

Consultative Forum communique` - 25 March 2020

Thank you for joining Ian Klug (TPB Chair), Michael O'Neill (TPB CEO/Secretary), Janette Luu (TPB Director of Policy and Legislation) and Nadja Harris (TPB Senior Policy and Legislation Adviser) at the TPB Combined Consultative Forum held on Thursday 25 March 2021. We appreciate your valuable input and have produced a summary below to assist your association with communicating key messages to your members.

Update from the Chair and the Board

- The last Board meeting was held on 10 March 2021.
- Keith James and Neil Earle attended part of the meeting to provide the Board with additional comments about the Final Report of the Review of the TPB and *Tax Agent Services Act 2009* (TASA) (Final Report) and to discuss the Government's response.
- The Board is also evaluating its strategic objectives, looking forward to 2024, and work has commenced on the TPB's Corporate Plan 2021-22.

Law reform

- TPB will consult with Forum members on recommendations that have been categorised by Government as being able to be implemented administratively (that is, in the absence of additional consultation or requiring law change).

Tax Practitioner Governance and Standards Forum

- The Chair noted that the Board considered the draft Tax Practitioner Governance and Standards Forum Charter and requested that the draft document be provided to the Forum for comment.
- The Board also endorsed a revised draft Consultative Forum Charter to be presented to the Forum for comments and/or endorsement.

Quarter 2 – Performance Report

- The Board considered an update in relation to the TPB's performance against the TPB's performance measures for Quarter 2. The Board noted that the TPB has had a successful quarter and exceeded many of its performance measures.

Website and Register refresh

- The Chair advised that the Board was updated in relation to work that is being undertaken to re-design and improve the TPB's website and Register, which will ultimately result in a reduction of red tape for tax practitioners and the public.

Meeting with the ATO Executive

- The Chair advised that the TPB continues to work closely with the ATO. The importance of this relationship was highlighted in the Final Report, particularly in relation to information and data sharing.
- The Chair noted that he recently met with the ATO Executive to discuss the ongoing relationship between the ATO and TPB. The Commissioner and senior executives will also be attending the Board meeting in April.

Items raised by Forum members

Accreditation of professional associations

- The representative of the South African Institute of Chartered Accountants (SAICA) raised an item of discussion for the Forum in support of recommendation 4.2 in the Final Report and Government's response, regarding "recognition" of professional associations.
- Forum members noted the views put forward by SAICA and requested that these views are circulated to members for further consideration out-of-session.

Draft Tax Practitioner Governance and Standards Forum and Consultative Forum Charters

- The Forum considered the following draft documents:
 - Tax Practitioner Governance and Standards Forum (TPGSF) Charter; and
 - amended Consultative Forum Charter.
- In relation to the draft TPGSF Charter, the Forum provided the following feedback:
 - The Charter would benefit from a role statement to clarify the distinct role of the TPGSF, particularly in contrast with the role of the Consultative Forum;
 - The purpose and role of the Charter should reflect the comments made in the Final Report in relation to the TPGSF's role, particularly in relation to amendments to the Code of Professional Conduct and the Charter of Tax Practitioner Governance.
 - There should be flexibility in relation to the representatives who attend the TPGSF on behalf of membership organisations (for example, the number of representatives who can attend on behalf of an organisation and having the same representative attend the TPGSF and Consultative Forum);
 - The nominated BAS agent association(s) and tax (financial) adviser association(s) should be listed in Appendix A to the Charter, once the TPB has received those nominations;
 - The Charter should include further clarity in relation to the TPB representatives attending meetings;
 - There should be further clarity in the Charter in relation to how Key Messages are approved, communicated and circulated;
 - The membership of the TPGSF should be limited; and
 - The role, purpose and agendas of the TPGSF need to be focussed on standards and governance issues, and it is important that there is limited overlap with matters considered by the Consultative Forum;

- In relation to the Consultative Forum Charter, members noted that the role and purpose of the Forum need to be updated to distinguish the Consultative Forum from the TPGSF. However, the TPB noted there will necessarily be some level of overlap given the breadth of tax practitioner issues that can be considered.
- The TPB noted that it would update the TPGSF and Consultative Forum Charters in light of the feedback received and circulate to Forum members out-of-session.
- The revised Consultative Forum Charter will be tabled at the next Consultative Forum meeting (July 2021) for consideration, and the TPGSF Charter will be tabled at the inaugural TPGSF meeting, which is likely to be scheduled in May 2021.

