



20 January 2022

Mr Chris Jordan AO

Commissioner of Taxation

Sent by email to: [REDACTED]

Dear Chris,

It was good to chat with you on Christmas Eve. As I said the TPB is fully committed to improving cooperation and collaboration with the ATO and I look forward to continual improvement in our working relationship.

In your letter to me, dated 21 September 2021, you raised a number of issues, including the TPB's conduct in its investigation of PwC and Peter Collins. Further, you requested that I undertake a review of the TPB's conduct of the investigations.

A detailed review was conducted by two of the TPB's Board members – the review included speaking to relevant ATO and TPB officers and considering relevant materials.

At our Board meeting on 15 December 2021, the Board endorsed the review findings and recommendations in full.

The review found that whilst our TPB officers acted legally and consistent with TPB policies and processes in the conduct of this investigation, it did identify opportunities to improve our processes to enhance the relationship and collaboration with the ATO.

In particular, the Board is committed to:

- better guidance and training for TPB staff on legal, operational and systems issues;
- enhanced risk identification and escalation processes for sensitive cases; and
- enhanced transparency, communication and a commitment to an effective partnership with the ATO.

Our investigations into Mr Collins and PwC are nearing completion, and the Board is committed to being transparent with you and relevant ATO colleagues about the outcomes and reasons.

The issue of the ATO and TPB relationship will be discussed with my Board at our Board meeting on 2 February 2022. As I mentioned to you, I have had several conversations with Brad Chapman, and with his support I believe that good progress will be made in building the relationship. As discussed with Brad, a representative from ATO People will be invited to attend our February Board meeting to discuss options, including a potential workplace assessment, to identify issues in the working relationship between the ATO and TPB, and opportunities for resolution.

Thanks again for your support of the TPB and I look forward to talking with you again soon.

Kind regards

A handwritten signature in black ink, appearing to read 'Ian Klug', written in a cursive style.

Ian Klug AM

Chair

Tax Practitioners Board



Commissioner of Taxation

Mr Ian Klug AM
[REDACTED]

Dear Ian

We now have a signed memorandum of understanding and see it as a positive step forward to supporting our working relationship. As you know, this MOU represents over two years of negotiation and strikes the right balance between enabling the TPB to undertake its role in respect of the *Tax Agent Services Act 2009* (TASA) whilst ensuring the ATO's information and data is used appropriately. I look forward to both organisations being able to move forward following both the form and spirit of the MOU.

However, there remains a matter of the utmost seriousness and concern that I feel I must formally raise with you as Chair.

We are aware that the TPB is currently investigating certain matters relating to Mr Peter Collins and now also PwC. We are extremely concerned that the conduct of the TPB in these investigations risks causing serious harm to the broader administration of the tax system. The ATO referred the matter relating to Mr Peter Collins to the TPB in July 2019 and as such we do not have concerns about the TPB conducting a TASA investigation per se, but rather our concerns relate to the manner in which the investigation is proceeding.

We have been provided with copies of formal notices sent to [REDACTED] and understand that some 26 foreign multinationals have received similar notices. Amongst other things, these notices request information related to details of restructures as a result of the proposed BEPS, MAAL, DPT and the hybrid mismatch rules, the purpose of the restructures, meetings with the ATO, negotiations with the ATO in relation to restructures and details of settlements and settlement negotiations with the ATO. Extraordinarily, we only became aware of these notices when approached by concerned advisors, and only after our following the matter up with the TPB did we receive details of the notices that had been issued.

As I emphasised at the Board meeting on Wednesday, 1 September, it is a fundamental tenet of our administration that taxpayers should be able to deal with us with trust and confidence, knowing that their information will remain secret. Requesting taxpayer information related to their own tax affairs as well as information related to dealings and or negotiations with the ATO seriously compromises this.

In our view, the risk that the notices pose to effective administration is disproportionate to the alleged breach under the TASA and puts at risk our ability to assure taxpayers that their settlements are confidential. Whilst there may be at times circumstances where it is warranted for the TPB to

request taxpayer related information we do not consider this to be one of those circumstances (or at least not to the extent of the information requested).

Concerningly, the TPB sought this information from businesses knowing that the ATO already had concerns about unnecessary overreach by the TPB. In June of this year, the ATO explicitly declined to provide specific taxpayer related information to the TPB citing concerns about taxpayer confidentiality and the lack of connection with the matters referred to the TPB. The fact that the TPB subsequently chose to approach businesses directly (requesting even more information), without consulting us, suggests a deliberate disregard for the ATO's concerns and an attempt to conceal these notices from us. Whilst the TPB Secretary has since apologised for not informing us of the notices, evidence within the TPB's own case management report shows that the TPB intended as early as March 2021 to issue these formal notices, suggesting this was more than a simple oversight.

Most concerning of all, it is apparent that your staff have also been accessing ATO systems for the same taxpayer information, including audit files and settlement deeds. We understand that these reviews have included analysis of our confidentiality obligations under the settlement deeds. It is inexplicable that your staff would be reviewing our settlement deeds and making unilateral judgments about our confidentiality obligations to justify that access. Not only is it highly inappropriate for your staff to be reviewing these settlement deeds, but it is extraordinary that they did this without notice or consultation (in fact after us stating our position that these documents were not relevant and should not be accessed) and drew conclusions about our legal obligations.

Independence of the TPB does not imply a disregard of the position of the ATO and indeed, what amounts to active deception of the ATO. These notices damage the trust and confidence that taxpayers have in dealings with the ATO and represent a very real threat to effective tax administration. The notices represent a serious overreach by the TPB and I ask that you instigate a review of the TPB's entire conduct of this investigation as a matter of priority and would strongly suggest withdrawing the notices while that review is conducted.

I close by referring to one of the questions you posed at the 1 September Board meeting: "what can be done to improve trust and the working relationship between the TPB and the ATO?". A signed MOU between the ATO and the TPB is a good first step as it illustrates a commitment by both parties to the intention of effectively working together whilst showing a level of respect for each other's roles, responsibilities and accountability in discharge of our respective duties. In order to build trust and confidence in that working relationship, the absolute first order priority must lie in ensuring conduct like this never happens again.

Regards



Chris Jordan AO
Commissioner of Taxation
21 September 2021