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Tax Practitioners Board
GPO Box 1620
SYDNEY NSW 2001

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BDO submission on Tax Practitioners Board discussion paper TPB (DP) D1/2020

We refer to the Tax Practitioners Board (TPB) discussion paper [TPB\(DP\) D1/2020](#) - Continuing professional education requirements for tax practitioners under the Tax Agent Services Act 2009 ('the discussion paper').

Our comments in relation to all 14 consultation questions are outlined in detail in the appendix to the submission.

Should you have any questions, or wish to discuss any of the comments made in our submission, please do not hesitate to contact me on 02 9240 9736 or lance.cunningham@bdo.com.au.

Yours sincerely



Lance Cunningham
BDO National Tax Director

APPENDIX 1

Q1 - Do you have any comment regarding continuation of the TPB's current approach to the purpose of CPE?

The TPB proposes that no changes be made to the current policy that provides that CPE is:

- the process of maintaining and improving a professional's knowledge and skills
- imperative in assisting tax practitioners' knowledge and skills (relevant to the services they provide) to adapt and improve as the law, society and their individual practice changes
- a means by which tax practitioners maintain and build upon their primary qualifications, used to gain initial registration with the TPB
- an eligibility requirement for all individual tax practitioners for renewal of registration.

BDO agrees with this continuation of the TPB's current approach to the purpose of CPE.

Q2 - Is the proposed minimum CPE hours requirement appropriate (40 hours per annum for all tax practitioners), or should it be changed to something else (and if so, how much and why)?

BDO do not support the TPB proposing a yearly 40 hours minimum continuing professional education (CPE) requirement for all practitioners, in place of the current 90 hours over three years for tax agents, 45 hours over three years for BAS agents and 60 hours over three years for tax (financial) advisers.

The TPB's proposal will be more restrictive than the current requirements and whilst purporting to line up with the educational requirements of other organisations does not in fact align with the requirements of the CPA, which currently requires a minimum of 120 hours over three years.

CPA Australia's professional development requirement is spread over three years, acknowledging that there will be years where more professional development will be required because of, for instance, a major law change, and other years where work or personal commitments make it more difficult to undertake professional development.

A hard 40 hours target per annum does not take into account the different circumstances people may find themselves in one year or another, for example, a health concern or recovering from a natural disaster i.e. the current Coronavirus pandemic.

The TPB's proposal also fails to recognise the flexibility afforded to practitioners under the current three-year minimum requirement period. This is a significant increase in the amount of time that busy practitioners will need to carve out to meet their CPE to maintain their registration with the TPB.

BDO advocates for thought to be given to how practitioners at different stages in their careers and lives, such as practitioners on long periods of leave, will be able to meet these requirements.

Q3 - Do you have any comment regarding continuation of the TPB's current approach to maintaining the lower CPE requirement for certain conditional tax practitioners?

Currently, the TPB's CPE requirements in relation to the hours of CPE that must be completed by tax practitioners are as follows:

Tax practitioner type	Minimum requirement over 3-year period ^[6]	Minimum requirement each year
Tax agents	90 hours	10 hours
BAS agents	45 hours	5 hours
Tax (financial) advisers	60 hours	7 hours
Conditional*: Quantity surveying	6 hours	2 hours
Conditional*: Fuel tax credit speciality	6 hours	2 hours
Conditional*: Other	45 hours	5 hours

*Practitioners who only provide tax agent services in a particular or restricted area of the taxation laws.

Source: Page 8 of the TPB discussion paper D1/2020

BDO agree with the continuation of the TPB's current approach to maintaining the lower CPE requirement for certain conditional tax practitioners.

The TPB should also acknowledge the difference between tax agents and BAS agents. A tax agent covers all aspects of income tax, GST, FBT and all other associated tax legislation. However, a BAS agent is primarily focused on the completion of a BAS so primarily the GST legislation with the income tax legislation limited to those components that appear on the BAS - tax withheld from those without an ABN, PAYG instalment payable and / or calculation of the income and rate.

