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Mr Nick Westerink
The Treasury
Individuals and Indirect Tax Division
Email: TPBreview@treasury.gov.au

Dear Nick,

Re: Review of Tax Practitioners Board

The National Tax and Accountants' Association ('NTAA') greatly appreciates the opportunity to provide input into the review of the Tax Practitioners Board ('TPB').

Background to the NTAA

The NTAA is a member-based non-profit association with over 10,000 member firms representing a considerable proportion of the 42,000 or so currently registered tax agents.

Since 1992, the NTAA has been at the coalface of interaction with the tax agent community. This occurs on two major fronts being, the delivery of tax-based seminars around the country as well as a number of online seminars, and through its National Hotline Service.

In both these interactions, the NTAA's aim is to educate its tax agent members in a way that enables them to provide high quality and practical tax advice to their clients and to be fully cognisant of their obligations under the Tax Agent Services Act 2009 ('TASA') including the Professional Code of Conduct ('Code').

The NTAA also represents the interests of the broader tax agent community. In particular, the NTAA is a member of several ATO committees, makes submissions on issues relevant to tax agents, and works with tax agents to resolve any disputes with the ATO.

Ultimately, the NTAA has a very focused interest on all issues affecting tax agents, especially those issues that impede their capacity to run their practices in an efficient manner.

Initial observations of the TPB

From the time TASA came into operation, the NTAA was well aware that its vast membership base would be forthright in informing it of any concerns they had about their interactions with the TPB, including its enforcement of the Code, its approach to complaints it received from the public and referrals from the ATO.

As it transpires, the NTAA has not been made aware of any systemic issues with regard to those interactions. From its own perspective, the NTAA has seen the TPB actively target tax agents breaching one of more of their obligations under TASA. For those cases proceeding to litigation, it would appear such efforts have been well placed in removing those tax agents from the system where it has been clearly warranted.

Whilst the NTAA is not aware of any available statistics, it seems that there may have been only limited referrals from the ATO to the TPB. This has since been confirmed from our attendance at the 'roundtable' on 9 April 2019.



Future direction of the TPB

Obviously, the TPB will continue to monitor tax agents' compliance with TASA.

In terms of specific compliance issues, the TPBs Annual Report for 2017-18 (at page 42) stated that:

"As a result of the increased ATO attention to work-related expenses, there was also a noticeable increase in the number of cases which related to subsection 30-10(7) (tax agent services are provided competently)."

The Report also makes further references to work-related expenses ('WREs') at pages 5 and 38, which strongly suggest that this area will continue to be a major focus for both the ATO and the TPB. This is further supported by the ATO's release of the tax gap estimate for the *individuals not in business* segment, where it stated that one of the main drivers of the \$8.76 billion estimate was incorrect claims for WREs.

Further, in its media release dated 12 July 2018, the ATO stated:

"We are also taking further steps to address the error rate in agent-prepared returns, which is currently higher than the error rate for self-prepared returns. While the majority of mistakes made by agents are avoidable, we are concerned to see a minority of tax agents exaggerating or falsifying claims to attract clients or retain their market share. The ATO works alongside the Tax Practitioners Board to identify and closely monitor these agents. Where we see evidence of unprofessional conduct, we will take action to protect the community and the integrity of the tax system."

Clearly, the heavy ATO focus on tax agents' and their clients' WRE claims will generate more investigative work for the TPB.

NTAA concerns going forward

The NTAA believes that item 6 of the review's terms of reference is the most relevant to its tax agent membership base. Item 6 states the following:

*"Consider any other matters that may enhance the regulatory environment that tax practitioners operate under, **including the interaction with the regulation of relevant related professional activities**". [emphasis added]*

Whilst our pretext focuses on WREs (as this is a currently emerging issue), the comments below can be equally applied to other issues that drive the TPB's investigative work, such as the black economy and rental properties.

In relation to item 6 (above), the NTAA would like to raise a number of specific concerns regarding the TPB's *interaction with the regulation of relevant related professional activities*. The following concerns focus on the **process** adopted by the TPB when engaging with tax agents:

1. The need for consultation

Whilst the TPB does consult on aspects of its activities, the recent introduction of the *72-hour practitioner complaint resolution process* is an example of when this did not take place. Stakeholders immediately reacted (negatively) to this, which prompted the TPB to conduct a teleconference where they explained their position. Whilst the TPB allayed some of the concerns initially raised, they conceded it would have been preferable to consult in advance rather than end up in the position they were now in.

Had the TPB opted to consult up-front, this would have given them the opportunity to consider issues they may have overlooked. This would have, in turn, led to a more palatable message being relayed on their website. For example, whilst the TPB advised that it would not be possible for all tax agents to contact a client and report back to the TPB within the 72-hour deadline, this was not mentioned in their original message.

2. Transparency of process

To the extent it can be anticipated that the TPB will investigate more tax agents in relation to WREs, this will inherently involve a disruption to tax agents' practices. In this regard, it is noted that one of the TPBs self-assessment KPIs (KPI 1) is that:

"Regulators do not unnecessarily impede the efficient operation of regulated entities"

The key word here being *unnecessarily*. The NTAA clearly understands that there is balance between not wanting to disrupt a tax agent's business and being mandated to investigate possible breaches of TASA. Up until now, self-assessment against KPI 1 has related more to issues of an administrative nature, but it appears this is now going to change or, at least, potentially change.

The NTAA strongly submits that, in relation to any future TPB investigation activities (especially in relation to WREs), the TPB develops formal process protocols that can be made available to tax agents via the TPB website. For example, if the ATO refers a tax agent to the TPB in relation to possible breaches of the Code, how will the referral be processed within the TPB?

Further, any such process protocols should be developed in association with relevant stakeholders (including professional associations), as this will create a better opportunity to strike the right balance between the interests of both the TPB and tax agents.

3. Clarity of expectations

Following on from point 2 above, by having transparent protocols in place, tax agents will be clearer on what they can expect, and will be less likely to feel they are being unduly targeted or taken by surprise. Even after tax agents become aware they are being investigated, they will know to a large degree, how the process will proceed, irrespective of the ultimate outcome.

The NTAA believes that having transparent protocols in place will also assist in maintaining tax agents' trust in the TPB, which is crucial to enhancing and maintaining the regulatory environment for tax agents. In this regard, it would be completely unhelpful if the regulator is, or is perceived to be, behaving in a rogue fashion.

If you have any questions regarding this submission, please feel to contact Nick Connell at nick.connell@corsem.com.au or on 0417 310 627.

Yours faithfully,



Geoff Boxer

Chief Executive Officer, NTAA