

11 March 2021

Madalene Sarvos
Senior Policy and Legislation Adviser
Policy and Legislation
Tax Practitioners Board
GPO Box 1620
Sydney NSW 2001

By email: tpbsubmissions@tpb.gov.au

Cc: Janette Luu, Director of Policy and Legislation, Tax Practitioners Board

Dear Madalene,

Proposed changes to continuing professional education

CPA Australia represents the diverse interests of more than 168,000 members working in over a 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

The Tax Practitioners Board's (TPB) two Exposure Drafts *TPB(EP) D43/2021 Continuing professional education requirements for registered tax and BAS agents (TPB(EP) D43/2021)* and *TPB(EP) D44/2021 Continuing professional education policy requirements for registered tax (financial) advisers (TPB(EP) D44/2021)* (the Exposure Drafts) provide a detailed explanation of the TPB's proposed continuing professional education (CPE) requirements for registered agents from 1 July 2021.

Our comments on the key changes proposed in the Exposure Drafts are as follows.

- **An increase in the total CPE hours requirement to a minimum of 120 hours over three years for all registered tax practitioners**

In response to TPB's 2020 discussion paper on CPE¹ (the Discussion Paper), we submitted²:

"We support the proposal to increase the number of CPE hours but recommend that it remain aligned to the registration renewal period of three years, rather than an annual requirement."

This view is consistent with our continuing professional development (CPD) requirements for members and on the basis that TPB-required CPE will also satisfy CPA Australia requirements.

We note, however, the cumulative impact of CPE/CPD requirements on practitioners who hold multiple licences or registrations and are regulated by more than one department or regulator. Such practitioners will be required to complete significantly more than 120 CPE hours over three years to satisfy the various regulatory requirements. CPA Australia's Regulatory Burden Report³ provides insights into the impacts on consumers and the affordability of advice as a result of multiple regulatory regimes being imposed on accountants.

Tax (financial) advisers

We also noted the potential for a significant CPE burden on those registered with the TPB and holding an Australian Financial Services (AFS) licence or other licences (that is, tax (financial) advisers (TFAs)) if Financial Adviser Standards and Ethics Authority (FASEA) CPE activities were not able to satisfactorily demonstrate a sufficient nexus to the tax services provided, in order to be

¹ Tax Practitioners Board, 2020. *TPB(DP) D1/2020 Tax Practitioners Board: Continuing professional education requirements for tax practitioners under the Tax Agent Services Act 2009 Discussion Paper*, February.

² CPA Australia, 2020. *TPB Discussion Paper TPB(DP) D1/2020 Tax Practitioners Board: Continuing professional education requirements for tax practitioners under the Tax Agent Services Act 2009, Submission to the TPB*, March, p.1.

³ CPA Australia, 2019. *CPA Australia's Regulatory Burden Report - the Impact of Complex Regulatory Frameworks*, October.

recognised for TPB purposes. This may be further exacerbated for authorised representatives of AFS Licensees who may also be required to complete additional CPD prescribed by their licensee.

Since the Discussion Paper, the Final Report of the **Review of the Tax Practitioners Board (the Final Report)** has been released with Recommendation 7.1⁴ of particular relevance. The Government has given in principle support to a new model for regulating TFAs with the status quo to be retained until such time the new system is established⁵. Given the recommended requirement to have a separate registration process and for TFAs to abide by only the FASEA Code of Ethics, rather than the TPB's Code of Conduct, the legislative basis by which the CPE requirements for TFAs are imposed will most likely become redundant. We therefore suggest the TPB retain the current requirements for TFAs and focus on the integration of tax-related CPE into the new TFA regime.

BAS agents

We have previously called for enhancements to the requirements placed on BAS agents due to the increasing scope of tax services they are able to provide⁶. We observe, however, that the proposed increase from 45 hours to 120 hours over three years is substantial and significantly above the annual threshold of 15 CPE hours required by BAS agent associations⁷.

With the TPB recognising the narrower scope of BAS services⁸, consideration should be given to determining an appropriate level of CPE that is commensurate with the expanded range of BAS services, while recognising that these services remain a subset of tax agent services. The TPB may also wish to further assess the availability of BAS service-related CPE offerings and the potential cost impacts on BAS agents of the almost-threefold increase in required CPE hours, particularly for sole or part-time practitioners.

- **An increase in the minimum CPE hours requirement per year to 20 hours for all registered tax practitioners**

The proposal for a minimum CPE requirement of 20 hours of a year is consistent with CPA Australia requirements for its members. We are therefore pleased that the TPB has selected this threshold, rather than the 40 hours a year that was previously proposed in the Discussion Paper.

Any adjustments to the TFA or BAS agent three-year requirements should result in a similar change to the annual CPE hours requirement.

