**Review of the Tax Practitioners Board**

**Submission**

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This submission is in response to the following focus question:

*4. What other legislative measures could be implemented to further protect consumers of tax services?*

Section 20-10 of the TASA allows TPB to accredit professional associations. Part 1A of the Tax Agent Services Regulations 2009 (the ‘Regulations’) sets out the requirements for registration with Divisions 1, 2 and 2A relating respectively to a recognised BAS agent association, a recognised tax agent association and a recognised tax (financial) adviser association.

In accordance with the relevant Division, the TPB **must** recognise an applicant to be a professional association if the organisation meets the requirements for recognition, or alternatively the TPB **may** recognise an organisation if it meets the requirements for recognition other than the requirement mentioned in Schedule 1 item 108, item 209 and item 309. Items 108, 209 and 309 set out a requirement that the applicant organisation has at least 1000 voting members of whom at least 500 are registered as BAS agents, as tax agents, or tax (financial) advisers (as the case may be).

The discretion allowed to TPB to recognise professional associations that do not meet the de minimis requirement of 500 registered BAS agents, as tax agents, or tax (financial) advisers has been exercised by TPB in recent years to allow several professional associations to become recognised subject to satisfying TPB that appropriate steps are being taken to increase the number of members that are registered to at least 500.

TPB prefers that its discretion not be relied upon by a professional association and has indicated that the number of voting members who are registered BAS agents, as tax agents, or tax (financial) advisers should reach at least 500 at the earliest opportunity.

Consequently TPB monitors the progress of a professional association towards satisfying the de minimis requirement. This is a time consuming - and therefore costly - process for both TPB and the professional association, and is clearly an unsatisfactory situation for both the TPB and the professional association.

The origin of the imposition of the de minimis requirement of 500 registered BAS agents, tax agents, or tax (financial) advisers is obscure. It did not appear in legislation superseded by the TASA and TPB has recently verbally advised that it cannot (by enquiry of Treasury) ascertain the reason for its inclusion in the Regulations.

While the exercise of the TPB’s discretion in respect of the de minimis requirement currently impacts a number of recognised professional associations, it particularly affects those professional associations constituted overseas. It may be that when the TASA was drafted overseas-based professional associations with significant members residing in Australia were not considered for inclusion in the consultative process.

Since the TASA was enacted a number of these overseas-based professional associations have materially enhanced their representative presence in Australia as a consequence of increased membership numbers here resulting in application to TPB to become a recognised professional association. (It is pointed out that increases in membership numbers of overseas-based recognised professional associations refers to members who have become permanent residents of Australia rather than members on short term work visas.)

To its credit TPB has recognised this change (which is a consequence of globalisation and the Federal and State Government’s skilled migration policies of the last several years) through its approval of such organisations as recognised professional associations by exercise of the discretion described above.

To be a recognised professional association requires that the applicant professional association meet the significant and onerous requirements set out in Schedule 1 (and related TPB guidance) prior to recognition, and subsequently the ongoing requirements of TPB.

To potentially exclude a professional association that meets the TPB requirements other than in respect of an obscure and arbitrary de minimis requirement could be considered counterproductive.

In my opinion, the de minimis requirement fails to meet the Object of the TASA (section 2-5) in that a recognised professional association supports and augments the work of the TPB ensuring tax agent services (as defined) *are provided to the public in accordance with appropriate standards of professional and ethical conduct*.

The de minimis requirement should therefore be considered unreasonable in that it fails to protect consumers of tax services.

The de minimis requirement should be excluded from the Regulations.

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