB practice note provides a useful reference for tax practitioners who utilise outsourced services, APESB is concerned that it does not specifically address key considerations relevant to tax practitioners who provide outsourced tax services. We query whether there is a specific reason behind this limitation in the scope of the proposed practice note.

We note that there is a growing number of registered tax agents who provide outsourced tax services as their primary business. These tax practitioners may be based in Australia or are operating in another jurisdiction. We are of the view that similar to those tax practitioners who use outsourced services, tax practitioners who provide outsourced tax services as a business also face similar challenges and business risks (e.g. skills and competency considerations, confidentiality and privacy issues, data security concerns etc.). We therefore recommend that the TPB consider including guidance applicable to the provision of outsourced tax services in the proposed practice note to specifically address the needs of these tax practitioners.

Specific Comments

APESB would like to recommend that the TPB give further consideration to the following matters and revise the proposed practice note, as appropriate:

1. Definition of Outsourcing and Outsourced Service

We are concerned that the definition of *outsourcing* in the proposed practice note did not take into account that *outsourcing* (as defined in APES GN 30) involves an entity engaging another party 'on a continuing basis, to perform a business activity that is being, has been or could be performed by that entity'. The current definition in the proposed practice note is broad and can be misinterpreted to mean that an outsourcing activity may be done on a one-off basis and can include a generic service from another party that does not involve a business activity directly related to the service delivery to clients (e.g. cleaning services or leasing of copiers).

The proposed practice note also did not clarify that an *outsourced service* (as described in APES GN 30) involves outsourcing a material business activity to a party that provides the service. We recognise that materiality is a subjective concept. In this instance, however, a material business activity is a business activity that if disrupted, has the potential to significantly impact upon the quality, timeliness or scale of the services of the entity to its clients. We note that this definition in APES GN 30 is consistent with the definition of a material business activity in APRA's Prudential Standard CPS 231 *Outsourcing* (July 2017).

We suggest that the above matters be clarified in the *outsourcing* definition so that it captures those activities that should be within the scope of the practice note.

2. General considerations when deciding to enter into an outsourcing arrangement

APESB appreciates that issues relating to competency and skills of outsourced service providers are addressed in the *Code obligations* section of the proposed practice note. We believe, however, that the competency of outsourced service providers, including whether they have appropriate technical and communication skills to perform the services, are important considerations when considering outsourcing arrangements at the outset. We suggest that these considerations be included in the *General considerations* section of the proposed practice note to highlight their importance.

We are also of the view that when deciding to enter into an outsourcing arrangement, it is important to consider whether there are robust processes in place to ensure compliance with laws and regulations relating to protection of confidentiality and privacy of client information. The nature and complexities of these arrangements and the risk of non-compliance with laws and regulations on both the provider and user of outsourced services increase when the outsourced service provider is based in another jurisdiction.

In addition, it is important to consider whether there are adequate contingency and business continuity plans in place at both the user and provider of outsourced services. These plans should ensure that there are appropriate strategies, systems and processes to prevent and/or address any potential disruption to services to clients and recover significant data in disaster scenarios.

We believe that the above are critical considerations in any outsourcing arrangement and should be included in the *General considerations* section, in addition to related discussions in the *Code obligations* section of the proposed practice note.

3. Supervisory arrangements over outsourced tax services

APESB notes that the statement in the proposed practice note (paragraph 33) that there are no standard processes that tax practitioners can use to determine the adequacy of supervisory arrangements in outsourced tax services may not be entirely accurate.

There are a large number of tax practitioners registered with the TPB who are also members of the professional accounting bodies. These tax practitioners are required to comply with APES 320 *Quality Control for Firms* (APES 320) which specify that firms are required to establish policies and procedures (including supervision and review responsibilities) that will ensure that services provided are conducted in accordance with applicable professional standards and relevant laws and regulations. APES 320 also provides guidance in respect of key considerations relating to what constitutes appropriate engagement supervision and review processes.

In addition, APES 220 *Taxation Services* (APES 220) requires that tax practitioners perform sufficient reviews of tax returns and related documentation, where a significant portion of the work on the preparation of tax returns was not under the supervision of the tax practitioner.

We suggest that the TPB consider the requirements and guidance in APES 320 and APES 220 in respect of the topic *Adequate supervision arrangements*.

4. Transitioning in and out of outsourcing and offshoring arrangements

APESB believes that the proposed practice note could be enhanced by including specific commentary about managing the transition in and out of outsourcing and offshoring

arrangements. This would include the need for tax practitioners to have contingency plans in place for changing outsourced service providers or bringing these services back in-house, if necessary. It is also vital for tax practitioners to consider intellectual property break-up and recovery in these instances. We also are of the view that it is important for formal policies and procedures to be developed relating to these types of arrangements, and suggest that this be highlighted in the proposed practice note.

5. Dealing with client monies

APESB recognises that outsourced tax services sometimes involve dealing with client monies, including holding, disbursing or receiving client monies in relation to a tax or other related service. We are of the view that these functions add further complexities to the outsourced tax services and present additional risks for the tax practitioner to manage when providing or utilising outsourced tax services. The proposed practice note could include specific commentary to address this matter, and make reference to APES 310 *Dealing with Client Monies* when an accountant deals with client monies.

Concluding comments

We trust that you will find these comments useful in your final deliberations. Should you require any additional information, please contact APESB's Chief Executive Officer, Channa Wijesinghe at channa.wijesinghe@apesb.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicola Roxon', with a long horizontal flourish extending to the right.

The Hon. Nicola Roxon

Chairman