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Submission to the

Treasury on

Response to PwC –

tax regulator information

gathering powers review

May 2024

31 May 2024

Director

Governance and Integrity Policy Unit

Law Division

The Treasury

Langton Crescent

PARKES ACT 2600

By email: [pwcresponse@treasury.gov.au](mailto:pwcresponse@treasury.gov.au)

Dear Director

**Consultation paper: Response to PwC – tax regulator information gathering powers review**

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission on the above.

IPA is one of the professional accounting bodies in Australia. Of the IPA’s members who hold a Professional Practicing Certificate, 91 per cent are Registered Tax Agents. IPA has regular interactions with the ATO and TPB relating to their respective information gathering activities. IPA conducts its own disciplinary investigations and hearings which intersect with the activities and outcomes of the ATO and especially the TPB.

IPA is broadly supportive of the proposals in the consultation paper, which include in some cases to maintain the status quo.

Our comments appear in the Annexure below and relate to some of the questions posed in the consultation paper.

Should you require additional information or have queries, please contact Vicki Stylianou ([vicki.stylianou@publicaccountants.org.au](mailto:vicki.stylianou@publicaccountants.org.au)).

Yours sincerely

[signed]

Vicki Stylianou

Group Executive Advocacy & Professional Standards

Institute of Public Accountants

**ANNEXURE**

**Question**

• Are there gaps or issues that have not been identified in the ATO’s existing formal powers for civil and administrative investigations?

IPA is not aware of any gaps or issues in the ATO’s existing formal powers for civil and administrative investigations. This position is informed partly by the interactions which the IPA has had with the ATO involving IPA members.

Based on the consultation paper (page 10), it appears the ATO has sufficient powers to undertake its functions in terms of tax administration. We note that its formal powers are not restricted by confidentiality or privilege against self-incrimination, and it can issue penalties for non-compliance. We also note that:

*The courts have, at their discretion, allowed information gathered by the ATO using its formal powers to be admissible as evidence in criminal matters.*

AND

*The ATO’s existing information gathering powers are broad and long-standing, enabling it to properly and effectively assess all taxpayers’ liabilities. …The ATO’s existing formal powers appear suitable to enable the ATO to conduct civil and administrative investigations.* (page 11)

IPA’s position is that an administrative burden imposed by the requirement to refer the prosecution of offences to the Commonwealth Director of Public Prosecutions, including the need for a brief of evidence, is an insufficient reason to justify giving the ATO power to prosecute more serious tax related offences.

IPA does not support in principle any proposal to provide the ATO with a criminal investigative power to issue search warrants. In this regard, IPA may support the Inspector-General of Taxation proposals in the 2018 review into the ATO’s Fraud Control Management which recommended that the ATO be allowed to issue production orders to third parties such as banks. IPA would need to review further detail to make a proper assessment and form a position with respect to production orders.

At this stage, IPA totally supports the following statement from the consultation paper (page 19).

*Within Australia’s legal system, it is critical that powers provided to government officials do not unduly trespasses on personal rights and liberties of individual citizens. Where a power is granted, the power is both justified as necessary for the proper functioning of a regulatory regime and properly and adequately safeguarded. While further alternative investigative powers have been considered as part of the review, those power are not currently proposed at this time as necessary for the proper functioning of the tax and superannuation systems. This includes, for example, providing the ATO with the power to attend and give evidence in relation to a tax-related criminal matter, or an investigative search warrant power.*

IPA contends that the consultation paper questions around the ATO’s investigations powers to require the production of documents should be deferred to a review of the legal framework to assess whether it is fit for purpose, especially given advances in technology, other legislation relating to information sharing, review of the secrecy provisions, the anticipated AML laws, and other developments. This would include making the legislation technology-neutral which is an overarching principle in the development of policy and legislation. A holistic, coordinated, and consistent approach would be preferable. In the meantime, there appears to be no compelling reason to add the ATO as a prescribed law enforcement agency under the *Telecommunications (Interception and Access) Act 1979* (TIA Act)*.*

