



21 July 2023

Patrick Hodder | Committee Secretary
Senate Finance and Public Administration
References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary

Senate Finance and Public Administration References Committee Written Questions on Notice, Consulting services inquiry

We refer to the questions on notice from Senator Barbara Pocock, in her role as a member of the Senate Finance and Public Administration References Committee (**Committee**), received by PwC Australia (**PwC**) by email on 30 June (32 questions), with a due date of 21 July 2023. We provide our responses below.

In doing so, we also refer to our response dated 2 June 2023 to questions on notice from the Committee received by email on 5 May 2023 (**2 June submission**) and our response dated 7 July 2023 to questions on notice from Senator Barbara Pocock received by PwC by email on 28 June 2023 (32 questions) and 30 June 2023 (one question) (**7 July submission**).

- 1. Please provide names of the following office holders from 2013 to the present:**
 - a. CEO**
 - b. Chairperson of Board**
 - c. Oversight of legal functions**
 - d. General counsel**
 - e. Oversight of the risk function**
 - f. Oversight of the tax function**
 - g. Oversight of the TPB investigation/s and ATO investigation/s**
 - h. Membership of the Executive Board**

Please refer to **Appendix A**.

2. Please provide details of the roles performed by the following senior office holders between 2013 and the present:

- a. Luke Sayers**
- b. Tom Seymour**
- c. Meredith Beattie**
- d. Mr Gregory**
- e. Ms Maimone**
- f. Mr Kumar**
- g. Mr Peake**
- h. Ms Fazzino**
- i. Ms Waldron**
- j. Mr Van Dongen**
- k. Mr Haberlin**
- l. Mr Happell**
- m. Ms Tracey Kennair**
- n. Peter Collins**

Please refer to **Appendix B**.

3. Please provide details of:

- a. the total partnership drawings of Luke Sayers between 2013 and when he left the firm, by year.**
- b. the retirement income Mr Sayer has received from PwC each year since his CEO role ended.**
- c. the total partnership drawings of Meredith Beattie between 2013 and the present or when she left the firm, by year.**

Please refer to **Appendix C** for the total partnership drawings of Luke Sayers. We have not provided the information requested in 3(c) due to the privacy of the individual's personal information. We consider that non disclosure of their individual remuneration is consistent with the reporting obligations that apply to Australian listed companies. There is no requirement under Section 300A of the Corporations Act 2001 to disclose individual remuneration details for any person other than those who have been determined to be key management personnel.

4. What proportion and how many of the legal professional privilege claims made to the ATO between 2016 and 2020 did General Counsel Meredith Beattie prepare or have involvement in?

In the period 2016 to 2020, PwC received at least 46 notices from the ATO requiring production of documents and / or information. In some cases, those notices related to



ATO investigations concerning PwC's clients. In other cases, the notices related to ATO investigations concerning PwC.

Having regard to the number of notices PwC has received from the ATO during the relevant period, and the volume of documents produced in response to those notices, in the time available it has not been possible to identify the number of legal professional privilege claims made to the ATO between 2016 and 2020 that Meredith Beattie either prepared or had involvement in.

5. *Did Ms Beattie or anyone else prepare a legal strategy for the firm in response to the ATO request for information between 2015-2020? If so, please supply that strategy.*

Responses to ATO requests for information between 2015-2020 were dealt with on an individual, not collective, basis by the tax team in consultation with OGC and Risk and Quality.

6. *How many ex-ATO employees did PwC employ between 2012 and the present? If any, please provide their names and their period of employment.*

We have not kept central records of the backgrounds of all employees but please refer to **Appendix D** which has been prepared to the best of our ability. This shows 14 employees who were ex-ATO employees. We respectfully request the Committee to not publish Appendix D as this contains private information relating to individuals.

7. *What is the meaning of 'share of the upside'? Which firms did PwC have such, or similar, arrangements with between 2015-2023?*

We have been informed by the Committee that Senator Pocock's office has clarified that the "Share of the upside refers to when consultants assist a client to minimise their tax and get a percentage of the win in return".

As noted in our response to Question 25, the firm's billing in relation to MAAL-related engagements were all based on time (hourly billing) and materials.

8. ***Provide a copy of PwC's current personal investment policy for partners and the policy which applied in 2018.***
9. ***Provide details of the protocols (including formal and informal understandings) that guide the sharing of information and/or investment opportunities to and/or amongst partners for their personal investments.***

Strict rules on personal financial interests for partners and staff are imposed by a combination of legislation (e.g. Corporations Act) and standards (e.g. APES110) which are reflected in our PwC Australia Independence Policy, as well as other ethics and independence rules in external professional standards which our partners must comply with.

