



14 August 2024

Director, Tax Agent Regulation Unit  
Personal, Indirect Tax and Charities Division  
The Treasury  
Langton Crescent  
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*Email: [pwcreponse@treasury.gov.au](mailto:pwcreponse@treasury.gov.au)*

Dear Director,

**Re: Review of eligibility requirements for registration with the Tax Practitioners Board ('TPB')**

The National Tax & Accountants' Association (the 'NTAA') appreciates the opportunity to comment on the proposed reforms to the eligibility requirements for registration with the TPB as contained in the Treasury's Consultation Paper dated 17 July 2024 (the 'Consultation Paper').

The NTAA is a national member-based not-for-profit association with approximately 10,000 member firms. The NTAA is focused on representing the interests of its members, which comprise a considerable number of registered tax agents, as well as representing the interests of the broader tax community.

One objective of the NTAA is to educate its tax agent members so that they can provide high-quality and practical tax advice to their clients while complying with their own obligations under the *Tax Agents Services Act 2009* ('TASA'), including the Professional Code of Conduct (the 'Code').

As such, the NTAA is uniquely placed to provide comments on certain aspects of the Consultation Paper.

**General comments**

In terms of the consultation process generally, it is noted that the consultation period with respect to these proposed reforms was only 29 days, and that includes a one-week extension of time that was granted just a few hours before the initial closing date for submissions. This timeframe is inadequate and does not reflect the complexity of the proposed changes nor their significance for our members.

The NTAA supports reform to the eligibility requirements for registration with the TPB, where the reform increases consumer confidence in the tax profession, provided the reform does not create inequitable barriers to entry into the profession. Any reform that takes place must reflect an appropriate balance between these objectives. The NTAA is concerned that this cannot be achieved without undertaking a more thorough consultation than has occurred.

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To that end, it is essential that the Treasury engage with the TPB, professional associations and other interested parties via further targeted consultation and workshops to substantially develop these concepts, including any relevant TPB guidelines, before any changes to the law are made.

## **Strengthening registration requirements for companies and partnerships**

### **Consultation Paper Question 1**

*Will the inclusion of governance requirements in registration criteria for companies and partnerships help to meet the objectives of the TASA of maintaining integrity of the tax system and providing adequate professional and ethical safeguards to consumers?*

The Code has recently been strengthened to ensure that from 1 August 2024, all registered tax agents establish and maintain a system of quality management in relation to the provision of tax agent services, which is designed to provide reasonable confidence that the agent is complying with the Code. The policies and procedures of this system of quality management must be documented. Refer to S.40 of the *Tax Agent Services (Code of Professional Conduct) Determination 2024* as made under TASA.

Newly registered agents must comply with this requirement from day one of being registered; otherwise, they must advise the TPB of their failure to comply, thus placing their registration at risk.

The Consultation Paper proposes a change that would overlay an additional requirement that must be satisfied for certain types of firms to register as a tax agent. Specifically, it is proposed that all companies and partnerships be required to satisfy the TPB that they have sufficient governance arrangements in place, including internal controls and quality management systems, at the time of registering as a tax agent. The practical effect of this proposed change is to ensure the TPB can confirm or check that appropriate arrangements are in place from the outset (as is also required under the Code).

The NTAA has a number of concerns in relation to this proposed change:

1. The scope of the proposed change is too broad.

The proposed change would provide a safeguard of sorts to consumers, as it provides a level of comfort that registered companies and partnerships have appropriate controls in place.

However, the NTAA has concerns that this proposed change is too broad in its application.

It is evident that the Treasury has reduced the scope of this proposed change to exclude individual tax agents. However, this exclusion does not go far enough.

It is clear that the proposed change is intended to target large multidisciplinary firms. The NTAA is fully supportive of a reform that provides additional oversight of such firms, including at the time of registration. This is appropriate given these firms are generally at a higher risk of encountering complex practice issues and ethical dilemmas, as noted in the Consultation Paper. However, the lower risk level generally associated with smaller firms that operate as companies and partnerships does not warrant additional TPB oversight at the time of registration. Such oversight for these types of firms imposes an unnecessary burden on them and provides no benefit to consumers.

The NTAA suggests reducing the scope of the proposed change to exclude small firms. It is argued that the obligations imposed under the Code are appropriate and sufficient to deal with the risk level that smaller firms present (i.e., the Code already requires that they have a quality management system set up and completed at the time of registration and thereafter).

