



12 September 2022

Tax Practitioners Board
GPO Box 1620
Sydney NSW 2001

By email to: tpbsubmissions@tpb.gov.au

Dear Sir/Madam,

Exposure Draft – What is a tax agent service

On behalf of the Institute of Public Accountants I submit our comments on Exposure draft *TPB(I) D48/2022 What is a tax agent service*.

Given the changing regulatory environment, it is good practice to review this guidance to ensure it remains contemporaneous and fit for purpose. It is an important gateway as it provides guidance to determine if an entity is providing a tax agent service and therefore consider the need to register with the TPB. We therefore welcome the opportunity to provide feedback and make the following comments for consideration.

Advice on State based Taxes

Accountants have historically provided advice and compliance services in respect of state tax liabilities for their clients for whom, they also provide advice and compliance services in respect of Commonwealth tax liabilities. It is not clear whether accountants can provide advice on state taxes in these situations. The COVID business support payments administered by the States has increased the normal incidence of accountants advising and providing compliance activities associated with state-based law.

In NSW for example, [Section 10 of Legal Profession Uniform Law](#) states that “An entity must not engage in legal practice in this jurisdiction, unless it is a qualified entity.” [Section 6 of the Legal Profession Uniform Law](#) defines:

- “qualified entity” as including “an individual engaged in legal practice under the authority of a law of the Commonwealth or of a [jurisdiction](#), other than this Law or the Uniform Rules”
- “engage in legal practice” as “includes practise law or provide legal services, but does not include engage in policy work (which, without limitation, includes developing and commenting on legal policy)”

Rule 10 of the [Legal Profession Uniform General Rules 2015](#) provides a list of exemptions to section 10 of the Legal Profession Uniform Law. That list however does not include accountants advising on state tax issues.



As a general principle, accountants do not consider that they engage in legal practice when assisting clients in respect of state-based laws.

Further to assisting clients in respect of state-based laws, legal professionals have for many years been warning that a tax agent could be regarded as having provided legal advice by ascertaining specific rights or obligations around a particular set of facts if the advice involves reason and consideration of the application of common law principles. This would include interpretation of a legal agreement, deed, will, or anything that is part of determining specific liabilities.

The *Tax Agent Services Act (TASA)*, a federal law, provides a level of protection for registered tax agents to provide certain legal advice on federal tax issues. The TASA does not authorise a tax agent to advise on state tax issues. This means that the exception won't protect a tax agent if they stray into the provision of legal advice in relation to a state tax issue.

Whilst this situation is nothing new, it has been exacerbated by recent COVID support payments and is likely to become more prevalent in NSW if it proceeds with adopting optionality for eligible purchasers to pay an annual land tax instead of stamp duty.

Providing advice on state taxes could be considered engaging in legal practice and has the following potential ramifications to accountants and their clients:

- Accountants, and their clients, will not be covered by the accountant's Professional Indemnity Insurance (PII) policy and as a result may be reluctant to engage in work which they cannot get PII cover for.
- Accountants could be subject to prosecution under the relevant state-based legislation and face monetary penalties.
- Accountants could be exposed to disciplinary action under the TASA code of conduct.

The TASA code of conduct requires that tax agents only provide services that they are competent in providing. Specifically, code item 7 states that

"You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently."

During the COVID state-based business support period, the TPB reminded tax agents of this responsibility particularly given that these initiatives relied on federal tax law concepts for eligibility. There needs to some reference either in the code of conduct and what is a tax agent service or ideally both of these requirements to provide services competently which extends beyond federal tax laws.



The role of digital Service Providers (DSP)

An emerging issue which is gathering pace, is the role of DSP's and whether they fall within the scope of providing tax or BAS agent services. With the advent of AI and technological developments, it is arguable that users of DSP's are relying on automated processes to generate information which is then lodged as part of the entity's reporting obligations to the ATO. The ATO have recently embodied the concept of DSP's providing seamless reporting without much human interaction as part of their future vision.

Reliance on intermediaries in the cryptocurrency space by practitioners is another case in point. Whilst it is clear that some DSPs are not within the scope of TASA, some guidance could be provided as to when such intermediaries would be considered within scope in order to ensure a level playing field and maintain existing consumer protections.

List of indicative tax agent services – Appendix A

Whilst the list of examples of tax agent services is not meant to be exhaustive, we make the comments in relation to the list as follows:

- General comment that applies to all services listed. Attempt to group as much as possible, all related services one after another.
- Include in the provision of any service deemed a BAS agent service within scope of a tax agent service.
- Service 11 – Include reference to the transfer balance cap under this service.
- Service 17 – Consider whether this service should be altered to restrict it to advising on the tax implications of salary sacrificing arrangements and salary packaging. Tax agents are restricted in the advice they can provide unless they have an AFSL. Also service 45 includes reference to non-tax advice relating to salary sacrificing arrangements and salary sacrificing so it may be useful to consolidate into one item. An example of what is considered non-tax advice relating to salary sacrificing would also be useful.
- Service 42 – Undertaking a payroll compliance review. Due to the interaction of Fair work provisions and various tax & BAS provisions, some inclusion of a caveat that the compliance review excludes compliance with *Fair Work Act*.
- Service 49 – Contracting the service of a specialist to provide advice about an area of taxation law that you have no expertise and cannot review for accuracy. In this scenario we would recommend the inclusion of “registered tax agent “before the word specialist.



- Service 51 – It would be helpful to provide examples of general taxation advice to clients that does not involve the application or the interpretation of a taxation law and/or BAS provision to the clients personal circumstances.

If you would like to discuss our comments, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Greco', is positioned above the typed name.

Tony Greco
General Manager, Technical Policy
Institute of Public Accountants

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