TPB update

Compliance Activity – COVID-19 related matters

- The TPB has continued to receive only a small number of genuine tip-offs via the dedicated hotline and mailbox for COVID complaints.
- There are currently approximately 90 active COVID compliance cases, with conduct ranging from practitioner error/incompetence, to reckless or fraudulent claims made for themselves or on behalf of their clients.

Compliance – general matters

- As at 1 Mar 2021, the TPB had 587 active cases on hand of which:
 - 85 are at investigation stage;
 - 358 are at preliminary enquiry stage.
- The TPB is working to progress our unregistered agent strategy and is working jointly with the ATO to accurately detect UA activity.
- The TPB is currently looking into a number of referrals from the ATO where it appears that tax practitioners have lodged annual returns for Self-Managed Superannuation Funds however information received from the ATO indicates that the funds may not have been audited in accordance with the information declared in those annual returns. A recent AAT decision affirmed the Board's termination decision in a case of SMSF misconduct.

TPB concessions

- The TPB has provided concessions as a result of a range of circumstances facing tax practitioners, including the bushfires, COVID-19 and the recent weather events impacting the Southern and Eastern States. We continue to encourage tax practitioners who require additional support to contact the TPB so that we can provide the support necessary to their circumstances.

Litigation

- In December 2020, the Federal Court sentenced Mr Hacker to a seven-and-a-half-month term of imprisonment for contempt of court, imposed injunctions and pecuniary penalties for the civil penalty breaches of approximately \$640,000.

Biannual Tax Practitioner Survey

- The third wave of the Biannual Tax Practitioner Survey issued in November 2020 has been analysed by the ATO Insights Team. Key areas of note include:
 - 86% of surveyed tax practitioners thought that the TPB was most effective at ensuring tax practitioners understand their obligations;
 - 70% of surveyed tax and BAS agents indicated that the TPB has improved the type, amount and frequency of information/communication it provides;
 - 88% of consumers indicated a use and trust in tax practitioners; and
 - 56% of consumers have used the same tax practitioner for over five years.

Information Technology

- The TPB's project to replace the existing customer relationship and case management system has progressed well but has increased in scope to include a technical refresh of the "My Profile" section of the tpb.gov.au website. The aim initially will be to make as few visible changes as possible to My Profile whilst refreshing the underlying technology, which will enable further improvements in the future.
- The TPB is thankful to those who expressed willingness to be involved in a practitioner testing group for changes to our website. The TPB will engage this group as these website changes progress.
- Since December, the TPB is exploring the feasibility of two changes to the Public Register search function to enable searching the register by providing the ABN of a practitioner, and a location search that shows practitioners within a distance radius of a given location.
- Forum members requested that a summary of the TPB's organisational update is provided in the Consultative Forum agenda papers going forward.

ATO update

- The ATO provided the following organisational update to Forum members:

Speaking engagements and forums

- Between 1 January and 18 March there have been 11 ATO speaking engagements with a further 5 engagements planned by 31 March. Topics covered at these speaking engagements are as follows:
 - ATO administrative support;
 - Budget measures;
 - Digital program;
 - Compliance approach;

- FBT;
- GST; and
- STP.
- There are four ATO Open Forums planned between 24 and 31 March.

