**CPA Australia Ltd**
ABN 64 008 392 452
Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia
GPO Box 2820 Melbourne
VIC 3001 Australia
**T** 1300 737 373
**Outside** Aust +613 9606 9677
**cpaaustralia.com.au**

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The Treasury
Langton Crescent
Parkes
ACT 2600

Submissions portal

## Tax Practitioners Board sanctions reforms

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 176,000 members working in over 100 jurisdictions and regions around the world.

CPA Australia supports a robust sanctions regime to deter misconduct and impose appropriate penalties proportionate to the level of wrongdoing. It is important for the tax profession to be held to the highest standard, a standard to which the vast majority of the profession already adheres. This ensures that the community has confidence in the operation and administration of our taxation and superannuation systems.

Regarding the draft *Tax Agent Services Amendment (Enhancing Tax Practitioners Board Sanctions) Regulations 2026* (the Amending Regulations) and the *Tax Agent Services (Code of Professional Conduct) Amendment (Enhancing Tax Practitioners Board Sanctions) Determination 2026* (the Amending instrument), we make the following comments:

### Interim Suspension

In drafting the Amending Regulations and the Amending instrument, it is essential that the subordinate legislation must remain consistent with the parliamentary intent of the *Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026* (the Amending Bill). This is particularly important in relation to the interim suspensions power proposed under the Amending Bill. Specifically, the proposal at draft subsection 40-45(2) would allow for suspensions of up to 90 days without applying the natural justice hearing rule. These two factors, together with the proposed requirements to inform clients of the interim suspension will have a significant impact on a tax practitioner's business and long-term reputation and potentially impact their clients' ability to meet their compliance obligations. For this reason, exercise of the power must be confined to the most exceptional circumstances as intended by Parliament.

The Explanatory Memorandum to the Amending Bill, at paragraph 1.81, is very clear as to the high threshold the Tax Practitioners Board (TPB) would need to satisfy itself of before imposing such an interim suspension.

> *The TPB can only impose an interim suspension in response to highly egregious behaviour* ***and*** *where the TPB is satisfied that the behaviour poses a risk of serious harm in the future to tax clients and/or to the tax system [emphasis added].*

However, the Explanatory Statement to the Amending Regulations fails to recognise this high threshold intended by Parliament, stating only:

> *The TPB may [...] suspend the registration of an entity [...] on an interim basis where the entity has engaged in certain serious misconduct that may pose a risk to their clients or the integrity of the tax system [emphasis added].*

Accordingly, the circumstances under which the interim suspension may be applied as described in the Explanatory Statement to the Amending Regulations are not consistent with those described in the Explanatory Memorandum to the Amending Bill. As drafted, the Explanatory Statement expands the circumstances in a manner which does not reflect Parliament's intent and creates uncertainty about when the TPB may exercise this proposed new power. The wording of the Explanatory Statement should be amended to align with Parliament's intention by adopting the language used in the Explanatory Memorandum to the Amending Bill.

**Paragraph 45(1)(d) and Interim Suspensions**

Paragraph 45(1)(d) of the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (the Determination) "requires tax practitioners to inform their current and prospective clients of certain integrity matters" that "have occurred in the last 5 years."[1]

The Amending instrument amends paragraph 45(1)(d)(i) of the Determination to clarify that a tax practitioner is not required to advise their clients if their registration has been subject to an interim suspension (meaning a suspension under Subdivision 40-D of the Act) in the past 5 years.

CPA Australia supports this amendment. Where the concerns giving rise to an interim suspension are ultimately substantiated, the tax practitioner would likely be subject to further sanctions that require disclosure under paragraph 45(1)(d) of the Determination. Conversely, if the concerns which gave rise to the interim suspension are ultimately found to be insufficient to result in any further disclosable sanction, requiring disclosure of the past interim suspension would provide little value to clients or prospective clients, but may unfairly prejudice the tax practitioner and their business.

In contrast, the proposed paragraph 45(1)(e) would require tax practitioners to notify their clients if their registration as a registered tax agent or BAS agent is currently subject to a suspension (including an interim suspension). On balance we also support this amendment, because disclosure of an interim suspension to which the tax practitioner is currently subject provides clients and potential clients with information essential to their decision as to whether to engage or continue to engage the tax practitioner. However, we warn of the inherent danger of requiring a disclosure to clients of a suspicion rather than a proven outcome. Despite the position put forward in the Explanatory Statement that an interim suspension should not "be taken as reflecting on a tax practitioner's ongoing suitability to provide tax agent or BAS services"[2], such disclosure is likely to have a materially damaging long-term impact on the tax practitioner's business. This would be particularly devastating where the concerns that led to the interim suspension are ultimately unsubstantiated.

