

17 July 2020

Mr Timothy Dyce  
Deputy Commissioner – Private Wealth  
Australian Taxation Office  
GPO Box 9990  
SYDNEY NSW 2001

By email: Timothy.Dyce@ato.gov.au  
CC Deborah Jenkins, A/g Second Commissioner – Law Design and Practice: Deborah.Jenkins@ato.gov.au

Dear Mr Dyce,

### **Allocation of Profits within Professional Firms Revised Guidelines**

Chartered Accountants Australia and New Zealand, CPA Australia, Grant Thornton, Institute of Public Accountants, Law Council of Australia, Law Firms Australia, National Tax and Accountants' Association Ltd, Pitcher Partners, The Tax Institute and William Buck (together the **Joint Organisations**) write to you regarding the ongoing consultation concerning the revision of the Australian Taxation Office's (**ATO**) guidelines on the allocation of profits in professional firms.

### **Background**

Two and a half years have passed since consultation began on how to revise the now withdrawn **Assessing the Risk: Allocation of profits within professional firms guidelines** - which were originally issued in 2015.

We understand that a draft document is ready for release for public consultation. However, due to the intervening circumstances of the COVID-19 crisis adversely impacting the business environment, the ATO has to date chosen not to release the draft document for public consultation.

The ATO established the Professional Firms Working Group in 2018 to consult on the revision of the guidelines prior to releasing them for public consultation. Members of the Working Group report they have not yet been consulted on a complete version of the draft guidelines. As at 10 July 2020, the ATO website<sup>1</sup> indicates this Working Group is closed and last met in 2017, even though it met in September 2019.

The Joint Organisations are concerned that the ATO's Professional Firms Working Group has not been consulted on the draft document. In fact, consultation with the Working Group has been limited to:

- A handful of meetings at which there were discussions about the appropriate principles to apply in any reissued guidelines; and
- A short time to review part of a document during a meeting which may or may not now reflect the ATO's position. The partial document was not available to be taken away and given mature thought.

We understood that the Working Group was established to provide targeted consultation on the revised guidelines. Several Working Group members took it upon themselves to provide a confidential submission to the ATO in November 2019 in an attempt to make sure their views were formally provided to the ATO, particularly as they had felt unheard during the consultation process.

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<sup>1</sup> <https://www.ato.gov.au/General/Consultation/Consultation-groups/Closed-groups/>

The above-described process does not represent consultation on the revised guidelines in any meaningful way.

### **Request for thorough consultation on a timely basis as soon as possible**

The Joint Organisations urge the ATO to engage in thorough consultation on the draft guidelines with the Working Group and the professional associations to ensure all relevant technical issues are considered prior to releasing the draft guidelines for public consultation.

It was clear to those participating in the last round of consultation on behalf of the Joint Organisations that the ATO's position was still evolving. Participants expected that the position would be brought back to the Working Group for further discussion once the ATO had considered feedback provided in the consultation discussions so far. On this basis, participants formed the view that the targeted consultation was still on foot and they would be consulted with again.

A comprehensive airing of the draft guidelines with the Working Group members and professional associations on a targeted basis would ensure key issues are raised and quickly addressed.

The Joint Organisations are not looking to delay the release of the draft guidelines. On the contrary – we consider that the uncertainty caused by the withdrawal of the original guidelines has gone on too long. Rather, we are trying to ensure that the guidelines have been carefully considered so that upon their release for public consultation, they are not unduly further delayed by issues being raised in the public consultation process that could have been uncovered and resolved in a targeted consultation process.

In this regard, we urge the ATO to release, as soon as possible, the draft guidelines for consultation on a targeted basis with the Working Group members and professional associations. A two week targeted consultation period would be sufficient and would then allow the draft guidelines to be issued for public consultation in September 2020. This would give all taxpayers affected by the revised guidelines sufficient advance notice ahead of the start of the 2021-22 income year (starting on 1 July 2021) to determine the impact of the new guidelines. It also ensures a timely culmination of the targeted consultation process.

The Joint Organisations look forward to consulting with the ATO on the draft guidelines in a timely manner as soon as they are made available to us.

If you would like to discuss any of the above, please contact The Tax Institute's Tax Counsel, Stephanie Caredes, on 02 8223 0059 in the first instance.

Yours faithfully,



**Michael Croker**  
Tax Leader Australia  
Chartered Accountants Australia and New Zealand



**Dr Gary Pflugrath**  
Executive General Manager, Policy & Advocacy  
CPA Australia



**Steve Westaway**  
Company Secretary  
Grant Thornton



**Tony Greco**  
General Manager Technical Policy  
Institute of Public Accountants



**Greg Rodgers**  
Chair – Business Law Section  
Law Council of Australia



**Mitch Hillier**  
Executive Director  
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**Geoff Boxer**  
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**Mark Northeast**  
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**Peter Godber**  
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**Greg Travers**  
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William Buck