Our Independence policy has strict requirements in place that restrict partners (and family members) from holding certain financial relationships with clients, and their related entities, as it relates to maintaining audit independence (e.g. partners are not permitted to hold securities in audit clients etc). These restrictions tend to go beyond what is required by regulation.

The Independence policy also includes restrictions on partners providing services to other clients (clients that are not subject to audit and assurance restrictions) if they (or their family members) have a material investment in that client. If they (or their family members) have a pre-existing immaterial investment, the policy allows services to be provided subject to strict trading restrictions whereby there can be no trading in the securities of the client during the service period and for six months afterwards.

As of June 2018, in advance of the release of a dedicated partner personal investment policy, the Independence policy also restricted partners, and their family members, from investing in certain other entities designated as prohibited investments by the Executive Board. These are entities that PwC is already, or is considering, investing in, or entities to which PwC is providing services in exchange for equity/a potential future investment.

To help PwC firms and its partners to track and comply with the independence policies relating to their financial interests, and also the financial interests of their immediate family members, a global PwC system "Independence Checkpoint" is used.

In accordance with policy requirements, partners are required to maintain an accurate and up to date listing of financial interest investments in the Checkpoint system. This includes their direct and material indirect financial interests in securities, as well as those of their immediate family members. Interests held by different family members and/or in different capacities (e.g., trustee only, unvested spouse employer share option) must be entered separately. If the individual and an immediate family member both own the same financial interest, separate entries in Checkpoint are required. All investments must be reported, even if they are disposed of within a very short time



period. New securities holdings must be “pre-cleared” prior to acquisition and recorded on Checkpoint within 14 days of acquisition.

PwC undertakes random compliance audits (personal independence compliance testing) to check that Checkpoint portfolios are 100% complete and accurate and that partner (and family member) investments are in compliance with the personal independence rules. If non-compliance is identified, this may result in disciplinary action, including financial sanction(s).

In addition to the June 2018 revision to our Independence policy set out above, a dedicated partner personal investment policy was developed in 2018 and came into effect in 2019. A copy of this has been provided in Appendix B of our 7 July submission.

10. *What, if any, shares or stake does PwC or any of its partners hold in Australia Visa Processing (AVP)?*

PwC does not have any shares or stake in AVP, nor do any PwC partners. The firm's AVP investments were divested in November 2021.

11. *Please provide a copy of any reports or internal reviews relating to PwC or individual PwC partner's investment in AVP.*

An internal investigation was undertaken which found that nine partners had made investments in AVP contrary to PwC Australia's independence policy. In accordance with our Consequence Management Policy, accountability decisions were made, including the suspension of one partner (who provided notice of intention to retire at the meeting at which he was suspended), and financial penalties for partners, including the former CEO. In August 2018, at the firm's direction, the AVP shares held by these partners were transferred to the Australian firm's investment vehicle, and the purchase price paid by the partner/investors was refunded to them. Following this matter, PwC amended its personal investment policy.

12. *What payments and agreements were made with Mr Peter Collins as he left PwC? Did he sign a Non-Disclosure Agreement (or equivalent)? Did he have a trailing income after he left PwC? If so, how much and when did it end?*

On 18 October 2022 a letter outlining the terms of Mr Collins' retirement was issued to him which included a payment representing approximately eight months of his FY23 total target income. There was no non-disclosure agreement relating to Mr Collins' departure.



As we have publicly acknowledged, we commenced our broad investigation into the sharing of confidential tax information in May 2023. We considered that Mr Collins had failed to comply with obligations under the Partnership Agreement and consideration was given to the accountability options available to us given he had already retired from the Partnership. Mr Collins was due to start receiving Partner Termination Payments (PTP) in September 2023 but he was informed by letter dated 1 June 2023 that no PTP would be payable to him. He did not have a trailing income.

13. *Provide the most recent versions of any internal and/or external PwC reports into the tax leaks investigation.*

Please refer to **Appendix E** for a copy of our six-monthly reporting report to the TPB on 14 July. Our further investigations are ongoing.

- 14. *Provide a timeline of who within PwC knew about the extent of the tax leaks and at what point, including names and positions. Include in the timeline reference to when the ATO, TPB and/or the AFP made inquiries about the matter.***
- 15. *Provide copies of all documents, including, but not limited to, minutes, summaries of decisions and emails in relation to any executive board and/or governance board meetings about the tax leaks matter.***

PwC understands that these matters are the subject of an ongoing Australian Federal Police investigation. In order to avoid prejudicing the investigation (including prejudicing any individuals that may be the subject of the investigation), PwC is unable to respond.