It is further noted that having the quality management system as a registration requirement rather than an ethical standard means that the TPB can decline a registration application by a prospective agent without having to do any real investigation, which would be required under an ethical standards breach. This does not provide the applicant with a fair and just outcome.

2. The TPB process to assess whether a firm has sufficient governance arrangements is unknown.

The Consultation Paper provides no guidance regarding the TPB process to assess whether a firm has sufficient governance arrangements in place at the time of registration. Whilst we appreciate this issue will be the subject of a future consultation, it would be unacceptable for any change in this area to proceed without stakeholders having knowledge of what this process may ultimately entail. It is only then that stakeholders can offer an informed comment with respect to the proposed change.

## **Consultation Paper Question 2**

*Is the current policy setting requiring entities to only demonstrate that they have a 'sufficient number' of individually registered tax practitioners appropriate? Should the number or ratio of individually registered tax practitioners be prescribed, or the requirement be expanded to include all partners or directors within the entity who supervise (or sign off on) tax services?*

Currently, for a company or partnership to register as a tax agent, it must have 'sufficient numbers' of individually registered agents to oversee the services of the registered entity. In assessing what constitutes a 'sufficient number', the company or partnership must consider the size and scale of tax agent services provided within the business, the type and complexity of the services being provided, and the number of qualified and experienced staff.

Under the current system if the TPB disagrees with the number of 'sufficient individuals' a new applicant proposes, this can be negotiated at registration time, which is an efficient and effective process. If the TPB later forms a view that a registered agent's circumstances have changed, warranting a change to the 'sufficient number,' this can be addressed at that time.

The NTAA view is that this is the most appropriate way to administer this aspect of registration as it fosters consumer confidence in the tax profession without imposing inequitable barriers to entry. This view is reinforced by the fact that neither the TPB nor the Treasury have indicated that any specific mischief has arisen with respect to this particular registration requirement.

Registered tax agents are so varied in the modern environment, ranging from large multidisciplinary firms with a broad scope of operations to small, low-risk firms. There are also vast differences in the way businesses are conducted, with some firms being AI and technology-focused, whilst others are more traditional in their operations.

Although it may seem appealing to introduce 'prescribed numbers' for the purposes of this registration requirement (e.g., from an administration perspective), the NTAA does not believe this would provide adequate protection for consumers.

Our main concern is that it would be almost impossible for the TPB to mandate a prescribed number of sufficient individuals that would appropriately apply across the spectrum of firms in the profession. It is vital that the registration system has sufficient flexibility to ensure that each particular firm has the correct number of 'sufficient individuals' for its operations.

Under-prescribing the number of sufficient individuals for a particular firm creates risk for consumers, while over-prescribing creates inequitable barriers to entry into the profession. The NTAA does not support a registration system where either of these outcomes is a possibility.

In addition, the NTAA has concerns that introducing 'prescribed numbers' may ultimately increase the cost of tax services for consumers. This may occur where a company or partnership is required to employ suitably qualified professionals to ensure they satisfy their prescribed number (whether or not this is an 'overprescribed' quota). Where possible, this increased cost would likely be passed on to consumers.

## **Reviewing the professional association accreditation and registration pathways**

### **Consultation Paper Question 3**

*Is the current recognised professional association framework (initial eligibility, ongoing eligibility and compliance framework) appropriate?*

When a potential tax agent looks to be registered, there are essentially six options available to them. Broadly, each requires a combination of primary qualifications, TPB-approved courses and/or relevant experience. Many applicants choose Item 206 as a pathway for the following reasons:

- The applicant has significant experience in providing tax agent services (i.e., they satisfy the requirement to have at least eight full time years' experience in the last ten years);
- They are a voting member of a recognised professional association (and many have been for a number of years); and/or
- The TPB disregard their tertiary qualifications as being too old, thus requiring them to complete additional TPB-approved courses if registered under one of the other pathways.

The Consultation Paper proposes removing the professional association accreditation and registration pathway (Item 206). It appears that the primary basis for this change is a lack of government funding to the TPB. The Consultation Paper advises that:

*“the TPB has limited capability to assess and monitor whether a professional association meets RPA requirements (noting that while the Board is charged with general administration of the TASA under section 1-15 of the same, the TPB does not charge a fee for RPA applications, unlike the general tax practitioner registration process)”.*

The NTAA strongly advocates against the removal of Item 206. The current recognised professional association pathway under Item 206 remains a legitimate and appropriate option for many agents.

