

Committee Secretary

9 November 2023

Senate Standing Committee on Finance and Public Administration
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: fpa.sen@aph.gov.au

RE: Questions on Notice

Dear Committee Secretary

Please find enclosed responses to the questions on notice provided on 19 October 2023 by Senator Barbara Pocock in her role as a member of the Senate Finance and Public Administration Reference.

EY can confirm that it is the multidisciplinary professional services firm referenced in the Australian Financial Review article dated 17 October 2023. The former partner referred to in that article is being sued by the Commissioner of Taxation in the Federal Court. The Federal Court has made suppression orders which provide that there be no disclosure, by publication or otherwise, of documents filed in the proceedings and the information contained in them, insofar as they refer to the names of the former partner, witnesses or taxpayers.

On 1 November 2023, EY successfully applied to have a variation made to the suppression orders in the case referred to above, which enabled the naming of EY. The rest of the suppression orders continue to prevent disclosure of documents filed in the proceedings and the information contained in them.

EY will continue to be an intervenor in the proceedings, seeking to lift the orders preventing us from providing more information on this matter, however, pending being successful in this application, a breach of the suppression orders would be a contempt of court, which is a criminal offence.

Also, given the circumstances surrounding this legal action, much of the information requested by the Committee is subject to tax secrecy laws, further restricting EY's ability to comment publicly on the matter¹.

¹ The Proceedings commenced by the Commissioner of Taxation described in the article contain allegations that the former partner promoted a tax exploitation scheme and breached promoter penalty laws under Division 290 of Schedule 1 to the Tax Administration Act 1953 (Cth) (the Tax Administration Act). Division 355 of Schedule 1 of the Tax Administration Act prohibits the disclosure by any party of information disclosed or obtained under or for the purposes of a taxation law that relates to the affairs of an entity and identifies or is reasonably capable of identifying the entity (s355-30) (Protected Information) and it is a criminal offence for another entity such as EY to non-disclose Protected Information (s355-15).

Given the serious consequences associated with breaching the orders and/or disclosing Protected Information, EY is currently severely restricted from providing certain details. Within these constraints, we have answered the questions below to the best of our ability and look forward to the opportunity to present further details to the Committee as we are able to do so.

Please do not hesitate to contact us if we can provide any further assistance to the inquiry.

Regards,

David Larocca
EY Oceania CEO and Regional Managing
Partner

Leigh Walker
EY Oceania Risk Management and
Independence Leader

a. Provide their name, position, team.

We can confirm that the individual was a former partner of EY. The suppression orders prevent EY from naming this individual, their position and their team. We are continuing to act as an intervenor in the case to enable us to answer this question.

b. Are they continuing to receive financial benefits from EY, including, but not limited to, retirement payments?

No.

c. Why did the partner retire?

The former partner did not retire, they were terminated for just cause in August 2022.

The former partner was terminated for the unauthorised receipt of financial benefits in connection with the client transactions subject to the proceedings.

d. Was the partner forced to retire?

Yes. The partner was terminated from the partnership for just cause. A number of legal avenues are being pursued by EY against the former partner.

e. Did the partner sign an NDA on retirement?

No.

f. Were any other EY personnel involved in the tax exploitation scheme, and if so, who?

The pleadings in the Commissioner's proceedings contain allegations that the former partner promoted a tax exploitation scheme and also set out that an employee at EY drafted documents to give effect to the scheme. The employee is not accused of any wrongdoing.

g. Did EY investigate any other partners or staff in relation to this matter? If so, who?

The Commissioner's proceedings are against the former partner of EY and the former partner only and the Commissioner makes no allegations of wrongdoing against EY.

Upon being made aware of issues regarding the former partner's behaviour, EY's leadership team initiated quality reviews.

EY's quality reviews established that the partner acted without the approval of EY and contrary to the firm's well-established policies and procedures.

When undertaking the quality review process, the former partner did not come forward to EY with any evidence of other partners being in any way involved at the time when the transactions were entered into, despite being asked directly by EY.

EY also undertook a confirmation process to confirm whether any other tax partner had provided any advice with features that were the same as or similar to the advice provided by the former partner. That process indicated the former partner was the only partner who did so.