- 16. *Provide a list of names and positions of all PwC personnel involved in the tax leaks matter. For each person, indicate specific allegations about what each person knew and their role in the matter. Please note, this should include, but not be limited to personnel included in the list of names in the emails provided by PwC to the Senate Inquiry previously.***

Please refer to our response to questions 1(b) and 3(b) in our 2 June submission and our [public statement dated 3 July 2023](#).

- 17. Are any of the following individuals receiving retirement payments or any other type of payments from PwC:**
- Mr Seymour**
 - Mr Collins**
 - Mr Bersten**
 - Mr Fuller**
 - Mr McNab**
 - The five partners who were directed to go on leave on 29 May 2023**
- 18. If yes to question 17, provide the name of each partner, the type of payment and the amount they have received or are receiving.**

The individuals listed in (b)-(e) are not receiving retirement payments or any other type of payments from PwC. We are in the process of finalising the decisions relating to the individuals listed in (a) and (f). We refer to our Partnership Deed provided in Appendix A of our 7 July submission.

- 19. How much money (revenue and profit) has PwC's tax division made over the past ten years? Please provide this figure as well as its share of the percentage of total PwC revenue and profit over this period.**

Below is a table which shows the revenue that PwC's tax division has made over the past ten years, as well as a share of the percentage of total PwC revenue over this period.

	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	YTD March 23
Revenue - Tax Business Unit (\$m)	269.3	274.1	285.3	289.4	297.5	327.8	351.0	342.9	353.5	388.3	305.9
Percentage of total Firm revenue	21%	21%	20%	18%	17%	17%	17%	17%	17%	15%	15%

PwC prepares financial statements reporting profitability at an enterprise level, and takes into account enterprise wide costs. PwC does not prepare financial statements calculating profitability of individual businesses, such as the tax business.

- 20. What is the range of pay, the median and the average pay of tax partners over the past ten years compared to non-tax partners?**

Please refer to **Appendix F**. We kindly request the Committee to not publish the information provided in Appendix F as the information is competitively sensitive.

21. ***Provide the names of the 14 companies that PwC pitched tax advice to listed in the 144 pages of emails released to the Senate.***
22. ***Provide the names of all companies that restructured based on PwC's tax advice.***
23. ***Provide how much money each company paid to PwC for PwC's advice in relation to MAAL. Include the name of each company as well as the amount of money they paid to PwC.***

We understand the reference to “*the 14 companies that PwC pitched tax advice to*” to be those clients listed in bold font in the email dated 6 January 2016 starting at page 88 of the 144 pages of redacted emails released by the TPB to the Senate (Doc ID number PWC.405.001.6083).

In 2013, the Organisation for Economic Co-operation and Development (**OECD**) initiated its BEPS project as part of the global focus on multinational companies (**MNCs**). One of the aims was to determine whether these companies were each paying their fair share of tax. It resulted in a series of action items which formed the basis for the global taxation of multinationals. In Australia, this led the Commonwealth Parliament to pass the Multinational Anti-Avoidance Law (**MAAL**)¹ on 3 December 2015 (receiving royal assent on 11 December 2015), which commenced operation on 1 January 2016. An exposure draft of the MAAL was publicly released on 12 May 2015.

The MAAL rules were designed to be punitive in nature and operated such that, from 1 January 2016, any MNC operating in Australia that had not restructured in compliance with the new law would have to pay back the tax they owed, plus interest, and face penalties of up to 100 per cent. The legislative requirement to restructure was to ensure MNCs were paying the tax required under an Australian entity business model. This was a higher amount of tax than they had been paying prior to the legislative change.

PwC presented to potential and actual clients a number of structures considered responsive to the legislative change arising from the MAAL's proposed introduction. Documents describing the legislative changes were created on the basis of publicly available content in the ED and provided to clients only after the public release of the ED.

As has been consistently noted by the ATO, 44 international groups restructured their Australian affairs in compliance with the new legislation. Of these, PwC provided some level of assistance to eight of these companies to restructure to some degree.

¹ Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015

On 8 May 2023, the ATO Second Commissioner described the ultimate effect of the MAAL at a Senate Economics Legislation Committee:

“Like all good avoidance laws, it operated by encouraging people to structure so that it did not apply. We engaged with many overseas companies, and ultimately 44 international groups restructured their Australian affairs in a way that booked sales in Australia the purpose of the multinational anti-avoidance law. So we dealt with those 44 companies, and we estimate that that resulted in \$100m in income tax a year being collected in Australia and about \$80m worth of net GST being collected in Australia each year”.

The Second Commissioner added:

If these structures had been effective or had been implemented and we had not challenged them, that was the tax at risk. But I can assure the committee we identified these schemes very early, no companies implemented these structures, and we protected the revenue so that Australia does not lose money as a result of this breach of confidentiality.

