



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

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## **1. Executive Summary**

### **1.1. Background**

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*. In March 2011, APESB issued a revised APES 220 *Taxation Services* with an effective date of 1 May 2011.

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

In accordance with the constitution of the APESB, an annual review needs to be performed. This report presents a review of the issues reported to APESB and a proposed course of action to address the issues.

### **1.3. Issue identified**

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

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.

#### *New issue*

No new issues have been reported by stakeholders.

### **1.4. Recommendation**

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

The National Tax Practitioners Board is currently considering responses received to its exposure drafts addressing reasonable care. Following finalisation of the NTPB position, it is recommended that APESB consider the consistency of APES 220 *Taxation Services* with TPB’s interpretation of reasonable care.

## **2 Review of Issues**

### **2.1 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.

The 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.

#### **2013 Update**

In December 2011 the National Tax Practitioners Board (NTPB) released a discussion paper on the application of subsection s30-10(9) of the *Tax Agent Services Act 2009* (TASA). In September 2012 the NTPB released two exposure drafts addressing reasonable care to ascertain a Client’s state of affairs and reasonable care to ensure taxation laws are applied correctly. The NTPB is currently considering responses received from stakeholders.

### **Impacted Stakeholders**

Members of the professional accounting bodies who are involved in providing Taxation Services.

### **Recommendation**

The NTPB is currently considering responses received from stakeholders on their two exposure drafts issued in September 2012. Accordingly once the NTPB's position is finalised, it is recommended that APESB consider the consistency of APES 220 *Taxation Services* with TPB's interpretation of reasonable care.