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NAVIGATING TASA CHANGES

Essential updates for Tax Professionals

Presented by

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Questions?

Please ask questions through the Q & A pod not on the chat pod.

Not Answered Questions will be emailed to you along with the **webinar recording**

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Agenda

- Context behind the recent determination
- What has changed over the past few months
- Current state
- What to be mindful of

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Introductory remarks

- Highly emotive (TPB webinar had 5,000+ attendees; more than system could handle)
- Be alert but not alarmed
- Minister and subordinate authorities (e.g., OIA (Office of Impact Analysis)) seemingly don't understand the profession
    - Minister says: "changes are only modest"
    - The OIA (Office of Impact Analysis) stated that the measures in the Determination are estimated to have a no/low impact on compliance costs and that an Impact Analysis was not required
- Keep your ear to the ground – this keeps changing
- Your industry bodies are looking after you – everyone is awake to this
- What is it that we should be seeking? No additional obligations for those already doing the right thing.

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PwC scandal

- Breach and commercialising confidential information
- ATO awareness, TPB awareness
- Highlighted many failings
- Fallout continues

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The Tax Agent Environment

- Highly regulated
- Already subject to multiple codes of conduct
- Stats:
    - Approx 72,000 registered practitioners
- Changes of the past few years
    - Single touch payroll
    - Covid
    - Director ID
    - Breach reporting + ‘dob-in’ provisions

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TASA History

- TASA: introduced in 1999
    - Was in the works for around 10 years
    - Established the TPB – subsidiary of ATO
    - Introduced code of conduct
- 2019: James Review - independent review of the TPB
    - This is more important than most realise
    - Issued in Oct 2019 – had 28 recommendations which are slowly being implemented
- 2023 – Omnibus Bill (passed Nov 23)
    - Minister can supplement the code of conduct
        - Hence the recent determination
    - Changed registration from 3 years to 1 year
    - Breach reporting

Breach reporting (as of 1 July 2024)

Registered tax and BAS agents are required to notify the TPB of other agents they "reasonably believe" have committed a "significant breach" of the Code of Professional Conduct in TASA

- Undefined terms – what does this all mean?

Draft TPB Information Sheet TPB (I) D53/2024

- Info sheet from TPB (not binding!)
- Says you have 30 days to report from when you have "reasonable grounds" to have known or ought to have known about the breach
    - More terms lacking clarity!
- Instructs to use dictionary definition of reasonable grounds' and 'significant breach'
- TPB have said recently: reporting has already started, and triaging is occurring
    - Make of that what you will...!

Recent determination – introduced 2 July

- Noted that it falls off the back of the 'PwC scandal'
- Added 8 requirements – most were targeted at the PwC scandal behaviours
  - Upholding and promoting the ethical standards of the tax profession (s10)
    - *Do it anyway*
  - False or misleading statements (s15)
    - *Controversial*
  - Conflicts of interest in dealings with government (s20)
    - *Big end of town*
  - Maintaining confidentiality in dealings with government (s25)
    - *Big end of town*
  - Keeping of proper client records (s30)
    - *Do it anyway, but good reminder*
  - Ensuring tax agent services provided on your behalf are provided competently (s35)
    - *Do it anyway*
  - Quality management systems (s40)
    - *More onerous?*
  - Keeping your clients informed of all relevant matters (from 1 July 2022!) (s45)
    - *Controversial*

Recent determination – introduced 2 July (cont…)

- Dates were a problem – introduced 2 July for 1 August implementation
- Introduced without parliamentary rigour (Omnibus Bill – 2023)
- Chronology
  - Introduced 2 July
  - Uproar
  - Postponement - Delayed until 1 Jan 2025 (>100 employees) or 1 July 2025 (<100 employees), provided reasonable steps taken to comply
    - Most of these requirements – you either comply or you don't
  - Uproar continued – what does reasonable steps to comply mean?
    - Requirement then removed
  - 10 Sept: Dean Smith – Liberal WA senator introduced a motion to disallow – was 31-31. Independents didn't support at 11th hour on the basis that further consultation would be undertaken
  - 18 Sept: Senator Pocock (Independent) gave second motion of disallowance. Was scheduled to be heard on 8 Oct, but withdrew. Why? Last minute adjustments (second iteration had a 5 day consultation period)
  - Leg Instrument then registered and in force (9 October)
- TPB guidance coming out trance by tranche

False and misleading statement (s15)

