



## **Annual Review of APES 220 *Taxation Services***

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## **1. Executive Summary**

### **1.1. Background**

The Accounting Professional and Ethical Standards Board (APESB) issued APES 220 *Taxation Services* in December 2007 with an effective date of 1 July 2008. APES 220 replaced APS 6 *Statement of Taxation Standards*.

### **1.2. Reason for this report**

In accordance with the constitution of the APESB, a review needs to be performed annually after a new standard is effective. This report presents a review of the issues reported to the APESB and a proposed course of action to address the issues.

### **1.3. Issue identified**

#### *New issue identified*

1. APES 220 makes reference to the appropriation of tax refunds in paragraph 9.2 of the standard. A stakeholder has reported that as it is currently written “appropriate tax refunds” may be interpreted in a number of ways thus making it difficult to discipline a Member who has not complied with this mandatory requirement.

#### *Issue carried forward from the 2009 Annual Review*

2. The Tax Agent Services Act 2009 (the Act) is operative from 1 January 2010. The Act includes a Code of Conduct that governs the members of the three professional accounting bodies who are registered tax agents or BAS agents. Members of the three accounting bodies are also bound by APES 110 *Code of Ethics for Professional Accountants* (APES 110) and APES 220 *Taxation Services* (APES 220).

The Act uses the term “reasonable care” which remains undefined. This raises the question of whether the Act creates any additional obligations that are not addressed in professional standards.

## 1.4. Recommendation

It is recommended that:

1. Paragraph 9.2 be amended to read as follows:

A Member in Public Practice shall not use, withhold or otherwise appropriate tax refunds to settle the fees of the Member or for any other use in lieu of their transfer directly to the Client, unless agreed to by the Client in Writing.

2. APESB monitor the National Tax Practitioners Board work program and developments in relation to the definition of “reasonable care” and dependent on the deliberation of that Board consider any future amendments to APES 220.

## 2 Review of Issues

### 2.1 Interpretation of the term “appropriate” in Section 9.2 of APES220

#### Issue

A stakeholder has reported that the term “appropriate” in paragraph 9.2 may be interpreted in a number of ways thus making it difficult to discipline a Member who has not complied with this mandatory requirement.

#### Analysis of the issue

Paragraphs 9.1 and 9.2 of APES 220 reads as follows:

**9.1 A Member in Public Practice shall ensure prompt transmission of monies received on behalf of a Client from Revenue Authorities to the Client.**

**9.2 A Member in Public Practice shall not appropriate tax refunds to settle the fees of the Member or for any other use in lieu of their transfer directly to the Client, unless agreed to by the Client in Writing.**

The stakeholder notes that in the above context, “appropriate tax refunds” may be interpreted as follows:

- to steal or take the client’s money or refund;
- to bank the client’s refund and hold it in trust; or
- to bank the refund and apply it towards outstanding fees.

The Technical staff view is that the mandatory requirement should be read as the Member must transfer directly to the Client any monies received on behalf of a

Client (paragraph 9.1). Accordingly, any tax refunds received must be sent to the Client promptly unless there is a written agreement to use the funds for another purpose (paragraph 9.2). In the absence of a written agreement, the default position is to refund the money to the Client.

### **Impacted Stakeholders**

Members of the professional accounting bodies who are involved in providing taxation services.

Recipients of taxation services ie. Clients.

Professional bodies performing disciplinary procedures.

### **Recommendation**

Paragraph 9.2 be amended to read as follows:

A Member in Public Practice shall not use, withhold or otherwise appropriate tax refunds to settle the fees of the Member or for any other use in lieu of their transfer directly to the Client, unless agreed to by the Client in Writing.

## **2.2 Use of the term “reasonable care” in the *Tax Agents Services Act 2009***

### **Issue**

Use of the term “reasonable care” in the Act potentially introduces a more stringent approach than is currently required by APESB pronouncements.

### **Analysis of the issue**

The following extracts show the two instances where the Act uses the term “reasonable care”:

Part 3 30-10(9) You must take reasonable care in ascertaining a client’s state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client

Part 3 30-10(10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

The term “reasonable care” has not been defined in the Act which raises the issue of what constitutes “reasonable care”. Whilst use of the term “reasonable care” under the Act does not contradict the requirements of APESB pronouncements, whether it constitutes a more stringent approach is not clear.

A recently established National Tax Practitioners Board (NTPB) has primary responsibility for the oversight and regulation of the tax agent profession. It is expected that NTPB will consider the need to define “reasonable care” as part of their work program.

#### 2010 Update

The Institute of Chartered Accountants in Australia Professional Standards Team compared APES 220 and the *Tax Agents Services Act 2009* and concluded that they impose broadly equivalent obligations on members who are registered tax agents or BAS agents.

#### **Impacted Stakeholders**

Members of the professional accounting bodies who are involved in providing taxation services.

#### **Recommendation**

APESB continue to monitor the NTPB work program and developments in relation to the definition of “reasonable care” and dependent on the deliberation of that Board consider any future amendments to APES 220.

## **APPENDIX – Stakeholder Comment**

*Mr V was charged with the following breach of APES 220 - Section 9.2*

***“A Member in public Practice shall not appropriate tax refunds to settle fees of the Member or for any other use in lieu of their transfer directly to the Client, unless agreed to by the Client in Writing.”***

*That caused confusion as to the interpretation of the word "appropriate". The Committee were not prepared to find the Charge sustained as it was unclear whether "appropriate" meant:*

- to steal/ take the clients money/ refund,*
- to bank the clients refund and hold it in trust,*
- to bank the refund and apply it towards outstanding fees.*

*The Member had banked the money into trust, and used it as leverage to have his fees paid. The client withheld the ATO refund for 3 months, only handing it across after the complaint from CPA Australia was received. This was clearly a breach of Section 9.1 of APES 220. However as the word "appropriate" in Section 9.2 conveyed a possible interpretation of theft, the Committee was not prepared to find this charge sustained.*

*The Committee's view was that clearly "theft" was not what APES contemplated by this section - but that this was one interpretation open on the wording of Section 9.2.*

*It is also unclear if Section 9.2 is breached where a Member merely holds a clients ATO refund cheque on file as leverage for unpaid fees. Section 9.2 would not catch this type of behaviour.*