PwC understands the reference to ‘(t)his breach of confidentiality’ is the breach of confidentiality by Mr Collins, identified as part of the TPB investigation.

As a registered tax agent under the Code of Professional Conduct (as set out in section 30-10 of the *Tax Agent Services Act 2009* (Cth), PwC is prohibited from providing additional information on clients and their affairs.

24. Provide details of the tax schemes and tax “pitch books” PwC promoted to clients, including, but not limited to, the MAAL and debt dumping.

As noted above, PwC presented to potential and actual clients a number of structures considered responsive to the legislative change arising from the MAAL's proposed introduction. Some of those who were approached by PwC chose to engage with the Firm, consider its advice but implement the structures themselves and some chose to engage PwC to both advise on and implement the structures. Some did not respond to or engage with PwC at all, notwithstanding the approaches that were made to them.

The ATO took particular objection to one of the structures PwC developed and outlined its concerns to PwC in relation to it. Subsequently, the ATO issued a Taxpayer Alert on 15 September 2016 that set out its concerns with this structure. The ATO had concerns with some other structures PwC clients implemented (as well as some developed and implemented by others), which also needed to be addressed. On 7 August 2019, the ATO advised PwC that it was conducting a Promoter Risk Review of PwC in relation to the introduction of the MAAL, with the focus being upon two structures implemented following PwC advice (Promotor Risk Review).

On 5 June 2020, the ATO advised that it had concluded the Promoter Risk Review in relation to the introduction of the MAAL and would not be taking further action against PwC as a result of the Promoter Risk Review.

We are not aware of any tax ‘pitch books’ which PwC promoted to clients. There were however some marketing documents following the release of the exposure draft of the MAAL, which was released with the budget on 12 May 2015:

- On 20 May 2015, a partner circulated a document “*Australias [sic] Diverted Profits Tax are you in or out*”.
- There is an October 2015 slide pack authored by two partners setting out options to respond to how the legislation would operate.
- On 13 December 2015, there was an internal draft working document setting out “DPT examples”, which we are not aware of having been shared with clients.

None of these documents or correspondence contained any confidential Treasury information.

25. *Provide details of payment methods the firm allowed with relation to the tax schemes, including, no win no fee, scaled payments, success fees, ‘share of the upside’ and so on.*

The firm’s billing in relation to MAAL-related engagements were all based on time (hourly billing) and materials. Payments were made in a normal manner in accordance with ordinary business terms.

26. *Provide a copy of the independent external review of the effectiveness of PwCs tax governance and controls conducted since the tax scandal.*

a. *Who conducted this review?*

Bruce Quigley. Please refer to **Appendix G** for a copy of Mr Quigley’s review. We respectfully request the Committee to publish the version of the report which has been provided to the Committee which redacts the names of PwC personnel.

In addition to arranging and adopting the recommendations from Mr Quigley’s review (March 2021), PwC has by its own initiatives and on other occasions working with the ATO, taken actions since 2017 to improve the effectiveness of governance and controls in our tax practice including:

- establishing a Tax Policy Panel (**TPP**) which considers certain complex tax advice matters escalated within the firm’s tax practice, and which supports the provision of holistic and sustainable tax advice for our clients. The Chair of the TPP convenes partners not involved in the matter under review to review complex tax

advice matters involving material issues of tax policy as well as matters of trust and reputation for clients (December 2016). The TPP policy was later enhanced in July 2017 to address complex or potentially controversial tax matters and to recommend clients' require timely and constructive engagement with the ATO. Further details of the TPP are provided in our response to Question 27.

- introducing an annual mandatory training module in relation to complex tax advice (July 2017)
- implementing a triage and approval mechanism and annual training reinforcing the Firm's requirements when tax advice is provided as a legal service (November 2018)
- introducing an annual leadership in quality survey including upward feedback (October 2020)
- imposing an escalation and senior approval requirement prior to entry into Government/BoT consultations (July 2021)
- adopting the Australian Tax Advisory Firm Governance – Best Practice Principles which were developed in conjunction with the ATO (August 2022)
- imposing a prohibition upon tax agent market facing partners entering into Government/BoT consultations (November 2022)
- advising Treasury, BoT and the ATO that the only point of contact for them in relation to confidential consultations is a named tax adviser who has only an internal role and does not engage with the market (December 2022)
- tax agent compulsory training undertaken (November 2022 to February 2023)
- contacting all members of relevant consultation groups and asking them to confirm their compliance with the confidentiality obligations they owe (February 2023)
- updating compulsory training modules to cover confidentiality (March 2023)
- updating the LPP triage process and the MDP protocols which have been agreed with the ATO (March 2023)
- putting in place new training modules for 6 monthly tax agent training (April 2023), and
- engaging in ongoing monthly engagement with the ATO to discuss any issues that may arise.

