

24 October 2023

Patrick Hodder
Committee Secretary
Senate Finance and Public Administration References Committee
Parliament House
CANBERRA ACT

Dear Mr Hodder

Clarification of evidence given at the Senate Finance and Public Administration References Committee's hearing held on 26 September 2023

I write to the Committee to clarify evidence I provided at the Committee's hearing on Tuesday 26 September 2023.

Clarification 1

Extract from the proof Hansard transcript (pages 2 and 3)

CHAIR: As to the current legislation that's been released by the government into the management of these matters—how might that impact on your current processes? One of those elements is increasing the period of an investigation from six months to I think two years?

Mr de Cure: To 24 months.

CHAIR: Would that apply to this process in the circumstances that the legislation is passed within that six-month period?

Mr de Cure: I don't believe so.

CHAIR: So, it's not retrospective in that sense?

Mr de Cure: No, I don't believe it to be retrospective.

Clarification

I am providing an amended response to the Committee in relation to the above extract. I advise that the proposed amendment in the exposure draft legislation released by Government on 20 September 2023 that seeks to increase the TPB's investigations period from 6 months to 24 months is proposed to apply retrospectively where:

- the investigation commenced up to 6 months before the new law commences;
- the investigation period had not been extended by the Board; and
- the investigation has not yet been finalised.

Clarification 2

Extract from the proof Hansard transcript (page 3)

CHAIR: This goes to some of the issues discussed at this committee and in estimates previously where secrecy provisions within a number of pieces of legislation—and this new legislation does cover off on a number of acts—inhibited sharing of information to progress the circumstances around this issue in the first place?

Mr de Cure: Correct. The expanded provisions allow us to share information, for instance, with Treasury to let them know that there's something we can see here that we think is not right. So, we would be able to do that. Whereas in the past we felt we were unable to do that.

CHAIR: What about sharing with the ATO, because that was an issue as well?

Mr de Cure: Yes, it does.

Clarification

I am providing an amended response to the Committee in relation to the above extract. I advise that the proposed amendments in the exposure draft legislation released by Government on 20 September 2023 do not include proposed changes to sharing information arrangements between the TPB and ATO. The exposure draft legislation provides for information sharing from the ATO to Treasury, and from the TPB to Treasury. TPB and ATO information sharing arrangements will be reviewed in 2024 as part of the Treasury led review of the secrecy provisions that apply to the ATO and TPB.

Clarification 3

Extract from the proof Hansard transcript (page 3)

CHAIR: So, in respect of the new provisions on the register what will that allow? What will the new legislation allow you to do that you can't do now?

Mr de Cure: It provides for a longer period. If there's a sanction imposed on a practitioner that sanction can stay on the register for up to five years, which is the maximum length of a termination, for instance. Previously there was a restriction to 12 months for that to stay on the register. It gives us clarity and a better ability to disclose and retain on the register things that are of interest to the public who might be searching our register with a view to taking on a new tax practitioner.

Clarification

I am providing an amended response to the Committee in relation to the above extract. I advise that the proposed amendments in the exposure draft legislation released by Government on 20 September 2023 seeks to require that the TPB must publish sanction decisions, other than written cautions, on the TPB's public register for 5 years, not up to 5 years. Additionally, if the TPB conducts an investigation and finds that the *Tax Agent Services Act 2009* has been breached, the proposed amendments would give the TPB a discretion to order publication of an individual or an entity on the public register, even if the individual or entity is not currently registered. The TPB's finding that the individual or entity had breached the Act, and the reasons for that finding, would be published on the Register for 5 years.

Clarification 4

Extract from the proof Hansard transcript (page 5)

Senator BARBARA POCOCK: Have you got an undertaking that you'll get the full international partner report and the full domestic partner report in their entirety?

Mr de Cure: That's my understanding, yes.

Clarification

I am providing an amended response to the Committee in relation to the above extract. I advise that that no such specific undertaking has been given to the TPB.

Regards

Peter de Cure AM
Chair
Tax Practitioners Board