



THE TAX INSTITUTE

THE MARK OF EXPERTISE

2 October 2013

Mr Neil Pegg
Secretariat
Tax Practitioners Board
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HURSTVILLE NSW BC 1481

By email: tpbsubmissions@tpb.gov.au

Dear Mr Pegg

Exposure Draft TPB Information Sheet TPB (I) D19/2013: Code of Professional Conduct – managing conflicts of interest

The Tax Institute is pleased to have the opportunity to make a submission to the Tax Practitioners Board (**Board**) in relation to *TPB Information Sheet TPB (I) D19/2013: Code of Professional Conduct – managing conflicts of interest (Exposure Draft)*.

The Tax Institute broadly agrees with the commentary and examples included in the Exposure Draft and notes the Exposure Draft will be of great assistance to registered tax and BAS agents to assist them to meet and discharge their obligation under Item 5 of the Code of Professional Conduct (**Code**) to manage conflicts of interest.

However, we raise the following issues in respect of the Exposure Draft:

- a) Paragraph 9 of the Exposure Draft refers to the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants*. It is not clear for what purpose this reference is made. Is it to provide an additional source of information to guide registered agents in managing conflicts of interest? We note the sentence quoted refers to not allowing a conflict of interest to override professional or business judgments. Is it setting a standard that registered agents should meet (that is, that the standard required by the Board of registered agents will be the same or similar to the standard set in APES 110)?
- b) Paragraph 10 defines what is a "conflict of interest" and notes that a conflict arises when the registered agent has a personal interest or duty to another

person which conflicts with the duty they owe to the client. Paragraphs 11 to 13 go on to describe circumstances where actual and potential conflicts of interest can arise. However, no description is given of what the duty is that is owed to the client. Until a registered agent identifies this duty, they may not be able to identify if they have a conflict of interest. It may be useful for the Board to include some brief comments about what duties a registered agent may owe to a client.

- c) Paragraphs 18 and 19 refer to the use of “Chinese walls” within a firm for the purpose of managing conflicts. Use of Chinese walls generally extends to ensuring both physical and electronic files between which a conflict may exist are kept separate. This may require a secure filing system to be put in place where access to the secure files is restricted for the purpose of maintaining the Chinese wall. We suggest that the Board include in the Exposure Draft a comment on the need to not only separate staff, but to also ensure files related to the matters giving rise to the conflict of interest are kept separate to assist in managing conflicts of interest.
- d) We suggest inclusion of the words “or BAS” in the third bullet point after the words “tax agent” at paragraph 23. Though the term “tax agent service” is defined to include “BAS service”, in the interests of clarity, it may be worth referring to “BAS service” separately as well so it is clear to both tax and BAS agents that conflicts of interest can arise in the context of the provision of both tax agent services and BAS services.
- e) We suggest inclusion of the words “from each of the parties involved” at the end of paragraph 25 to make it clear that consent has been obtained from each of the parties impacted by the agent’s conflict of interest.
- f) Paragraph 26 refers to comments made in paragraph 25, though it references paragraph 24 instead. We suggest this reference be amended to refer to paragraph 25.
- g) In paragraph 27, a suggestion is made for a registered agent to develop a register of private interests together with appropriate protocols and to regularly revise the register. Broadly, most accounting firms maintain a register of this nature as a matter of course. Given that a registered agent has to identify if they or their employees have a conflict of interest with a particular client, it is reasonable to ask this information of employees, provided it forms part of their condition of employment that their private interests be disclosed.

Maintaining a register of private interests of itself does not necessarily address all possible or potential conflicts of interest. Should an employer choose to run a

register of this nature, they should ensure that declaration of private interests forms part of their employees' employment contract; otherwise requiring employees to disclose private interests may be a breach of an employee's privacy. It may be worth the Board noting the potential privacy issues associated with a registered agent using this technique.

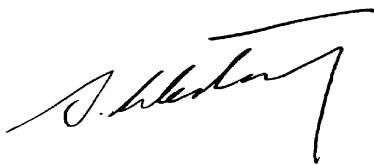
- h) Example 4 is a somewhat unrealistic example. It is extremely unlikely that a registered tax agent would be able to get themselves comfortable enough that they could provide independent tax advice to each entity involved in the merger that would not be materially impacted by the tax agent's knowledge of and work for the other entity. This is particularly the case where two publicly listed companies are involved.

The example suggests that the registered agent could make use of "Chinese walls" and be able to maintain sufficient independence to provide the advice. However, it is unlikely that the use of Chinese walls could sufficiently assist to manage the extent of the conflict of interest facing the registered agent.

In very limited circumstances, such as if the two entities approached the registered agent together and agreed to receive the advice together or to share their individual pieces of advice, might a registered tax agent act in such a situation where they were so conflicted. However, this would be a rare occurrence and therefore is not illustrative of a situation of a conflict of interest commonly arising for registered agents.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Westaway', with a long horizontal stroke extending to the right.

Steve Westaway
President