PwC will be commencing a further planned independent external review on the design effectiveness of our tax governance and internal control framework in August 2023, which will be carried out again by Mr Quigley. The review will include the same terms of reference as the previous review, but will be expanded to include large market tax advisor principles for the industry.

27. Provide details of the policy panel established by PwC to review complex matters. Provide the names and positions of everyone who sits, or has sat, on this panel with details of the timing of their participation.

Consultation with the TPP is required as part of the acceptance process for all tax consulting engagements where high risk factors are present. This consultation must occur before any work product is delivered to our clients. Best practice is for the TPP to be involved very early as part of the engagement acceptance process.

Our FY22 Transparency report² provides the following additional information:

“PwC Australia (together with 35 countries across the PwC Global Network) has a Tax Policy Panel to which certain complex tax advice matters must be escalated. The Tax Policy Panel comprises senior partners and subject matter experts, who determine whether a potential tax project or advice position fits with our values and commitments, and aligns to PwC’s Global Tax Code of Conduct. In FY22, 60 matters were referred to the panel Chair, with 11 of these requiring a review by the full panel (indicating they were complex matters that needed to be escalated). In FY21, 56 matters were considered by the Panel, with 16 of these requiring a review by the full panel.”

The Chair is the standing member of the TPP. The Chair role has been held by Wayne Plummer and Jonathan Woodger (as acting Chair) during the period from 23 February 2017 to date. For each matter to be reviewed by a TPP, the TPP Chair forms a panel consisting of members selected based on their independence from the issue and the engagement and their expertise relating to the matter raised before the TPP.

28. Evidence given before the NSW inquiry indicated 660 PwC partners are currently members of boards. In a table, provide, for every board position held during 2023:

- a. the name of the organisation**
- b. the names and positions of PwC partners that sit on the board.**
- c. whether the board position is voluntary/unpaid or remunerated/paid.**

As of 12 July 2023, there were 339 PwC partners serving or who have served in external board governance and advisory positions in 2023 as disclosed under the firm’s external appointments policy. Below is a summary of the nature of these boards and roles.

² <https://www.pwc.com.au/about-us/assets/firmwide-transparency-report-fy22.pdf>

Type of Organisation	Advisory role	Governance role	Total
Not for Profit - Local	64	333	397
Not for Profit - Overseas	2	2	4
Private Ancillary Funds	-	21	21
Public Sector	19	24	43
Universities	20	9	29
For Profit/Commercial Operation	13	51	64
Grand Total	118	440	558

The NSW inquiry noting “660 PwC partners currently members of boards” appears to be a reference to PwC disclosure in our FY22 [Transparency Report](#) which indicates the 666 PwC personnel held board roles at the time.

Board and advisory roles are held in a personal capacity not as a result of their role as a partner with PwC. Many of these appointments are on the public record. However, when PwC personnel provide this information to us via our External Appointments Database, they do so under the conditions of our [privacy policy](#). The reasons for the partner’s involvement with a particular organisation may constitute personal sensitive information (e.g., reasons may pertain to religion, sexual preferences, health issues, personal beliefs etc.). On this basis and in line with the disclosure of personal information conditions of this policy, we have not provided the names of individual partners and / or any organisations they are associated with.

Included in the above are ten roles considered to be PwC roles as the partners represent PwC on behalf of an investment by PwC in an entity, or to reflect PwC’s broader support for the organisation (e.g., as a member organisation). Additionally, 21 director appointments are held by nine partners in a Responsible Person capacity on clients’ Private Ancillary Funds (PAFs) which are considered to be PwC roles.

The board and advisory roles held by our people are done so on a voluntary basis and would generally be unpaid positions. Through our [PwC not for profit OnBoard program](#), staff and partners are supported to use their professional skills to make a positive difference in the community about causes they are passionate about and contribute towards building more sustainable organisations in society.

Since the program commenced in 2015, the PwC OnBoard program has doubled the number of female partners and staff securing board and advisory roles. The program has also increased the amount of younger professionals sitting on boards as well as those from diverse backgrounds. Our goal has been to shift common misconceptions around the age, gender, cultural background required to sit on a board.



PwC has also been a supporter of [The Observership Program](#) for the past six years. This program creates a passionate and motivated community of future NFP board leaders by providing training and opportunities for young leaders with no prior board experience to observe on a not-for-profit board. Observership positions, though not active participants, are reflected above as advisory roles.

29. *How many redundancies has PwC offered to partners since February 2023?*

None. Partners are not employees and are therefore not subject to redundancies; however, 34 offers of retirement from the partnership have been made since February 2023.