The NTAA is concerned that the removal of this pathway creates a barrier to entry that may deter some highly experienced tax professionals from seeking registration as a tax agent. For example, the additional barrier to entry may cause such professionals to seek employment in another field. This would be to the detriment of consumers as this type of experience is vital to maintaining the integrity of the tax profession. Anecdotally, the NTAA has found that this type of extensive experience can be superior to the qualification levels that apply under other registration pathways.

It is also important that neither the TPB nor the Treasury has identified any mischiefs or shortcomings with agents registered under Item 206. There is no empirical evidence to suggest that agents registered under Item 206 have been more difficult for the TPB to administer.

The NTAA supports a registration system that encourages highly experienced tax professionals to remain in the tax profession, and this requires Item 206 to remain as a pathway to register.

We are also concerned with the Treasury's comments regarding RPAs. The TPB has built up a strong rapport with RPAs since TASA was implemented. The RPAs provide oversight of their members with various requirements related to code of conduct issues, CPE requirements, and professional indemnity requirements. They are another 'set of eyes' on registered practitioners, which significantly enhances the integrity of the tax profession.

The NTAA views RPA applications and oversight as a separate issue that should not be involved in or used as a justification for removing Item 206.

#### **Consultation Paper Question 4**

*If not, what should that framework look like? For example, replaced with an enhanced prescribed disciplinary body regime?*

As noted, the NTAA does not support the removal of Item 206. However, should this proposed change proceed, it should be replaced with an alternative registration pathway that allows experienced professionals to register as tax agents without having to undertake TPB-approved courses.

The requirement to undertake TPB-approved courses creates an inequitable barrier for experienced professionals to register as tax agents, which could undermine the integrity of the tax profession.

One of the advantages of RPAs was that the TPB was comfortable that RPA members had to complete the minimum CPE requirements set by the RPA. Should RPAs be abolished, one recommendation the NTAA makes is to retain Item 206 but amend it to refer to professional associations that have CPE requirements that at least meet the minimum TPB requirements.

In addition, there could also be a requirement that the applicant be a member of the professional association for a certain minimum period prior to applying for registration, giving the TPB comfort that these applicants have maintained minimum CPE requirements for those years.

### **Consultation Paper Question 5**

*How should tax practitioners who are currently registered under the voting member pathway be treated if recognised professional association pathway was to be removed?*

Should the registration pathway under Item 206 be removed, each registered agent who has successfully applied for registration under that pathway up until that point should be afforded grandfathering provisions. This grandfathering should be a permanent entitlement subject to satisfying all other usual requirements, such as professional indemnity insurance and CPE requirements.

Anything less than permanent grandfathering would put the tax agent in an unacceptable position on renewal of their registration (i.e., if they were required to complete TPB-approved courses). The NTAA is concerned that this outcome creates a barrier to entry that would likely deter some highly experienced tax professionals from seeking re-registration as a tax agent. This would be to the detriment of the tax community, particularly given that these professionals would have demonstrated to the TPB that they are capable tax agents, and most of them would have done so over many years.

### **Broadening the TPB's ability to accept alternative forms of 'relevant experience'**

#### **Consultation Paper Question 6**

*Do you agree that the current 'relevant experience' settings are set at an appropriate level for both tax agents and BAS agents? If not, what changes to these settings should be made and why?*

The NTAA agrees with the Treasury's view and the findings from the 2019 TPB review that the current 'relevant experience' settings are set at an appropriate level for tax agents. Under the current rules, the TPB has limited flexibility to approve appropriate applicants who have relevant experience that is not mandated under any of Items 201 to 206, which the NTAA agrees is problematic.

The NTAA has seen this firsthand, with some clearly experienced former ATO staff having trouble satisfying the 'relevant experience' requirement, as well as others who have taken maternity or other extended personal leave.

The NTAA welcomes reform that provides the TPB with the flexibility to consider individual circumstances when determining whether the 'relevant experience' requirement is met. However, it is important that any reform undertaken does not erode the current standard of the relevant experience requirements.

