

AGENDA PAPER

Item Number: 14

Date of Meeting: 3 September 2024

Subject: APESB draft submission to TPB consultation on draft guidance

Action required For discussion For noting For information

Purpose

To:

- provide an update to the Board on key changes to the *Tax Agent Services Act 2009* and its new Code obligations for tax practitioners; and
- seek the Board's approval, subject to the Board's review comments and editorials, on the draft submission to TPB draft guidance TPB(I) D54/2024 and TPB(I) D55/2024.

Background

On 6 August 2023, the Government [announced](#) a significant package of reforms in response to the PwC matters. These reforms were aimed at strengthening the integrity of the tax system, increasing the powers of our regulators and strengthening regulatory arrangements to ensure they are fit for the purpose.

One element of the reform package was supplementing the Tax Practitioners Board's (TPB's) Code of Professional Conduct in the [Tax Agent Services Act 2009](#).

On 10 December 2023, the Treasury sought consultation on a draft [Tax Agent Services \(Code of Professional Conduct\) Determination 2023](#) and [explanatory materials](#). The draft determination proposes additional obligations to supplement those obligations already in place for registered tax agents and BAS agents under the TPB's Code of Professional Conduct. The comment period for this consultation closed on 21 January 2024.

In January 2024, APESB made a [submission](#) to the Treasury's draft determination. In the submission, APESB was supportive of the proposed amendments and emphasised the need to ensure consistency between the TPB's Code of Professional Conduct and APESB's suite of professional standards.

Matters for Consideration

This paper sets out some of the key developments since the APESB's submission to the Treasury in January 2024.

Changes to Tax Agent Services Act 2009 (TASA)

On 31 May 2024, the Government passed the [Treasury Laws Amendment \(Tax Accountability and Fairness\) Act 2024](#), which amends both the [Tax Agent Services Act 2009](#) (TASA) and the [Taxation Administration Act 1953](#).

On 26 June 2024, the TPB published a summary of key changes relevant to tax practitioners. These changes, applying from 1 July 2024, include extended Whistleblower protections, publication of additional information on the Public Register, and extending the period of TPB investigation to 24 months. Other changes relating to allowing information sharing with the Treasury and professional disciplinary bodies will take effect on 1 June 2024. The TPB's media release can be found [here](#).

Tax Agent Services (Code of Professional Conduct) Determination 2024

On 2 July 2024, the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (Determination) was registered, with a commencement date of 1 August 2024.

On 11 July 2024, the TPB [announced](#) that tax practitioners must comply with 8 additional obligations that will supplement the existing obligations under the TPB's Code of Professional Conduct from 1 August 2024. The new Code obligations under the Determination include:

- uphold and promote the ethical standards of the tax profession (section 10);
- correct false or misleading statements made to the TPB and/or the ATO (section 15);
- identify, disclose and manage conflicts of interest in dealings with the government (section 20);
- maintain confidentiality in dealings with the government (section 25);
- keep proper client records (section 30);
- provide competent tax agent services (section 35);
- maintain quality management systems (section 40); and
- keep clients informed of all relevant matters (section 45).

The Chair of the TPB, Peter de Cure AM, said, "*Many tax practitioners will already meet these new standards required of them. However, for those tax practitioners that do not, they will need to promptly ensure that they have appropriate controls and arrangements in their practices to comply with the new obligations.*" The TPB's media release can be found [here](#).

The TPB will also be consulting on draft guidance materials on the new Code obligations progressively in due course.

To assist tax practitioners in understanding the new obligations, the TPB has published [frequently asked questions](#) on its website. Notably, question 7 highlights that APESB is considered one of the resources in its development of substantial guidance material.

Transitional Rule for the Determination

On 1 August 2024, the Government [announced](#) the insertion of a transitional rule into the Determination. This will provide firms with 100 employees or less until 1 July 2025 and larger firms with 101 employees or more until 1 January 2025 to bring themselves into compliance with these new obligations, so long as they continue to take genuine steps towards compliance during this period.

However, on the 27th of August, there was an additional announcement from the Assistant Treasurer with respect to amendments, and based on an IPA update, it appears that there will be amendments with respect to the following:

- tax practitioners will no longer be required to take reasonable steps to establish, implement and update any systems or processes that are necessary to comply with the new obligations prior to the relevant start date (refer above); and
- the duty to disclose all relevant matters to the client (Section 45) will be prospective to align with the transitional dates. The previous version required tax practitioners to consider issues arising from 2.5 years to 3 years earlier;

Based on the Assistant Treasurer's announcement, the Government also committed to addressing substantive concerns regarding Section 15(2)(c) (reporting matters to the TPB or ATO) and Section 45 (advising current and prospective clients of all relevant matters).

TPB Consultation on Draft Guidance on New Code Obligations

On 24 July 2024, the TPB [published](#) an updated anticipated timeline for consulting on guidance to support the new Code obligations under TASA, as follows:

<u>Guidance</u>	<u>Expected release date for public consultation on draft guidance product</u>	<u>Expected date for finalisation of guidance product</u>
Tranche 1 <ul style="list-style-type: none">• False or misleading statements (s15)• Conflicts of interest (s20)• Maintaining confidentiality (s25)	Early August (4-week consultation period)	Late September
Tranche 2 <ul style="list-style-type: none">• Record keeping (s30)• Competence (s35)• Quality management system (s40)• Informing clients of relevant matters (s45)	Late August (6-week consultation period)	Early November
Tranche 3 <ul style="list-style-type: none">• Upholding standards (s10)	Early September (4-week consultation period)	Early November

TPB Tranche 1 consultation of draft guidance TPB(I) D54/2024 & TPB(I) D55/2024

On 6 August 2024, the TPB released the Tranche 1 draft guidance for consultation: [TPB\(I\) D54/2024](#) *False or misleading statements to the TPB or Commissioner* (TPB(I) D54/2024) and [TPB\(I\) D55/2024](#) *Managing conflicts of interest and maintaining confidentiality in dealings with government* (TPB(I) D55/2024). These 2 draft guidance provide advice and assistance on the application the additional obligations of Section 15 *False or Misleading statements*, Section 20 *Conflicts of interest in dealing with government*, and Section 25 *Maintaining confidentiality in dealing with government* of the Determination.

The comment period closes on 3 September 2024. Read the TPB's media release [here](#).

Technical Staff have prepared a draft submission to the TPB consultation on the draft guidance TPB(I) D54/2024 and TPB(I) D55/2024. Refer to Agenda Item 14 (a).

Recommendations

The Board:

- note the update on the key changes to the *Tax Agent Services Act 2009* and new Code obligations for tax practitioners; and
- approve, subject to the Board's review comments and editorials, the submission to TPB draft guidance TPB(I) D54/2024 and TPB(I) D55/2024.

Materials Presented

Agenda Item 14 (a) Draft submission to TPB(I) D54/2024 & TPB(I) D55/2024

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