30. *Were any of the people PwC has offered redundancies to involved in the PwC tax leaks matter? If yes, how many?*

Of the 34 partners offered retirement from the Partnership, four were found by our investigation to have either failed to uphold the firm's professional and ethical standards in relation to confidential government information, or failed in their leadership and governance roles.

As noted in our announcement on 3 July 2023, other partners have been given notice of PwC Australia's findings against them and a process has started under the Partnership Agreement to remove them from the partnership.

31. *What provisions have been made to meet the entitlements of PwC personnel in the event of their job loss?*

In line with Accounting Standards, PwC records provisions for employee leave entitlements on their balance sheet. In the event of a role becoming redundant, these entitlements are paid to the impacted individual.

Also, in line with Accounting Standards, a provision for redundancy is only created when an employee has a valid expectation of their role being made redundant.

32. *What provisions have been made to meet the entitlements of PwC personnel in the event of their transition to a new firm structure, including Bell?*

In the event of a business transfer, the leave entitlements of the employees transfer with them to the new organisation. The tenure of employees is also maintained in the new organisation.

Appendix A: Names of office holders (Question 1)

(a) **CEO**

Luke Sayers	1 July 2012 – 30 June 2020
Tom Seymour	1 July 2020 – 8 May 2023
Kristin Stubbins (Acting)	9 May 2023 – 16 July 2023
Kevin Burrowes	17 July 2023 – present

(b) **Chairperson of Board**

Michael Happell	2 July 2012 – 30 June 2016
Mark Haberin	1 July 2016 – 30 June 2018
Peter van Dongen	1 July 2018 – 30 June 2022
Tracey Kennair	1 July 2022 – 28 May 2023
Justin Carroll (Acting)	29 May 2023 – 15 June 2023
Justin Carroll	16 June 2023 – present

(c) **Oversight of legal functions**

CEO	2013 to date
Sean Gregory, COO (Investments, Finance Operations, Technology, Risk, OGC)	1 July 2016 – 30 June 2018
Nadia Carlin, Chief Risk Officer	1 July 2018 – 30 June 2020
Sean Gregory, Chief Strategy, Risk & Reputation Officer	1 July 2020 – 10 May 2023

(d) **General counsel**

Meredith Beattie	2013 - 9 July 2023
Karen Evans-Cullen (Acting)	10 July 2023 - present

(e) **Oversight of the risk function**

Mary Waldron, Managing Partner – Reputation Regulation and Risk	1 July 2012 – 30 June 2016
Sean Gregory, COO (Investments, Finance Operations, Technology, Risk, OGC)	1 July 2016 – 30 June 2018
Nadia Carlin, Chief Risk Officer	1 July 2018 – 30 June 2020
Sean Gregory, Chief Strategy, Risk & Reputation Officer	1 July 2020 – 10 May 2023
Tony O'Malley, Chief Risk & Ethics Leader	11 May 2023 – 30 June 2023
Jan McCahey, Chief Risk & Ethics Leader	1 July 2023 – present

(f) **Oversight of the tax function**

Tom Seymour, Tax & Legal Services Managing Partner	1 July 2012 – 30 June 2020
Pete Calleja, Managing Partner Financial Advisory	1 July 2020 – 10 May 2023
Chris Morris, Head of Tax	1 July 2020 – present
Rob Silverwood, Managing Partner Financial Advisory	11 May 2023 - present

(g) Oversight of the TPB investigation/s and ATO investigation/s

Different aspects of the TPB and ATO investigations had different oversight with the business, OGC, leadership and external counsel all taking responsibility over various aspects.

(h) Membership of the Executive Board (EB)

2012 - 2013 (Luke Sayers, CEO, 1 July)	2014
1. Luke Sayers 2. Sammy Kumar 3. Sean Gregory 4. Helen Fazzino 5. David Wills 6. Deb Eckerseley 7. Tom Seymour 8. Tony Peake 9. Richard Deutsch 10. Peter Van Dongen 11. Mary Waldron 12. Mike McGrath	1. Luke Sayers 2. Sammy Kumar 3. Sean Gregory 4. Marcus Laithwaite 5. Helen Fazzino 6. David Wills 7. Deb Eckerseley 8. Tom Seymour 9. Tony Peake 10. Neil Plumridge 11. Peter Van Dongen 12. Mary Waldron 13. Mike McGrath
2015	2016-2017
1. Luke Sayers 2. Sammy Kumar 3. Sean Gregory 4. Marcus Laithwaite 5. Helen Fazzino 6. David Wills 7. Deb Eckerseley 8. Tom Seymour 9. Tony Peake 10. Neil Plumridge 11. Peter Van Dongen 12. Mary Waldron 13. Mike McGrath	1. Luke Sayers 2. Sammy Kumar 3. Nadia Carlin 4. Julie Coates 5. Matt Graham 6. Tom Seymour 7. Helen Fazzino 8. Sean Gregory
2018-2019	2020
1. Luke Sayers 2. Sammy Kumar 3. Nadia Carlin 4. Julie Coates 5. Matt Graham 6. Tom Seymour 7. Helen Fazzino 8. Sean Gregory 9. Liza Maimone	1. Luke Sayers 2. Sammy Kumar 3. Nadia Carlin 4. Julie Coates 5. Matt Graham 6. Tom Seymour 7. Helen Fazzino 8. Sean Gregory 9. Liza Maimone