If a BAS agent is restricted in the tax related services they can provide, the level of CPE required to be maintained should be equally restricted.

The [Australian Small Business and Family Enterprise Ombudsman report](#) released on 12 December 2019 includes a suite of reforms to the administration of the Research and Development Tax Incentive (R&DTI). Recommendation #4 in the report - Advisors should be skilled and responsible for their advice - includes the following suggestions that BDO supports.

- e) Registered tax agents who prepare or lodge R&DTI claims should meet specialised further education criteria that demonstrates understanding of the requirements of the R&DTI.

Q4 - Should the TPB incorporate any specific comment or requirement in relation to subject areas/categories - in particular, should the TPB:

- recommend areas/types to be completed by tax practitioners (without being prescriptive as to minimum hours in specific subject areas), or
- mandate a minimum number of hours in CPE subject areas/categories similar to the approach of the Financial Adviser Standards and Ethics Authority (FASEA), or
- make no further changes/comment (do neither of the above)?

As highlighted in the discussion paper, tax law is complex, resulting in many tax practitioners operating in different fields but still being registered tax agents. In larger practices such as BDO, there are staff whose speciality is corporate tax work where they are focused on tax issues impacting larger enterprises including areas such as thin capitalisation, TOFA etc. Other staff in the same firm deal almost exclusively with SMEs, where the ability to access the small business CGT concessions is a major tax issue whilst others focus only on superannuation funds.

The CPE needs of a registered tax agent who is a sole practitioner will differ to those of a partner in a large practice, both of which will differ again to a person who is an in house accountant for a corporate group. A registered tax agent should be free to select the CPE that is relevant and of interest to their field of work, and to their areas of interest. It is inappropriate that TPB specify subject areas. To do so would result in tax agents attending training in subjects that were of no interest or relevance, so little retention of the training content, and as a consequence of having to do the mandated subject do not have the time nor the financial resources to attend the training that is relevant. Registered tax agents need to be able to select the subject matters that are relevant, topical and offer the greatest learning retention to them. This is an individual decision matrix.

Generally, a Tax Practitioner will not enrol in a training course that is not relevant to their specialisation; however, there should be some guidance from the TPG in relation to selection of appropriate training courses by tax practitioners. For example, an R&D tax adviser attending a conference that deals with small business tax issues because it is in a location where they want to travel to should not be counted as CPD for the tax practitioner as it would not add much to their knowledge in their specialised field.

Q5 - Do you have any suggestions about how the TPB should implement any changes to its CPE requirements in relation to the minimum number of hours and/or subject areas required, noting that the TPB would allow for sufficient lead-in time for any changes? For example, should the TPB employ a calendar-year model starting from 1 January, or commence application of any changes from a practitioner's next registration renewal?

Key organisations such as Chartered Accountants Australia and New Zealand (CAANZ) and the Chartered Tax Institute operate on a financial year basis. Members of these organisations are required to undertake minimum levels of CPE, and, as part of the annual membership renewal, each individual member is required to provide a declaration of the number of hours of CPE during that year, including a cap on the number of hours reading.

BDO support the TPB aligning the CPE sign off in a manner that requires the minimum level of additional resources from a compliance perspective. Alignment of the TPB requirements with those of existing accounting and tax professional bodies will maximise the level of compliance with minimal additional compliance time.

Q6 - Should the TPB's requirements be reduced for tax practitioners who work part-time? If so, on what basis and to what extent should the TPB's requirements be reduced?

The FASEA CPD policy requires 40 hours of CPD activity in each CPD year and 36 hours for part-time professionals, which equates to a 10% reduction. BDO recommend that the TPB's requirements similarly be reduced for tax practitioners who work part-time by 10%. Working part time provides challenges. During the time that a tax practitioner is delivering their services as an employee, contractor or self employed person, they are providing their services in the same manner as a full time person. The expectation of the client engaging the services of the tax practitioner is that the part time person is as equally qualified as the full time. Whilst this may be argued as placing a higher demand on the part time, this is necessary to meet the demands of the tax profession and of the clients to whom the services are provided.

