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Tax Practitioners Board
GPO Box 1620, Sydney, NSW 2001

Online: tpbsubmissions@tpb.gov.au

Dear Sir/ Madam

Exposure draft TPB (PN) D40/2019 Letters of Engagement

CPA Australia represents the diverse interests of 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

The draft TPB Practice Note D40/2019 *Letters of Engagement* is a welcome step for registered tax practitioners who are not members of professional accountancy organisations and therefore not subject to the requirements established by the Accounting Professional and Ethical Standards Board. CPA Australia supports efforts to establish high levels of integrity and professionalism in the market and to provide consumers with clear and transparent information about their engagements.

CPA Australia has assessed the draft Practice Note against APES 305 Terms of Engagement (APES 305) as this is the standard to which members of professional accountancy organisations are held. A particular focus was placed on identifying where the regulatory obligations would exceed those established by APES 305. We note that there are particular expectations in the Practice Note which go beyond the requirements set out in APES 305. These restrict the ability for tax practitioners to exercise professional judgment and remove flexibility in the manner and regularity with which they communicate the terms of engagement to their clients.

The draft Practice Note also raises the broader issue of the binding, or non-binding, nature of the document. The disclaimer states that the document "*when finalised, will be for information only*" yet also indicates that the existence and content of engagement letter/s will be taken into account when considering whether a tax practitioner has breached the Code of Professional Conduct. In practical terms, this effectively makes the Practice Note mandatory as the practitioner may be penalised on such a basis if a complaint is made against him and her.

Given the prescriptive nature of some of the statements made in the Practice Note, a general statement as to the level of discretion available to tax agents in following the Practice Note would be beneficial, especially where the Tax Practitioners Board (TPB) expectation exceeds that of APES 305. Alternatively, the TPB may wish to reconsider the draft Practice Note to align its requirements with those of APES 305 to ensure the TPB is not increasing the regulatory burden for those who currently comply with APES 305.

Consideration should also be given to including an acknowledgment of good faith efforts to comply with the approach set out in the Practice Note, in a similar manner to the ATO's Practical Compliance Guidelines. This reduces uncertainty for tax agents seeking to comply with the Code.

CPA Australia's feedback on the draft Practice Note D40/2019 is in the enclosed Attachment.

If you have any queries do not hesitate to contact Gavan Ord, Manager Business and Investment Policy at CPA Australia on gavan.ord@cpaaustralia.com.au or 03 9606 9695.

Yours sincerely



Dr Gary Pflugrath CPA

**Head of Policy and Advocacy
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Encl.

Specific feedback on draft Practice Note D40/2019

- APES 305 is mandatory for all members of the professional accounting organisations, many of whom are registered tax agents. The introduction of non-mandatory requirements by the regulator may undermine the intent that the Practice Note will be followed, at least where the registered tax agent is a member of a professional organisation. Alternatively, the non-mandatory Practice Note standards may be adopted by some registered tax agents which introduces an inconsistent approach across the profession.
 - It is recommended that the Practice Note be aligned to, and not exceed, the requirements of APES 305. This will maximise its adoption and set a consistent standard for registered tax agents.
- The articulation of the benefits to preparing an engagement letter in **paragraphs 3-6** aids the practitioner in understanding how it adds value to their business. This is particularly beneficial as no similar paragraph exists in APES 305.
- Greater definition and scope of what the TPB considers to constitute an engagement letter beyond the general statement in **Paragraph 3** should be provided.
 - The current wording indicates that a generalised engagement document (e.g. brochure) is excluded. Such documents are often preferable for i-return clients where the scope and function of an engagement is static and clearly defined. APES 305 does not require that every client be issued a personalised engagement letter.
 - Engagement documents and the ability to provide them in an electronic format is preferable for many practitioners. In some instances, the details of an engagement may be articulated in emails or other forms of electronic communication. The Practice Note creates uncertainty about the method and manner in which the engagement letter is communicated.
 - The Practice Note should include the TPB's view on electronic forms of communication and allow for engagement documents rather than only engagement letters.
- **Paragraph 7** states that while engagement letters are not a specific requirement of the *Tax Agent Services Act 2009 (TASA)* Professional Code of Conduct (the Code), the TPB takes into account the existence and content of an engagement letter between the tax practitioner and client/s when considering a breach of the Code.
 - This creates uncertainty, as while the Practice Note does not mandate the use of an engagement letter, the absence thereof can be used in determining breaches of the Code. It is unclear how this position might affect a tax agent in a hearing before the Board Conduct Committee, nor the extent to which the Practice Note has legal effect.
 - However, it is likely that, out of an abundance of caution, tax agents will interpret the Practice Note as being, in effect, mandatory, which therefore necessitates consideration of the additional burden it imposes on registered tax agents.
 - To provide certainty, the Practice Note should either be made mandatory or the discussion regarding consideration of non-mandatory process and procedure in disciplinary actions be excluded.
- **Paragraph 11** states that an engagement letter may assist practitioners in complying with the TASA Code principles. The connection to many of the Code items is ambiguous and may create more confusion than clarity.