2020-2021 (Tom Seymour - CEO, 20 May)	2022
1. Tom Seymour	1. Tom Seymour
2. Julie McKay	2. Julie McKay
3. Liza Maimone	3. Liza Maimone
4. Sean Gregory	4. Sean Gregory
5. Matt Graham	5. Matt Graham
6. Kristin Stubbins	6. Kristin Stubbins
7. Corinne Best	7. Corinne Best
8. Pete Calleja	8. Pete Calleja
9. Chris Morris	9. Chris Morris
10. Martina Crowley	10. Martina Crowley
11. Rob Silverwood	11. Rob Silverwood
12. David McKeering	12. David McKeering
13. Nicole Salimbeni	13. Nicole Salimbeni
14. David Sacks	14. Rohit Antao (April 2022)
	15. Peter Konidaris (April 2022)
2023	2023 (Kevin Burrowes - CEO, 17 July)
1. Tom Seymour	1. Kevin Burrowes
2. Liza Maimone	2. Sue Horlin
3. Sean Gregory	3. Rob Silverwood
4. Suji Kanagalingam <i>*Covering parental leave for Julie McKay</i>	4. David McKeering
5. Kristin Stubbins	5. Tom Gunson
6. Elizabeth O'Brien	6. Kristin Stubbins
7. Corinne Best	7. Liza Maimone
8. Pete Calleja	8. Catherine Walsh
9. Chris Morris	9. Jan McCahey
10. Martina Crowley	10. Karen Evans-Cullen
11. Rob Silverwood	
12. David McKeering	
13. Nicole Salimbeni	
14. Peter Konidaris	
15. Rohit Antao	

Appendix B: Details of roles performed by senior office holders (Question 2)

Name	Role	Date
Luke Sayers	CEO	1 July 2012 – 30 June 2020
	Executive Board member	1 July 2012 – 30 June 2020
	Retired	30 June 2020
Tom Seymour	CEO	1 July 2020 – 8 May 2023
	Executive Board Member	1 July 2020 – 8 May 2023
	Financial Advisory Leader	1 July 2016 – 30 June 2020
	Tax & Legal Services Managing Partner	1 July 2012 – 30 June 2016
Meredith Beattie	Head of OGC	7 February 2005 - 9 July 2023
Mr Gregory	Deals Managing Partner	1 July 2012 – 30 June 2016
	Executive Board member	1 July 2012 – May 2023
	Chief Operating Officer	1 July 2016 – 30 June 2020
	Chief Strategy, Risk & Reputation Officer	1 July 2020 – May 2023
	Retired	30 June 2023
Ms Maimone	Executive Board member	2018 – May 2023
	Chief Operating Officer and Energy Transition Executive	2020 – present
	Managing Partner, PwC Consulting Australia	2017-2020
	Markets Managing Partner for Canberra	2015-2017
	People partner PwC Consulting Australia	2014
	Clients and Industries Leader and Energy Utilities and Mining Leader PwC Consulting Australia	2013-2014
Mr Kumar	Executive Board member	1 July 2012 – 30 June 2020
	Managing Partner – Strategy, & Transformation	1 July 2012 – 30 June 2016
	Managing Partner – Firm Strategy, Marketing, Innovation and Ventures & ASEANZ Consulting Leader	1 July 2016 – 30 June 2020
	Retired	31 August 2020
Mr Peake	Executive Board member	1 July 2012 – 30 June 2016
	Managing Partner, Finance & Operations	1 July 2012 – 30 June 2016
	National Government & Public Sector	June 2012 – June 2018