EY therefore established the former partner acted in isolation and without the approval of EY, and contrary to the firm's well-established policies and procedures.

h. Did EY sanction any other partners or staff in relation to this matter? If so, who?

Given no other partners were involved in the action that is subject to the court proceedings, no other partners have been sanctioned in relation to this matter.

EY sanctioned the former partner by terminating them for just cause. A number of legal avenues are also being pursued by EY against the former partner.

With regards to other partners or staff:

- No EY partner or staff member is a party to the Commissioner's proceedings.
- The Commissioner makes no allegations of wrongdoing by EY in the proceedings.
- EY's quality reviews established that the partner acted without the approval of EY and contrary to the firm's well-established policies and procedures.
- When undertaking the quality review process, the former partner did not come forward to EY with any evidence of other partners being in any way involved at the time when the transactions were entered into, despite being asked directly by EY.

It has not been alleged by the Commissioner and we have no reason to believe that any other EY partner or staff member acted inappropriately, as a result, no other EY partners or staff were sanctioned in relation to the actions of this isolated individual.

i. Did EY report this matter or any individuals involved in this matter to any regulators, government agencies or professional bodies? If so, which organisations and when?

EY has co-operated fully, pro-actively and extensively with regulators – and continues to do so.

EY reported the matter to CAANZ, the Law Society of NSW, Department of Finance, ASIC and the PCAOB as soon as the Orders were varied. We have also engaged with other regulators throughout this process, including the TPB.

Further, EY first made CAANZ aware of EY entering into an enforceable voluntary undertaking on 19 September 2023. This is EY's first and only enforceable voluntary undertaking with the Commissioner, and is a commitment to undertake improvements EY identified, around the introduction of additional controls that strengthen the monitoring of compliance with relevant policies and procedures.

j. Has EY reviewed the matter internally or externally? If so, please provide the review and all documents relating to the review.

EY has conducted quality reviews into this matter, and cooperated fully with the regulator's investigation. It is our intention to release these reviews to this Committee as soon as we are permitted to do so by the courts. If and when the suppression orders are varied to enable it to do so, EY will provide documents insofar as it can consistently with its other obligations and rights including in respect of Protected Information.

We are unable to provide anything currently as the documents in relation to these reviews and communications to regulators identify the former partner, witnesses and taxpayers (EY clients) referred to in the Commissioner's proceedings and / or contain information disclosed or obtained under or for the purposes of a taxation law.

k. When was EY leadership first made aware of the issue? Who was made aware?

EY was made aware in June 2021 when it received notices from the ATO (addressed to the EY Oceania Tax Managing Partner) which referred to an investigation into the conduct of the former partner in relation to the potential promotion of a tax exploitation scheme. Broader EY leadership, including the Oceania CEO and incoming Oceania CEO, were made aware immediately.

EY leadership, including the Oceania Executive Leadership Team, the EY Regional Partner Forum, and the Asia-Pacific and Global Tax Leadership, have been briefed and kept abreast of all key decisions made by EY.

l. Provide a copy of all correspondence and documents, including, but not limited to, emails, text/WhatsApp messages, letters, photos, relating to the tax exploitation scheme.

EY does not supply phones to its partners. Therefore, EY does not have access to the former partner's phone or WhatsApp messages. Additionally, the information being sought in this question is likely to form part of the Commissioner's proceedings against the former partner, and may constitute Protected Information, or cannot be disclosed due to the suppression orders.

Therefore, EY is not in a position to provide the material requested. If and when the suppression orders are varied to enable it to do so, EY will provide information in its possession insofar as it can consistently with its other obligations and rights including in respect of Protected Information.

m. Provide a timeline of the matter, including but not limited to, the actions of the ex-partner, when EY was made aware of the matter, all communication EY had in relation to the matter internally and with government agencies and regulators.

EY intends to provide a comprehensive timeline on the matter but is currently limited due to much of the information being subject to the suppression order or tax secrecy laws. By way of direct example, there are limitations in terms of the correspondence that EY can detail between EY and the regulator as it discloses Protected Information.