Q7 - Do you have any feedback in relation to the TPB's proposed view regarding CPE activities?

BDO support the TPB's pragmatic and nonprescriptive in relation to the types of activities that are required to meet the TPB's CPE requirements. Tax practitioners should also be required to demonstrate how the CPE activities they have undertaken relate to their service offerings.

BDO also note that there is an increasing trend to shorter more specific topic focused sessions both as discussion groups and in webinar formats

Q8 - Do you agree with the TPB maintaining the 25% reading allowance?

As highlighted in the discussion paper, tax law is constantly changing and the complexity forever increasing. Reading updates of changes is essentially a daily requirement. Tax law changes flow from many sources including:

- Federal Budget and other government announcements including press releases,
- legislation changes requiring the study of bills and acts of parliament, Explanatory Memoranda etc.;
- Court decisions requiring the study of judgements;
- ATO guidance including rulings and determinations as well as website updates, etc.

Central to all of these is reading with a view to updating the knowledge of the tax agent. The TPB should be encouraging and rewarding tax agents for reading so that they stay up to date by recognising the reading as CPE. BDO therefore believe that the allowance for reading should be greater than 25%.



If the TPB reduces the reading allowance this sends the message that the TPB does not recognise the value of tax agents undertaking reading as an essential means of remaining up to date with the constant changes, and that tax agents should wait until a seminar that does constitute CPE provides the opportunity for an update. If tax agents are to be up to date, it will be necessary to combine reading and seminar style training.

Q9 - Do you have any suggestions on how tax practitioners should be required to demonstrate that the CPE completed reflects their service offerings (for example, what evidence should be required, and how frequently)? Should the TPB require CPE logs to contain sufficient detail to explain how a tax practitioner’s professional or technical reading is relevant to the tax services provided?

The tax agent should be able to select the CPE and as part of other professional bodies the CPE is only included if it has some relevance. CPE topics that include non-technical skills i.e. effective letter writing are very relevant to the effective delivery of tax agent skills. The TPB may randomly select tax agents to provide a list of their CPE in the same manner that random reviews are undertaken by the professional bodies. If the quality of a tax agent’s services are under review for other reasons, then a review of their CPE and topics selected would be appropriate.

A tax agent reading a daily tax update on each of 200 working days (40 weeks of 5 days allows for annual leave, public holidays and sick leave) where they devote 8 minutes to reading those updates and the supporting materials results in 26.67 hours of reading. The TPB should be able to accept that to remain current a tax agent will need to read more than an average of 8 minutes of changes to tax laws on a daily basis.

The TPB does not mandate a particular CPE log, but has provided a CPE log on its website to provide guidance. BDO believe that this log should mandate use of this log.

Continuing professional education log					
Information on the Board's continuing professional education (CPE) policy is available on our website at www.tpb.gov.au					
Date	CPE provider	Details of CPE activity undertaken, including format	Outcome / learning	Evidence of completion	Hours
<i>Example</i> 9/08/12	Tax World	Fundamental Business Activity Statements - workshop	Increase understanding of BAS requirements and skills in preparing BAS forms	Certificate of completion, course receipt	8 - 1 lunch break
Total CPE hours:					

Source: TPB website < https://www.tpb.gov.au/sites/default/files/cpe_log.pdf >.

Q10 - Do you have any feedback in relation to the TPB’s proposed approach to recognising CPD/CPE undertaken to satisfy requirements of other bodies, including TPB Recognised professional associations and FASEA?

BDO agrees with the TPB’s proposal to further clarify that a tax practitioner who meets the CPD/CPE of recognised professional bodies and FASEA’s as meeting the TPB’s CPE requirements. However, it is expected they should be able to demonstrate how the CPE activities completed are relevant to the tax agent services / BAS services / tax (financial) advice services they provide (reflects their service offerings). The proposal appears to be that it is up to the tax practitioner to be confident that the CPE undertaken is appropriate to meet the TPB requirements. This is consistent with the whole self assessment approach upon which the tax compliance laws are based.

