



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:BMlb070824

7 August 2024

Director, Tax Agent Regulation Unit
Personal, Indirect Tax and Charities Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: pwcreponse@treasury.gov.au

Dear Sir/Madam,

Review of eligibility requirements for registration with the Tax Practitioners Board

The Law Society appreciates the opportunity to comment on the Consultation Paper, 'Review of the eligibility requirements for registration with the Tax Practitioners Board'. The Law Society's Business Law Committee contributed to this submission.

Our submission focuses on two proposals, relating to accreditation and registration of legal practitioners.

Reviewing the professional association accreditation and registration pathways

The Law Society became a recognised professional association (RPA) (formerly a 'recognised tax agent association') in 2012, with the commencement of the registration requirements under the *Tax Agent Services Act 2009* (TASA), and has maintained that accreditation until the present time.

As part of a review of tax practitioner registration requirements, it is proposed to remove the professional association accreditation and registration pathway. We understand that Treasury considers that this proposal would, among other advantages, strengthen the existing registration regime by increasing the minimum education requirements for individuals to become tax agents.¹

The Consultation Paper states that to transition effectively towards this outcome, tax practitioners who are currently registered under the RPA pathway would be grandfathered into the registration regime. These tax practitioners would be subject to other non-qualification requirements being met, as well as the TPB's standard renewal requirements, assuming they maintain their voting membership status with the RPA.²

¹ The Treasury (Commonwealth), 'Review of eligibility requirements for registration with the Tax Practitioners Board, Consultation Paper, July 2024, 19 ('Consultation Paper').

² Ibid.

Subject to these transitional arrangements being implemented on a permanent basis, which will protect our members who rely on their membership of the Law Society in retaining their status as registered tax agents, we have no objection to the proposal to remove the professional association accreditation and registration pathway.

27. Should the TASA be amended to require legal practitioners who provide tax agent services, as defined in section 90-05 of the TASA, for fee or reward, to be registered with the TPB?

Treasury seeks views on whether it is appropriate to retain the exemption for legal practitioners from the requirement to register with the TPB when providing legal services, which includes tax advice, (except where the legal service includes preparing, or lodging, a return, or statement in the nature of a return).³

The exemption existed prior to the enactment of the TASA, and recognises that legal practitioners are able to provide advice on the operation of the law, which includes tax laws. The 2019 TPB Review noted this rationale for the exemption and stressed that it is important that professionals are not subjected to unnecessary and duplicative regulatory burdens.⁴

We endorse the conclusion from the 2019 TPB Review, that the current exemption for legal practitioners is appropriate, and suggest its removal is unwarranted.

We understand that the Law Council of Australia, which represents the legal profession at the national level, is also writing to you in relation to this proposal. We will therefore address our comments to its impact in the NSW context.

Regulatory duplication

The Law Society shares co-regulatory duties with the Office of the Legal Service Commissioner (OLSC), an independent statutory body, and sets and enforces professional standards, licenses solicitors to practice, investigates complaints and administers discipline in NSW. As a result, we suggest that consumers who obtain the services of legal practitioners in NSW have considerable consumer protections and less risk than may be the case for consumers dealing with non-legal practitioners in relation to tax advice.

The following extract from the OLSC website summarises the relevant regulatory framework:

As an independent statutory body, the NSW Legal Services Commissioner receives all complaints about lawyers in New South Wales. In addition to receiving complaints, the NSW Legal Services Commissioner investigates complaints and oversees the investigation of complaints by delegates, plays a role in resolving consumer matters and may take disciplinary action against a lawyer or commence disciplinary proceedings in the NSW Civil and Administrative Tribunal (NCAT) - Occupational Division.

The OLSC and the Law Society regulate the profession pursuant to the Uniform Law, which commenced in NSW and Victoria in 2015. The Uniform Law aims to promote the administration of justice and an efficient and effective Australian legal profession. The objectives of the Uniform Law include:

³ Section 50-5 of the TASA.

⁴ The Treasury (Commonwealth), 'Independent Review of the Tax Practitioners Board, Final Report, 31 October 2019', 49 ('2019 TPB Review').

- Ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services
- Enhancing the protection of clients of law practices and the public
- Empowering clients to make informed choices about their legal options
- Promoting efficient, effective, targeted and proportionate regulation of the legal profession.

We submit that this regulatory framework for legal practitioners is a robust, fit for purpose regime that facilitates the provision of quality legal services in an ethical manner, and aligns with the objectives of this review as set out in the Consultation Paper.⁵

Ambit of regulatory capture

The 2019 TPB Review also recognised that Section 90-5 of the TASA, which defines what is meant by a 'tax agent service' is very broad and does not draw a distinction between entities that solely provide tax agent services and entities for which tax agent services form a small portion of their offered services.⁶

The removal of the exemption would result in the capture of a wide range of legal services that are already regulated by the Legal Services Commissioner and the Law Society. Legal practitioners who do not provide specialist tax advice as part of their core practice, as well as those that do, would nonetheless be subject to the requirement to register. One example relates to legal practitioners engaged to provide advice in relation to the sale and purchase of real property, who may, as part of the conveyancing process, advise on the effects of the Foreign Resident Capital Gains Withholding (FRGCW), the annual vacancy fee for foreign owners of Australian residential property, or the GST withholding on supplies of new residential premises or potential residential land, as it applies to the transaction. Many legal practitioners in NSW may give legal advice where there are consequential tax implications. We suggest that a significant number of NSW legal practitioners would be captured by the requirement to register, if the exemption was removed and we query the benefit of this duplicate registration, both in relation to its impact on consumers, and on the TPB itself being required to manage the registration of many thousands of additional legal practitioners.

We would appreciate the opportunity to discuss these issues in more detail, in conjunction with the Law Council of Australia, if this proposal is to be given further consideration.

Please do not hesitate to contact Liza Booth, Head of Commercial and Advisory Law Reform on 02 99260202 or liza.booth@lawsociety.com.au if you would like to discuss this in more detail.

Yours faithfully,



Brett McGrath
President

⁵ Consultation paper, 7.

⁶ 2019 TPB Review, 46.