

Friday 24 April 2026

Director
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By email: taxadministrationconsultation@treasury.gov.au

Dear Director

Exposure Draft: Treasury Laws Amendment Bill: Enhancing TPB Sanctions Framework

The Joint Bodies appreciate the opportunity to comment on the exposure draft to the Treasury Laws Amendment Bill: Enhancing TPB Sanctions Framework (**the draft Bill**).

The Joint Bodies welcome the implementation of the James Review recommendation that the Tax Practitioners Board (**TPB**) be provided with a greater range of sanctions. The ability to issue infringement notices, participate in enforceable undertakings, and issue interim and contingent suspensions of a tax practitioner's registration will help ensure that the TPB has appropriate sanctions for a wider range of contraventions of the *Tax Agent Services Act 2009* (Cth) (**TASA**). The reintroduction of criminal sanctions, and introduction of an additional civil penalty, for unregistered preparers are strongly supported.

Interim suspension

The proposal to allow the TPB to immediately suspend a tax practitioner's registration without the need to commence or finalise an investigation into a suspected offence or contravention of a civil penalty provision is appropriate in cases:

- of highly egregious behaviour; and
- where the TPB is satisfied that the practitioner's behaviour poses a risk of:
 - serious and immediate harm to clients; or
 - serious harm to the tax system.

While the draft explanatory memorandum clearly articulates that this measure is to be used in exceptional circumstances, the draft legislation does not reflect this high threshold.

The draft explanatory memorandum at paragraph 1.54 states that this proposal will apply where:

There are reasonable grounds to conclude there is a serious and immediate threat to clients, or the suspension is in the public interest because of the risk to the integrity of the tax system if the tax practitioner is able to continue to practice as a registered tax practitioner (for example, the tax evasion schemes would result in a significant future loss of Commonwealth revenue) during the period of an investigation or immediately preceding a possible investigation.

However, proposed subparagraph 40-17(1)(b)(i) applies if “*one or more of your clients is likely to suffer loss or damage if your registration is not suspended.*” This wording could apply to a \$1 loss. A substantially higher threshold should apply in this section to ensure that it operates appropriately and as intended.

To reflect the intent of the legislation, draft subparagraph 40-17(1)(b)(i) should be amended to “*there will be **serious and immediate harm** to one or more of your clients, if your registration is not suspended*” [emphasis added].

This is particularly important as the natural justice hearing rule does not apply to decisions by the TPB to use this power. This means that:

- the TPB is not required to undertake a formal investigation beforehand for any suspected Code of Professional Conduct breaches;
- the tax practitioner does not have an opportunity to provide input prior to the decision being made; and
- imposing the interim suspension at first instance is not reviewable by the Administrative Review Tribunal.

The Joint Bodies acknowledge that in highly egregious circumstances there is a need to act quickly. However, regulators who have similar powers, such as ASIC, do not have a clause explicitly stating that there is no requirement to apply natural justice and they are able to implement their relevant provisions effectively. It is suggested that clause 40-17(3) be removed as it is not consistent with other regulators.

Protecting taxpayers

Clients of tax practitioners who are suspended may inadvertently miss tax lodgement and payment deadlines due to the inability to work with their current tax practitioner. The Joint Bodies would welcome the opportunity to work with the Australian Taxation Office (ATO) to develop practical solutions that utilise the ATO’s discretion to assist taxpayers who find themselves in this unfortunate situation through no fault of their own.

Civil penalties guidance

Both the breadth and quantum of civil penalties that can be imposed on regulated tax practitioners has increased substantially.

The draft legislation does not distinguish between sole practitioners and multinational organisations that operate through companies and many smaller tax practitioners do not consider that this is appropriate. It is understood that this drafting follows usual practices of specifying the maximum penalty and leaving the Federal Court appropriate scope to impose a fitting penalty that is proportionate to the registered tax practitioners' circumstances and the gravity of the breach.

It would be helpful if the draft explanatory memorandum contained an explanation and example of how the significant civil penalty provisions are intended to apply across a variety of circumstances and how the Federal Court will consider a range of factors, including the size and structure of the tax practice, the capacity to pay, and the gravity of the breach (the principle of proportionality).

It would also be useful if the explanatory memorandum included a clear confirmation that seeking the imposition of civil penalties from the Federal Court for breach of the Code of Professional Conduct can only occur after lower range sanctions have been considered or applied, and not for minor breaches of the TASA.

TPB Guidance

Once the legislation is passed and preferably before it takes effect, the TPB should produce regulatory guidance like ASIC's guides (RG 98 etc) to explain how and when they would exercise these specific powers in the TASA.

Appendix A outlines suggested technical or minor changes to the exposure draft.

Should you have any queries, please contact Susan Franks at susan.franks@charteredaccountantsanz.com or Neville Birthisel at neville.birthisel@cpaaustralia.com.au.

Kind regards

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Appendix A

Below are suggested technical or minor changes to the exposure draft.

- Section 52-5 (1)(f) - signing of declarations – It is noted that in practice, many firms who have implemented outsourced or offshore service arrangements or who use employees or contractors who work remotely across Australia, have a business model that is reliant on the “reasonable steps” exception in section 50-30. It is suggested that section 52-5 should instruct the decision-maker that they must not issue an infringement notice under sub section (1)(f) unless they are satisfied that the exception in sub section 50-30(5) does not apply.
- Section 52-5(9) – it is unclear why 52-5(1)(e) and (f) are not included in this sub-section.
- Should the reference to sub section 45-5(1) be 45-5(2), on page 19 of the exposure draft?
- We also note that section 70-10 of the TASA has two sub sections (ha). It is suggested that this be rectified by renaming one of the (ha) as part of these changes.