#### **Consultation Paper Question 7**

*Do any of the proposed options, or combination of proposed options, provide a balanced and equitable method of embedding flexibility in the registration regime? Are there any other alternatives which provide a more balanced method of providing additional flexibility?*

The NTAA view is that a combination of the proposed options is appropriate to form the basis for meaningful reform in this area, provided it is implemented appropriately, as discussed below.

However, our overarching concern is that recommendations and changes will be made without fully exploring the best outcome with relevant stakeholders. It is recommended that, prior to proceeding any further on this proposal, the TPB and the Treasury undertake further meaningful consultation on the various options to explore what other 'relevant experience' may be appropriate.

## **Consultation Paper Question 8**

*Do you perceive any problems or have any concerns with providing the TPB the ability to consider exceptions to the 'relevant experience' criteria on a case-by-case basis (Option 1)?*

If the 'relevant experience' requirements are set out in the legislation, one advantage is that the TPB, applicants and other stakeholders are aware of what needs to be established to satisfy its parameters.

If reform is made to provide the TPB with the flexibility to consider exceptions to the 'relevant experience' criteria on a case-by-case basis, it is important that this flexibility is not viewed as the introduction of a lesser standard than what is currently required, as this would erode consumer confidence. For example, it is appropriate that any decisions regarding acceptable other 'relevant experience' be the product of joint consultation between the TPB and its consultative forums.

## **Consultation Paper Question 10**

*Do you believe that the introduction of an alternative, longer time period to obtain 'relevant experience' (Option 2) would provide sufficient flexibility to account for special circumstances? What levels of relevant experience are appropriate alternatives for each registration pathway?*

One of the more problematic aspects of the current time periods in which to obtain 'relevant experience' for tax registration purposes is where the applicant has taken some time away from the tax profession. For example, this might be to pursue additional academic qualifications, maternity/parental leave or perhaps the applicant has suffered long-term health issues. The relevant time periods can also disadvantage an applicant working part-time or on a casual basis for a period of time.

One proposal in the Consultation Paper is to allow applicants additional time to demonstrate their 'relevant experience'.

The NTAA broadly supports this proposed change, albeit on a limited basis and subject to undertaking further consultation on how the change would apply to each of the registration pathways.

For example, the existing time periods for Items 201 to 204 seem appropriate in most circumstances. Items 201, 202 and 204 require the individual to have at least 12 months of full-time relevant experience in the preceding five years. This is adequate, with the applicant only being required to demonstrate they have spent 20% of their full-time working life in the last five years providing tax agent services. If this time frame were extended as proposed, the applicant could satisfy the requirement without having worked in the tax profession for many years prior to registering as a tax agent.

Under current law, the maximum period an application can be away from the tax profession is 4 years. Whilst an increase to the maximum years reduces barriers to entry, we are concerned about the degree to which such a change may impact consumer confidence.

However, the NTAA supports change with respect to Items 205 and 206. As the time frame involved with these Items is longer, it is more likely that the applicant has had some event in their personal life that has impacted that full-time experience for a period. So, there is merit in extending the time period here to provide flexibility to account for special circumstances such as maternity leave.

## **'Fit and proper person' in the TASA context**

### **Consultation Paper Question 16**

*Is the fit and proper test currently fit for purpose? If not, what needs to be included in this test?*

The NTAA's view is that the existing fit and proper person requirements are broadly fit for purpose. That is not to say that they should not be enhanced if significant shortcomings are identified at any time. However, the proposed reform to align the TASA fit and proper person requirements with other Government agencies such as ASIC, APRA, and the Victorian Legal Admission Board ('VLAB') is not warranted, particularly as these agencies do not appear to have the same requirements.

If all agencies were to align their fit and proper purpose tests, then this approach may have merit. However, this is beyond the scope of the current consultation.

### **Consultation Paper Question 17**

*Should the matter of conflicts of interest be incorporated into the fit and proper person requirement? (Option 1)*

The NTAA does not support the proposed change to incorporate a 'conflict of interest' requirement into the fit and proper person test (as a pre-requisite to be registered or re-registered as a tax agent).

Conflicts of interest are already suitably dealt with under Item 5 of the Code. The TPB has also issued guidance in the form of *TPB(I) 19/2014 Code of Professional Conduct – Managing conflicts of interest*, which sets out a registered agent's obligations under this Code item.