Lodgments as at 11 March 2021

- The ATO has received over 15.5 million year to date (YTD) total lodgements (all entities/all years) which is a 1% decrease compared with the same time last year.
- The ATO has received over 12.1 million YTD 2020 Individual lodgements, less than a 1% decrease compared with the same time last year. Of these:
 - Over 12.0 million were electronic lodgements;
 - Less than 95,000 were paper lodgements;
 - Over 4.97 million were self-prepared; and
 - Over 7.12 million were agent-prepared.
- More than 9.77 million individual 2020 refunds YTD have been issued, totalling more than \$26.56 billion with an average refund of \$2,716.
- Last year at this time, the ATO had issued more than 9.81 million individual refunds, totalling more than \$27.28 billion with an average refund of \$2,779. The ATO noted that because refunds are only issued on weekdays, comparing the exact date across different years will result in regular fluctuations in reporting.
- Since 1 July 2020, total demand for the ATO's contact centre was more than 7.27 million calls.
- The ATO continues to support the community through Covid-19 and is starting to re-engage with clients who have debts with the ATO.

Recommencing the ATO's engagement strategy

- The ATO is recommencing its engagement strategy to help taxpayers get back on track where they may be falling behind in their tax obligations.
- The ATO temporarily paused all outbound campaigns and the majority of firmer or stronger actions taken, apart from cases with evidence of ongoing serious non-compliance and egregious behaviour.
- The number of taxpayers with outstanding payments or lodgments has grown. It is important that these taxpayers do not lose touch with the tax system, and that the ATO is able to provide them with the help and assistance they need.
- As such, the ATO has developed a plan for tailored engagement with taxpayers who have an outstanding payment or lodgment obligation, which involves:
 - Timely contact, ensuring that interactions will be as close as possible to the event for new obligations;
 - Staying connecting and engaging with as many taxpayers as possible;
 - Differentiation and tailoring of solutions for individuals and small business with straightforward tax affairs, compared to sophisticated, higher-risk clients; and
 - Listening and learning based on the regular review of client sentiment, feedback from ATO staff and outcomes.

- Phase 2 of the strategy introduces differentiated approaches based on the financial health of clients and other factors impacting them and in Phase 3 the ATO will continue to evolve its approach by drawing on learnings from phases 1 and 2 and adopting differentiated approaches.

Modernising Business Registers (MBR) Program and director identification numbers

- The Modernising Business Registers (MBR) Program will:
 - progressively bring together 31 Australian Securities and Investments Commission registers and the Australian Business Register onto one registry system; and
 - introduce director identification numbers (director ID).
- From 2021 to 2024 we will take a phased approach to transitioning the registers to a new registry system. There will be no immediate changes to the public operation of the registers. Businesses will continue to access, interact with and use the registers in the same way they do now.
- The first new function to be delivered on the new registry system will be director ID – a unique identifier that a director will keep forever. This will help prevent the use of fictitious director identities and make it easier for government regulators to trace directors’ relationships with companies over time.
- Directors do not need to do anything now. The MBR Program is preparing to test the director ID application process in a private beta, to ensure a seamless user experience.
- Tax practitioners and other intermediaries will play an important role in helping directors to understand the new requirements. The MBR Program will be using the private beta to co-design director ID guidance materials with tax practitioners and intermediaries and other key third parties.

Policy matters

TPB and TASA Review

- Treasury provided an update to the TPB and advised that they are actively finalising the proposed consultation framework and will be seeking input from the Minister shortly. Following that, Treasury will share the consultation framework document, including with members of the Consultative Forum.
- The TPB confirmed that it will consult and engage with Forum members in relation to the recommendations that have been identified by Government/Treasury as being implemented administratively by the TPB.

Education Working Group

- TPB continues to work with its key stakeholders, including the recognised professional associations and stakeholders in the education sector, in its review of the TPB’s requirements for courses approved by the Board for tax and BAS agents.
- TPB met with its Education Working Group representatives on 24 February 2021 for the first of its combined workshops. This followed the initial round of workshops held on 26 November and 2 December 2020.
- Some of the key outcomes resulting from the workshop include:

