

30 June 2008

The General Manager  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [taxagentservices@treasury.gov.au](mailto:taxagentservices@treasury.gov.au)

Dear Sir

## **SUBMISSION ON THE EXPOSURE DRAFT TAX AGENT SERVICES BILL 2008 AND EXPLANATORY MATERIALS**

CPA Australia, the Institute of Chartered Accountants in Australia, and the National Institute of Accountants (the professional bodies) remain strongly committed to the earliest possible introduction of a national regime for the regulation of tax agents and BAS agents.

We welcome this further opportunity to review the exposure draft legislation and accompanying material to ensure we have a regime that will put the profession in good stead for generations to come.

We acknowledge and appreciate the numerous amendments and improvements to the policy and drafting which are evident in the latest exposure draft of the proposed legislation and explanatory material. We also appreciate the difficulty of ensuring that all applicable regulatory concerns are appropriately addressed in the draft legislation and associated material.

In order to improve the proposed legislation and explanatory material even further, we wish to make suggestions which are contained in detail in our joint submission. The following five matters are the ones which we consider to be of the highest priority.

- The proposed legislation arguably prevents a registered tax agent or BAS agent from outsourcing work to an unregistered contractor who receives a fee for providing services to an agent who has contracted to provide such a service to a client. In our view the legislation should be amended to put beyond doubt that work outsourced to such a contractor will not breach the legislation if the contractor is remunerated for their services by the agent since no fee has been directly charged by the contractor to the end user client. In addition, this would be consistent with the competency requirement which in our view rightly targets the final outcome rather than the commercial process.
- The proposed regime replaces the current regime for partnerships to be tax agents and the partners to be the nominees of the partnership, with a requirement for partnerships and sufficient partners therein to all be registered tax agents. This approach may require some adjustment as a partnership will include in it, specialists practising in areas such as R&D or transfer pricing, for whom the proposed tax agent eligibility requirements may be inappropriate. Some fine-tuning may be needed to adjust specialists' eligibility requirements, and to clarify the nature of their relationship with the partnership being the registered tax agent. These clarifications are important in order to provide the Board with clear parliamentary policy guidance, to avoid disputes such as those currently occurring due to unclear language in the current statute.

**Representatives of the Australian Accounting Profession**



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- The Treasury's letter of 27 May 2008 states that the requirement for an agent to take reasonable care in ascertaining a client's true state of affairs, and taking reasonable steps in applying the taxation laws correctly, should be limited by the scope of the engagement or contractual relationship between an agent and a client. However, we do not believe that the proposed amendments to the Code of Conduct reflect this policy intention and accordingly submit that these provisions should be redrafted. The exposure draft prescribes a requirement for competent discharge of duties, with which we agree. However, it then adds two requirements for taking reasonable care in ascertaining the state of affairs and applying the law. We believe this inconsistency creates confusion and adds unnecessary complexity, which is heightened given the penalties for reckless behaviour. We recommend that the two further requirements should be removed, or otherwise redrafted.
- The draft explanatory memorandum requires amendment concerning the management of conflicts of interest to better align with the draft legislation which requires that conflicts be managed, rather than avoided.
- It is our preferred view that the secretariat/administrative support for the Tax Practitioners Board be drawn from the general public rather than from the ATO to enhance its perceived independence from the Tax Office. This would also be consistent with the composition and establishment of the Board, which is to be drawn more broadly.

The professional bodies would be pleased to meet with Treasury at short notice if necessary to discuss any of the matters raised in our submission. We are mindful of the brief window of opportunity to have the proposed legislation introduced into Parliament in the Spring 2008 sittings and reiterate our commitment to the introduction of the tax agent services regime.

The professional bodies also wish to emphasise that we would greatly appreciate being closely involved in the future operation and implementation of the tax agent services regime to ensure its success for all stakeholders, including the tax profession and taxpayers.

If you have any queries, in the first instance, please contact Mark Morris, Senior Tax Counsel of CPA Australia Ltd on (03) 9606 9860, Ali Noroozi, Tax Counsel of the Institute of Chartered Accountants in Australia on (02) 9290 5623, or Vicki Stylianou, Senior Policy Adviser of the National Institute of Accountants on (02) 6260 8619.

Yours faithfully



**Geoff Rankin**  
**Chief Executive Officer**  
**CPA Australia Ltd**



**Graham Meyer**  
**Chief Executive Officer**  
**Institute of Chartered Accountants**



**Roger Cotton**  
**Chief Executive Officer**  
**National Institute of Accountants**

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