We note the consultation paper (page 21) refers to:

*… an interagency taskforce in the AGD is progressing work to reform Australia’s electronic surveillance legislative frameworks, including the TIA Act… In particular, this work will ensure the new Act contains appropriate and proportionate thresholds, as well as robust, effective, and consistent controls, limits, safeguards, and oversight of the use of TIA Act type powers. This includes a framework that can provide enforcement agencies with access to some, but not all of the powers currently available under the TIA Act. This work enables a decision as to whether the ATO should be able to access telecommunications data and stored communications for criminal investigations, with appropriate safeguards and oversight applied, as part of this long-term reform work on electronic surveillance.*

*Treasury does not propose that AGD consider as part of its reform whether the ATO should be able to exercise telecommunications interception powers. It is appropriate that the exercise of these more intrusive powers is restricted to agencies whose exclusive area of operation is the investigation of serious criminal offences and threats to national security.*

We contend the questions posed in the consultation paper would be addressed by a holistic review undertaken by the AGD and a taskforce, industry stakeholders and informed by the 2018 review of the Inspector General of Taxation.

IPA agrees with the view expressed in the consultation paper (page 22) that it is appropriate that the ATO’s information gathering powers are limited to the purposes of the legislation it administers.

**Questions relating to TPB (pages 24ff):**

• What are the benefits or risks associated with expanding the TPB's investigation power to require the production of a document, or thing prior to commencing a formal investigation?

• Having regard to other legislative regulatory regimes, should any further restrictions or limitations be placed on the ability of the TPB to require the production of documents for the purposes of administering the TASA?

Obtaining information from a third party: IPA can relate to the example of the TPB making preliminary enquiries into a tax practitioner and seeking information from a bank, which was declined due to the Privacy Act requirements. IPA is in a similar position and must adhere to the requirements of the Privacy Act, such that a formal notice would be required before information or documents can be provided.

IPA is supportive of a power consistent with that of ASIC, whose power to compel the production of documents is part of the assessment of whether to commence a formal investigation. We believe that TPB should have a similar power and not have to launch a formal investigation before being able to formally compel documents. The threshold for the use of this power could be that the documents are necessary for the assessment of whether to commence a formal investigation. The AGD Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers can be applied to determine the threshold.

**Other comments – information sharing**

When considering changes to information gathering powers, as mentioned above, IPA believes that a holistic approach should be taken. Given the extensive attention on information sharing resulting from the PwC matter, IPA contends that the actual and potential changes to information sharing (and whistleblowing) should be considered in the context of information gathering.

IPA has made comments on information sharing in submissions and in evidence to the Parliamentary Joint Committee Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry, and in other forums.

Even though the consultation paper does not specifically include information sharing between agencies and with professional associations, we believe it is worth reiterating as part of the holistic approach to reforming this area. In some situations, extending information sharing could alleviate the need for information gathering, thereby reducing cost and disruption.

IPA has proposed reforms in the regulation of large multi-disciplinary partnerships (LMDPs) which include enhanced information sharing across multiple bodies, such as:

* Tax Practitioners Board
* ASIC (for auditors, financial advisers and companies)
* ATO
* National Anti-Corruption Commission (for potential corrupt conduct in Government contracts and procurement)
* state-based legal services regulators (for lawyers who are part of LMDPs)
* AUSTRAC
* prescribed professional associations (such as IPA, CPA Australia and CA ANZ).

In IPA’s view this would minimise many of the existing privacy related restrictions for information sharing between existing Commonwealth regulators and professional associations which have been identified before the Parliamentary Joint Committee Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry.

IPA considers that the information sharing and referral powers across State-based corruption and integrity bodies (for example, in Victoria where information and referrals can be made up and down the integrity pyramid from the Ombudsman to the Independent Broad-based Anti-corruption Commission) provide a strong example of the best-practice method for information sharing and jurisdictional referrals across a strong system of regulation.

We would be pleased to provide more information on this aspect of our submission.