- The scope of the Education Working Group is to be expanded to include the review of the primary qualifications for registration (recommendation 4.1 of the James Review). This will inevitably involve a re-examination of the current structure of the registration pathways to determine whether they remain fit for purpose.
- There was overwhelming support for the establishment of a working subgroup. Nominations for the working subgroup closed on 3 March 2021 and the successful nominees have been notified. A Forum member raised concerns regarding subgroup membership and ensuring that any actual, potential or perceived conflicts of interest are managed appropriately.
- Further review and the drafting of the TPB's proposed future requirements for courses approved by the Board is to be undertaken by the working subgroup, with any decisions made by the subgroup to be brought back to the Education Working Group for consideration.
- The TPB's proposed future requirements for courses approved by the Board for tax and BAS agents, including proposals concerning topic and learning outcomes, duration of courses, and assessments.
- The TPB is proposing to convene its first meeting with the working subgroup on 7 April 2021. This will be followed by the next scheduled Education Working Group workshop in late April/early May.

Exposure Draft Information Sheet: Supervisory arrangements under the TASA

- The TPB released the Exposure Draft Information Sheet to Consultative Forum members under embargo on 4 January 2021, with submissions due by 25 February 2021. The TPB received submissions from seven Forum members, including the ATO, raising the following common themes:
 - The guidance is not reflective of current practices and relies too heavily on outdated practices and outdated case law, and
 - The guidance relies heavily on physical proximity and direct supervision, rather than delegated supervision, quality controls, digital monitoring, and risk management processes.
- The feedback and comments will be considered at the next TPB Professional Practice Committee meeting scheduled for 20 April 2021.

Exposure Draft Explanatory Papers: Continuing Professional Education

- The TPB is seeking feedback on a number of proposed changes to the TPB's CPE requirements, including:
 - Increasing the total CPE hours requirement to 120 hours for all tax practitioners, with the minimum yearly requirement to increase to 20 hours;
 - Amending the CPE period to include a CPE year based on a calendar year or financial year to allow registered tax practitioners to select the CPE period most relevant to their circumstances;
 - Reducing the record keeping requirement from six years to five years;
 - Inclusion of a 10% educative health and wellbeing activity cap for the CPE period; and

- Inclusion of family or caring commitments as examples of extenuating circumstances where it might not be possible for a registered tax practitioner to complete the minimum level of CPE.
- The TPB received 95 submissions, most of which came from individual BAS agents. A broad summary of the feedback received is as follows:
 - The proposed increase to 120 hours over three years for BAS agents will place a further significant burden on businesses that are already under significant stress;
 - The need for the TPB's requirements for tax (financial) advisers to align with the Financial Adviser Standards and Ethics Authority's (FASEA) requirements.
- The TPB's Professional Practice Committee will consider the extensive feedback received at its next scheduled meeting on 20 April 2021.
- Prior to public release and finalisation, the TPB will release another iteration of the proposed final Practice Notes for consultation to Forum members.

Exposure Draft Practice Note: Proof of identity requirements

- The TPB's draft Practice Note is currently ready for public consultation. The TPB is working closely with the ATO to ensure that the TPB's release of the draft Practice Note is coordinated with the ATO's release of its customer verification requirements. It is anticipated that the draft Practice Note will be released for public consultation in the coming weeks.

Practice Note: Use and Disclosure of TFNs and TFN information in email communications

- Subsequent to the expiration of the public consultation period in relation to the *Exposure Draft Practice Note: Use and Disclosure of TFNs and TFN information in email communications*, the TPB received additional feedback from the Inspector-General of Taxation and Taxation Ombudsman in relation to the Practice Note. The TPB is currently finalising the Practice Note in light of all the feedback received and will publish the final Practice Note in the near future.

Next meeting

- The next TPB Combined Consultative Forum meeting is scheduled to be held in July 2021. The first Governance & Standards Forum meeting may be scheduled in May 2021, subject to attendee availability.
- Forum members were asked whether face-to-face meetings are preferred going forward, or whether members would prefer meetings to continue to be held via videoconference. Forum member feedback varied, with some members expressing a preference for meeting in person, while other members prefer to continue meeting by videoconference, subject to the duration of the meeting.