- **Amending the CPE period to include a CPE year based on a calendar year or financial year to allow registered tax practitioners who are members of a relevant recognised professional association to select the CPE period most relevant to their circumstances**

We support the proposed change to allow either a calendar or financial year basis for the three-year CPE requirement. In addition to aligning with professional association requirements, this enables agents who are also AFS Licensees or authorised representatives to align their CPE hours on a calendar year basis.

- **A 10 per cent educative health and wellbeing activity cap for the CPE period**

We support the proposal to retain the 10 per cent educative health and wellbeing activity cap, introduced in response to COVID-19 impacts, as it recognises the importance of mental health training with respect to the activity of registered tax practitioners.

This will enable participation in projects such as the profession's **Counting on U** initiative to be included as part of CPE requirements.

- **Reducing the record keeping requirement from six years to five years**

We are pleased to see the TPB permit the application of recognised tax or BAS agent association record keeping requirements to their members in lieu of the five-year period (paragraph 50 of *TPB(EP) D43/2021*). We understand this to mean that our members are required to keep CPD evidence for 12 months after the end of the three-year CPA Australia registration period, effectively a four-year record keeping requirement.

While the decrease for registered agents with no association membership from six to five years does reduce their record keeping burden, the TPB may wish to assess whether the discrepancy between these registered agents and those who are members of a professional association is sufficiently justified. To the extent that the additional time does not greatly mitigate

⁴ James, K. et al., 2019. *7. Tax services and financial advice, Independent Review of the Tax Practitioners Board Final Report*, Commonwealth of Australia, 31 October, p.77.

⁵ Australian Government, 2020. *Recommendation 7.1 – Government response, Government response to the Review of the Tax Practitioners Board*, November, p.20.

⁶ See CPA Australia, 2020. Comment on proposed extension of BAS services - Tax Agent Services (Specified BAS Services No. 2) Instrument 2020, *Submission to the TPB*, July, p.2. and CPA Australia, 2020. Board approved courses requirements – draft guidance, *Submission to the TPB*, July, pp.1-2

⁷ As per subparagraph 11(e) of *TPB(EP) D43/2021*

⁸ As per subparagraph 11(g) of *TPB(EP) D43/2021*

systemic risk or support investigation outcomes for this particular group, the TPB should consider setting requirements that are broadly equal for all practitioners.

- **A requirement that registered tax practitioners provide further detail in CPE logs in relation to unstructured CPE activities (such as relevant technical or professional reading) or where the relevance of a CPE activity cannot be determined.**

When responding to the Discussion Paper, we highlighted the need for further practical clarity on the TPB's interpretation of 'sufficient nexus' and 'relevant knowledge and skills' in order to allow registered agents to readily determine the level of detail required for their records. Paragraph 48 of *TPB(EP) D43/2021* creates a requirement to record further detail but does not provide guidance on the appropriate level of information.

It would be helpful for the Exposure Drafts to provide examples that illustrate the scope of the requirement and level of detail accepted by the TPB. This could address matters such as:

- Is a reference required for each piece of reading material?
- Does the registered agent have to map the CPE activity (e.g. applying capital gains tax concessions) to the specific services they provide (e.g. tax advice on small business restructures)?
- In Example 8 of *TPB(EP) D43/2021*, would Annalisa be able to count the session as CPE if:
 - The activity was reading material rather than a structured session (e.g. internal reference packs), and
 - Annalisa does not provide superannuation-related tax services in her role at the major accounting firm (i.e. relevance to tax agent services provided)?

The TPB's **CPE log** template for registered agents should also contain fields for all CPE requirements to ensure these can be used with certainty by registered agents. A complete TPB template will also enable us to review the CPA Australia CPD Diary to ensure that the requirements align. We note that our **online CPD Diary** is not currently designed to store the proposed additional information.

Further comments

We are pleased to see that the TPB has maintained the position that *"it is the responsibility of registered tax practitioners to exercise their professional judgment in selecting relevant CPE activities to be completed, having regard to their particular circumstances and the tax agent or BAS services provided by them"* (paragraph 14). We had noted in our submission to the Discussion Paper⁹ that any attempt to prescribe subject areas or apply the FASEA approach to registered agents would likely be no more effective than the existing approach.

We also reiterate our view that the evolving nature of CPE and education delivery requires ongoing evaluation and modification to remain contemporary. We encourage the TPB to consider complementary models such as the International Accounting Education Standards Board Standard 7 on CPD¹⁰ and seek to incorporate new ways of measuring CPE including output-based approaches.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy, CPA Australia, on 03 9606 9666 or elinor.kasapidis@cpaaustralia.com.au.

Yours sincerely,

Dr Gary Pflugrath
Executive General Manager,
Policy and Advocacy

⁹ CPA Australia, 2020. TPB Discussion Paper *TPB(DP) D1/2020 Tax Practitioners Board: Continuing professional education requirements for tax practitioners under the Tax Agent Services Act 2009, Submission to the TPB*, March, p.5.

¹⁰ International Accounting Education Standards Board, 2018. **International Education Standard – International Education Standard 7, Continuing Professional Development (Revised)**, December.