- False and misleading statement – most interesting one so far. Case study – example 6:
  - **Incorrect Statement**: A registered tax agent, Kate, discovered an incorrect statement in a client's (Peter's) previous tax return prepared by Kate.
  - **Obligation to Notify**: Kate had an obligation under the Tax Agent Services Determination to notify the ATO about the incorrect statement.
  - **Client's Refusal:** Kate gave Peter 5 business days to correct as 2 year amendment period was closing (consider timeline here!). Peter refused to allow Kate to correct the statement or continue their engagement.
  - **Notification to ATO**: Kate decided to notify the ATO about the incorrect statement to comply with her obligations as a registered tax agent.
  - **No Breach of Code**: Didn't need to report herself to the TPB for a breach under the breach reporting requirement…
- Must be material
  - Material = "not trivial" per the guidance
- As soon as you become aware
  - TPB webinar said 28 days to report is too long
  - Consider point around amendment period (2 or 4 years to amend) – does that impact reasonable time?
    - How impactful is the fact about amendment period nearing?

False and misleading statement (s15)

Previous: much broader:

Must inform the TPB if

- you prepared a statement and you become aware that it was false, incorrect or misleading in a material particular; and
- the maker of the statement does not correct the statement within a reasonable time.

Amendment: Significant improvement to s15

Revised:

- where you have reasonable grounds to believe a statement is false or misleading (more than merely incorrect), you must:
  - advise the client to correct, or the implications of not correcting (including that you will need to report the non-correction)
  - withdraw from the engagement if not corrected if you think it is due to recklessness or intentional disregard
  - notify the TPB, where you believe it would cause substantial harm to, for example, investors, creditors, employees or the public
- Much higher culpability threshold
- But – it is now a long provision with complex terms, leading to uncertain application and interpretation
  - E.g. what does 'substantial harm' mean?
- Note – this is now more consistent with the Australian Ethical & Professional Standards Board (APESB) ethical standards which is required for CA, CPA and Institute of Public Accountants.

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Section 45 – much improved

Previous iteration: notify all current and prospective clients, among other things, of 'any matter' that could significantly influence a client's decision to engage you or continue to engage you.

Revised:

Exhaustive list – that excludes personal matters

List –

- Convictions involving fraud or dishonesty and serious tax offences.
- Adverse findings against a practitioner, including penalties, sanctions and orders as a result of promoting or engaging in a tax avoidance or evasion scheme under the tax law; and
- Conditions applying to registration as a tax practitioner.

Treasury consultation – lawyers and in-house advisors in the gun?

- Consultation paper for comment
- Will lawyers providing tax advice have to be registered under the TPB?
  - Currently - regulated in their respective state and territory and are generally exempt from registration with the TPB
  - 2019: review of TPB confirmed that exception should remain,
  - Now seeking feedback if that is still appropriate – *"even if [services] does not include the preparation or lodgement or a return or a statement in the nature of a return."*
- In-house tax advisors?
  - Treasury enquiring whether there should be 'consistency of regulation'
  - Heavily disputed
  - The purpose of the TASA is consumer protection – *they have no clients!*
- Separate consultation on promoter penalty – is it working as it should? (e.g., social media pages pedalling tax schemes)

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TPB investigations

How they deal with matters

- please explain letters;
- preliminary enquiries;
- comprehensive investigations; and
- disciplinary hearings.

Outcomes

- sanction Accountants by suspending or termination their registration;
- order the repayment of fees or notification to clients;
- issue official warnings and education orders (these are very common!);
- take no further action.

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So what does this all mean?

Consider your fees

- Does revising your system of quality management require more work?
- What will happen to your PI insurance?
- Tax agent registration fees – will they go up?

It's not so bad after all...

- TPB are pushing a reasonable approach (although podcasts and webinars don't provide much protection...)
- Instrument has been softened

So what does this all mean? (cont...)

What you should be looking to do:

- Review and document quality management procedures
- Use resources
    - e.g., industry bodies bringing out templates for quality management systems in relation to the tax agent services provided which is designed to provide you with reasonable confidence that you are complying with the TPB Code.
- Re-review Professional Code of Conduct
    - Make sure staff are aware
- Take care in drafting engagement letters
- Up your record keeping game: file notes (stored appropriately and captures oral advice_
- Update engagement letters to include that the TPB maintains a register and how it can be accessed and searched, how to make a complain to the TPB, and any relevant disclosures

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