In the interim, EY has provided a preliminary timeline in the Appendix. It is our intention to release a more detailed timeline to this Committee as soon as we are permitted to do so by the courts. In the interim, EY has provided a preliminary timeline in a way that does not risk breaching the Orders and/or prohibitions on disclosure of Protected Information.

For a further detailed account of the events that are subject to the proceedings, EY refers the Senator to the matters pleaded in the Commissioner's proceedings.

n. Name the 7 clients the scheme was marketed to.

The Commissioner's proceedings allege that the former partner proposed a tax exploitation scheme to seven clients.

EY is unable to answer this question as this would be a breach of the suppression orders.

o. What fees did EY obtain from marketing the scheme?

The former partner – acting in isolation and without EY's knowledge or approval and contrary to EY's policies and procedures – received unauthorised personal financial benefits in excess of \$700,000 in connection with client transactions the subject of the proceedings.

These unauthorised personal financial benefits were received by the former partner in a personal capacity – the benefits did not pass through any EY systems.

EY received fees in relation to engagements with the former partner's clients for professional services rendered, that were related to the transactions referred to in the proceedings. According to the redacted pleadings, EY understands that the Commissioner has alleged that total of these invoices issued by the former partner across all of the clients referenced was less than \$75,000, with the invoices rendered between 2017 and 2020.

p. The Financial Review reported the partner ran the scheme "by a number of partners who advised it was a common arrangement." Name these partners, including their position and team.

The Commissioner's proceedings allege that the former partner proposed a tax exploitation scheme to seven clients. No other EY partner is a party to the Commissioner's proceedings. The Commissioner makes no allegations of wrongdoing by EY in the proceedings

As described in an earlier response, EY has conducted quality reviews. EY also undertook a formal confirmation process to establish and verify this assertion, and EY therefore does not believe any other tax partner in EY has advised on or proposed this scheme.

q. The Financial Review reported WhatsApp messages between the ex-partner and another individual. Name the other individual, including their position and team.

EY understands that this individual is not a partner or employee of EY.

Appendix – Timeline of Events

Between November 2016 and April 2021

- According to the matters set out in the Commissioner's proceedings, the former partner proposed tax exploitation schemes to certain of the former partner's clients.

Between 2017 and 2019

- The transactions the subject of the Commissioner's proceedings were entered into.

June 2021

- The ATO sent a notice to EY in June 2021 which first raised some of the allegations that are now before the Federal Court.
- EY's Regional and Area leadership was immediately informed.
- EY initiated quality reviews, as well as a number of associated workstreams.

Between June 2021 and May 2022

- EY undertook a range of internal reviews
- The findings of these reviews were that the former partner acted in isolation and without the approval of EY, and contrary to the firm's well-established policies and procedures.
- EY first became aware that the former partner, received unauthorised financial benefits.

June to July 2022

- Former partner given opportunity to respond to concerns in relation to the former partner's conduct. Further detail on the unauthorised financial benefits was obtained during this time.

12 August 2022

- EY terminated the former partner for just cause for receipt of unauthorised financial benefits, in excess of \$700,000, in connection with the client transactions the subject of the Commissioner's proceedings.

August 2023

- The Commissioner's proceedings against the former partner commenced.
 - Subsequently, the former partner applied for a suppression order.
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13 September 2023

- EY entered into an enforceable voluntary undertaking with the Commissioner as a commitment to undertake improvements identified by EY.
- EY notified CAANZ on 19 September 2023 that it has entered into an enforceable voluntary undertaking with a regulator.
- The enforceable voluntary undertaking is the first such undertaking EY has entered into with the Commissioner and includes undertakings that EY will:
 - continue to apply EY's management processes for breaches of EY Policy;
 - provide additional training on EY's Gifting Policy and specific aspects of EY's Tax Policies;
 - provide regular updates on progress of these matters and their effectiveness.

1 November 2023

- EY successfully varied the orders made on 9 October 2023 so that EY can be named as the firm in relation to the commissioner's proceedings against the former partner.
- EY reports this matter to ASIC, the Law Society of NSW, the PCAOB and provides an update to CAANZ.
- The former partner's name, the relevant clients' names and witnesses names are still subject to the Orders, pending the hearing of an application for leave to appeal.