Recommendation #4 in the Australian Small Business and Family Enterprise Ombudsman report - Advisors should be skilled and responsible for their advice - includes the following suggestions that BDO supports.

- c) The ATO should swiftly and effectively co-ordinate with the TPB regarding consultants under investigation so that companies are alerted of disqualified R&D “Consultants” on the TPB’s online register.
- d) The TPB should allocate further resources to speedily investigate R&D consultants who, as registered tax agents, have breached the Code of Conduct or Tax Agent Services Regulations 2009

Q11 - Do you have any comment regarding continuation of the TPB’s current approach to approval of CPE activities/providers?

It would be inappropriate for the TPB to approve a course as suitable to meet an individual practitioner’s CPE requirements. The TPB should continue to refrain from such approvals. A sign off as part of the renewal process with CPE measured on a financial year basis.

BDO therefore support the TPB’s plan to not change the current policy which provides that:

- The TPB does not approve CPE activities or providers, nor does it require any form of approval prior to completion of an activity.
- The TPB does not intend to be prescriptive and tax practitioners should exercise appropriate judgement when assessing relevant providers and activities.
- CPE activities should be provided by persons or organisations with suitable qualifications and/or practical experience in the relevant subject area.
- The completion of a primary course which has been used for the purpose of gaining initial registration as a tax practitioner, will not generally constitute a CPE activity.

Recommendation #4 in the Australian Small Business and Family Enterprise Ombudsman report - Advisors should be skilled and responsible for their advice - includes the following suggestions that BDO supports.

- f) Additional Continuing Professional Education (CPE) opportunities through structured courses should be provided by the ATO and AusIndustry to support registered R&D consultants achieve their CPE requirements.

Q12 - What evidence/level of detail should the TPB require from tax practitioners to assure compliance with the TPB’s CPE requirements, and how and when should tax practitioners be required to provide evidence about their CPE?

BDO believe that practitioners should be asked to provide detail/evidence annually or upon renewal. The TPB should be able to randomly select tax agents to provide a list of their CPE in the same manner that random reviews are undertaken by professional bodies. If the quality of a tax agent’s services are under review for other reasons, then a review of their CPE and topics selected would be appropriate

Recommendation #4 in the Australian Small Business and Family Enterprise Ombudsman report - Advisors should be skilled and responsible for their advice - includes the following suggestions that BDO supports.

- i) The ATO/AusIndustry/TPB should provide further guidance to help companies understand what to look for in selecting an R&D Consultant.

Q13 - Do you agree with the TPB's proposal in relation to record keeping requirements?

BDO support the TPB's proposal to update CPE policy requirements to align with FASEA's legislated requirement that records must be kept for 7 years (instead of the current 6-year requirement), in conjunction with an appropriate education and transitional policy, providing for streamlined regulatory compliance and avoidance of confusion.

The record keeping requirements should be consistent with professional bodies and be sufficient to satisfy taxation law requirements and professional indemnity needs.

If a period of 7 years is to apply, this needs to be clearly communicated to all agents in addition to what will be required from them i.e. is it just a list of CPE undertaken or is it necessary to retain receipts of attendance, seminar papers etc. as evidence and which exact date the 7 years starts from.

Some records are difficult to establish other than on an honesty basis - an increasing number of training sessions are delivered in a webinar format and it is not uncommon that one person registers for the webinar but several or many people are in the room watching the webinar. Every one of those who are watching should be able to include the session as CPE, not just the person who registered.

Q14 - Do you have any comment regarding the TPB's approach to extenuating circumstances?

BDO agree with the TPB's proposal to continuing to provide for consideration of extenuating circumstances on a case-by-case basis and not being prescriptive as to what extenuating circumstances may entail.

This power should always be retained as is evidenced by the current disruption that is occurring to society and to the delivery of tax practitioner services because of the global coronavirus pandemic.