- If the TPB seeks to explain how an engagement letter may assist the practitioner in complying with Code items, it is strongly recommended that the Practice Note include specific examples against each Code item to illustrate the connection.
- Per para 3.49 [Explanatory Memorandum](#) to the TASA, **Paragraph 13** should clarify that “*tax agents and BAS agents are only required to take reasonable care in ascertaining their clients’ state of affairs insofar as the state of those affairs is relevant to the service that they have been engaged to provide. That is, the requirement is subject to the agreed scope of the engagement between the agent and their clients.*”
- The Practice Note goes beyond the requirements of APES 305 with respect to recurring or ongoing client engagements. **Paragraph 17** prescribes that the practitioner “should” issue a new engagement letter every year for such engagements.
 - APES 305 provide factors for the practitioner to consider with a recurring engagement when assessing the need for re-issuance of an engagement letter. It does not require annual renewal and reissue where the terms and scope have not changed.
 - For example, a member has a recurring engagement with a client where the terms and scope do not change. The letter of engagement includes fee structures via a link to their website rather than in the engagement letter itself. Under APES 305, the member does not need to re-issue the letter of engagement annually as changes in fee structure are separately accessible on the website.
 - It is strongly recommended that the Practice Note should be aligned to the requirements of APES 305 with respect to recurring engagements.
- **Paragraph 16** uses the word “should” with respect to issuing separate engagement letters for related parties. The word “should” is, for many accountants, associated with a requirement and will be interpreted by most practitioners that it is mandatory to issue separate letters.
 - The need to provide separate engagement letters to individuals within a family group may be inappropriate given factors such as the inclusion of children, age, involvement, etc.
 - This requirement goes over and above the requirements in APES 305. APES 305 refers to the client but provides the member with the discretion to determine who the client is when determining to whom the terms should be communicated.
 - Paragraph 3.38 of the [Explanatory Memorandum](#) to the TASA suggests that a client can be defined in a letter of engagement ‘as the whole structure’.
 - It should be clarified that a single engagement letter should be allowed to cover all or as many defined entities within a structure as agreed with the client. This provides greater certainty than the phrase “unless it is agreed otherwise”.
 - Paragraph 16 should be aligned to the requirements of APES 305 with respect to issuing letters to the clients rather than all related parties.
- No templates or examples are included and **Paragraph 19** explicitly states that the TPB does not consider it appropriate to provide such products.

- As the Practice Note goes beyond APES 305 requirements in some areas, this places an additional burden on professional accounting organisations such as CPA Australia to develop a new TPB and APES 305-compliant product specific for registered tax agent members.
- This situation also leads to APES 305-compliant letters of engagement used by members who are not registered tax agents and a more prescriptive and onerous set of TPB and APES 305-compliant letters for members who are registered tax agents.