We therefore restate the imperative for the TPB, before applying interim suspensions, to meet the high threshold set out in the Explanatory Memorandum to the Amending Bill and to ensure that interim suspensions are not imposed without substantial evidence of wrongdoing and an expectation that, more likely than not, the suspicions will be proven.

**25EB Suspensions by Board under Subdivision 40-D of the Act**

Proposed section 25EB of the Amending Regulations requires that the TPB publish the details of interim suspensions on the public register (the Register), but only for the period of the suspension.[3] As noted above, the Explanatory Statement to the Amending Regulations states that interim suspensions "should

[1] Explanatory Statement to the Amending instrument
[2] Ibid
[3] The Amending Regulations subsection 25EB(3)

not of themselves be taken as reflecting on a tax practitioner's ongoing suitability to provide tax agent or BAS services."[2] This is restated in the Explanatory Statement to the Amending instrument.[4]

Seen together, the statements that an interim suspension should not be taken as a reflection of the tax practitioner's ongoing suitability and the requirement to advise clients and potential clients of the interim suspension under proposed subparagraph 45(1)(e) appear to conflict. Upon receiving notification from the practitioner or upon becoming aware of the interim suspension through the Register, clients and potential clients will immediately doubt the tax practitioner's capability. Again, we reiterate our call for the description of the high threshold to be met before interim suspension powers are used, as set out in the Explanatory Memorandum to the Amending Bill, be reflected in all associated explanatory statements, TPB guidance and in practice.

As noted above, draft sub-section 25EB(3) of the Amending Regulations requires that details of interim suspensions be entered on the register "*beginning on the day on which the suspension takes effect; and [...] ending on the day on which the suspension is no longer in force*."

Without further clarification, it appears that once an interim suspension ends, details of the suspension are simply removed from the register without explanation. If the practitioner is subject to further sanctions, details of those sanctions would be entered on the register under section 25E of the *Tax Agent Services Regulations 2022*, thus providing an outcome to the interim suspension. However, in the circumstance where the alleged conduct giving rise to the interim suspension is ultimately unsubstantiated, the register entry would disappear, leaving clients and the public to make their own conclusions about what occurred. This would not address the reputational harm caused to the practitioner, nor does it provide transparency or completeness for clients and the broader public. Accordingly, in instances where an interim suspension does not lead to further action, the register should include, for an appropriate period, details of how the TPB's concerns were resolved.

**The Determination Section 15**

Item 4 of the Table in section 15 of the Determination requires tax practitioners, in certain circumstances, to:

> *notify the Board or Commissioner (as the case requires) that you have advised your client that a statement made to the Board or Commissioner should be corrected and you are not reasonably satisfied that your advice was acted upon.*

While that TPB[5] and the Australian Taxation Office (ATO)[6] have provided guidance as to the information they expect will be provided in such a notification, concern remains that providing information beyond that specifically required by the Determination, without a legal duty to do so, may breach the confidentiality obligations of subsection 30-10(6) of the *Tax Agent Services Act 2009* (TASA).

Therefore, we support the proposed amendment set out in Item 8 of the Amending instrument, to add greater clarity to Table Item 4 of the Determination.

However, the comment in the Explanatory Statement to the Amending instrument that practitioners "may choose to provide additional information if they believe it is appropriate to do in the circumstances"[7] invites misunderstanding and may once again result in tax practitioners providing information which breaches their subsection 30-10(6) obligations. The commentary in brackets[8] in the final paragraph of the Explanatory Statement should be removed.

[4] Explanatory Statement to the Amending instrument
[5] TPB(GS) 50/2024, paragraph 74
[6] QC 105138
[7] Explanatory Statement to the Amending instrument
[8] (although they may choose to provide additional information if they believe it is appropriate to do in the circumstances)

If you have any queries please contact Belinda Zohrab, Regulation and Standards Lead, at belinda.zohrab@cpaaustralia.com.au.

Yours sincerely

Elinor Kasapidis
Chief of Policy, Standards and External Affairs