Generally speaking, from a registered tax agent's perspective, once registered, adequate arrangements must be in place for managing conflicts of interest. If not, the agent is required to self-report the failure to the TPB. The practical reality of this is that a registered agent will need to have adequate arrangements in place at the time of registration to obtain and maintain their registration.

There is no compelling benefit to duplicating the conflict of interest requirements by also including it in the fit and proper person test as part of the tax registration (and re-registration) process.

Conflicts of interest may be of greater concern to certain firms, such as large multidisciplinary firms, which are often at a higher risk of encountering ethical dilemmas. Whilst the NTAA is supportive of a reform that provides additional oversight of potential conflicts of interest where there are elevated levels of risk, using the fit and proper person test to do this is unlikely to achieve efficient and effective change.

### **Consultation Paper Question 19**

*Should the management of an individual's personal income tax affairs, and that of their associated entities, be a relevant consideration under the proposed conflicts of interest addition to the fit and proper person test?*

Similarly to the reasons above in relation to 'conflicts of interest', the management of a registered agent's tax affairs should not be incorporated into the fit and proper person test.

Item 2 of the Code requires registered tax agents to comply with the taxation laws in the conduct of their own personal affairs. If not, the agent is required to self-report to the TPB that they have failed this code requirement. The practical reality of this is that the agent will need to adequately manage their tax affairs to obtain and maintain their registration.

There is no compelling benefit to duplicating the management of tax affairs requirement by also including it in the fit and proper person test as part of the tax registration (and re-registration) process.

### **Consultation Paper Question 21**

*Do you believe the TPB should be required to consider the events listed in subsection 20 -15(b) from within a different period of time? Should this be a longer or shorter period, or regardless of when the events occurred?*

There is no compelling reason to amend the law to increase or remove the 5-year time frame that applies with respect to the fit and proper person test.

As noted in the Consultation Paper, under the current law, S.20-15(b) of the TASA explicitly requires the TPB to consider certain events if they occurred within the previous 5 years; however, it does not limit the TPB in considering these events to the 5 years.

The TPB still has an obligation under S.20-15(a) to consider these or any other events that may have occurred beyond the 5 years, where those events are relevant in assessing whether an applicant is of good fame, integrity and character. These provisions provide sufficient consumer protection by ensuring that individuals who are not of good fame, integrity and character cannot be registered as a tax agent.

## Other proposals for consideration

### Consultation Paper Question 23

*Should the Code be amended to require individual tax practitioners to establish and maintain a contingency/succession plans to ensure there is continuity of services to clients in the event of a significant disruptive event?*

As stated in the Consultation Paper, the TPB's role is to protect consumers and assure the public that tax practitioners meet appropriate standards of professional and ethical conduct.

To achieve this, the TPB's regulatory functions are set out in the TASA, which include overseeing the registration and complaints processes, TPB investigations, and administering the code of conduct requirements. The Code now has 17 broad requirements that a registered practitioner must comply with (Code 17 contains an additional 8 obligations pursuant to *the Tax Agent Services (Code of Professional Conduct) Determination 2024*).

The NTAA does not support the inclusion in the Code of a requirement to establish and maintain a contingency/succession plan. Establishing and maintaining a contingency or succession plan makes good business sense and can reduce the impact of certain events on a registered tax agent's business. Most, if not all, tax agents would have a contingency/succession plan in place as a matter of course.

Establishing and maintaining a contingency/succession plan is beyond the scope of the Code. These types of arrangements must be fluid such that they are amended on a timely basis in response to the changing circumstances of the business and its participants. Including this requirement in the Code may have the undesirable effect of encouraging business operators to only consider these issues at the time of tax registration or re-registration. Furthermore, it may cause registered agents to limit their contingency/succession plan to only cater to TPB requirements, whereas such a plan should fully address the needs of the business, from succession planning to key employees and leadership.

The TPB has helpfully released guidance for practitioners on this issue. The NTAA believes this guidance will encourage practitioners to establish and maintain a contingency/succession plan.

The NTAA reiterates the need for further meaningful consultation prior to any legislative changes regarding all matters raised in the Consultation Paper. Many of the issues raised by the Treasury will have far-reaching consequences for tax practitioners and the broader tax community; thus, it is imperative that any legislative changes be thoroughly considered.

Yours faithfully,



Geoff Boxer  
Chief Executive Officer