Name	Role	Date
	Leader	
	Defence Lead Partner	April 2018 – June 2020
	Global Leader, Government and Public Sector	April 2019 – June 2020
	Retired	30 June 2020
Ms Fazzino	Executive Board member	1 July 2012 – 30 June 2020
	Managing Partner, Partnership	1 July 2012 – 30 June 2016
	Managing Partner, People Partnership & Culture	1 July 2016 – 30 June 2020
Ms Waldron	Managing Partner – Reputation Regulation and Risk	1 July 2012 – 30 June 2016
	Retired	30 September 2022
Mr Van Dongen	Chair of Governance Board	1 July 2018 – 30 June 2022
	Member of Governance Board	1 July 2016 to date
	Member of Executive Board	1 July 2012 – 30 June 2016
	Assurance Leader	1 July 2012 – 30 June 2016
Mr Haberin	Member of Governance Board	1 July 2010 – 30 June 2018
	Chair of Governance Board	1 July 2016 – 30 June 2018
	Retired	31 October 2018
Mr Happell	Member of Governance Board	20 January 2011 – 30 June 2016
	Chair of Governance Board	2 July 2012 – 30 June 2016
	Retired	30 June 2016
Ms Tracey Kennair	Member of Governance Board	28 July 2015 to date
	Chair of Governance Board	1 July 2022 – 28 May 2023
	Deputy Chair of Governance Board	1 July 2019 – 30 June 2022
	Cloud and Digital – Digital Business Platforms Leader	June 2022 – present
	Partner, Consulting	Jan 2012 – present
Peter Collins	Head of International Tax	1 July 2015 to 20 October 2022
	Partner, Tax	January 1990 - 20 October 2022
	Retired	20 October 2022



Appendix C: Partnership income (Question 3)

(a) Luke Sayers partnership income between FY13 to FY20 (retiring in FY20 on 30 June 2020)

Financial Year	Act Inc – Total
2013	2,966,005
2014	3,540,749
2015	4,098,897
2016	3,673,125
2017	4,045,774
2018	3,906,424
2019	4,501,796
2020	3,483,798

(b) None



Appendix D: Ex-ATO employees (Question 6)



Appendix E: Copy of six-monthly statement to the TPB (Question 13)

PwC Compliance Report re TPB Order dated 25 November 2022

Report for six-monthly period ending 30 June 2023

Dated: 14 July 2023

Executive summary

On 25 November 2022, after completing an investigation, the Tax Practitioners Board (the **Board** or **TPB**) imposed an Order on PricewaterhouseCoopers (TAN 1622600) (**PwC AU**) under section 30-20 of the *Tax Agent Services Act 2009 (Cth)* (the **TPB Order**).

Under item 4 of the TPB Order, PwC AU must provide a compliance statement to the Board every six months confirming the items set out in the TPB Order. This report relates to the six-monthly period from 1 January 2023 to 30 June 2023 (the **Reporting Period**).

On the basis of the material contained within this report, it is considered that PwC AU has complied with items 1, 2 and 3 of the TPB Order. This report forms PwC AU's Compliance Statement as required by item 4 of the TPB Order. For completeness, I note that the TPB confirmed that this Compliance Statement was due within 14 days of the end of the six-month period ending 30 June 2023.

If you would like to discuss these matters, please feel free to contact me.

Yours sincerely

Jan McCahey

A rectangular area that has been redacted, likely containing a signature or stamp.

Contents

Executive summary	i
1 TPB Order	1
1.1 The TPB Order	2
2 Training	3
2.1 Mandatory six-monthly training commitment	4
2.2 Ongoing education	4
3 Confidentiality Agreement Register	6
3.1 Australian Policy – Confidentiality agreements with clients, prospective clients or third parties	7
3.2 Confidentiality Agreement Register	7
3.3 Steps taken to maintain the register	8
4 Reporting	9
4.1 Reporting	10
5 Compliance Statement	11
5.1 Compliance Statement for purposes of Item 4 of TPB Order	12
Appendix A TPB Order dated 25 November 2022	14
Appendix B Copy of eLearn Training Material	18

1

TPB Order

1.1 The TPB Order

A full copy of the TPB Order appears in **Appendix A**. A summary of the terms of the TPB Order can also be accessed on the TPB's website: <https://www.tpb.gov.au/tax-practitioner/tax-agent/16226000>

Pursuant to section 30-20 of the TASA, the TPB ordered PwC AU to take the following actions during the 2023 and 2024 calendar years:

- 1 ensure that appropriate training is provided on a 6-monthly basis to relevant partners and staff on compliance with s 30-10(5) of the Code of Professional Conduct in the TASA and PwC's policies on conflicts of interest, particularly including PwC AU's policy for managing conflicts of interest arising from engagements of partners and staff by Treasury, the Board of Taxation and/or other Australian Government agencies.
- 2 ensure that the Head of Regulatory Affairs (or their delegate) takes all reasonable steps to maintain the central register of confidentiality agreements, including regular status-checks with relevant partners and staff on the register.
- 3 ensure that the Chief Strategy, Risk and Reputation Officer (or their delegate) reports every 6 months to the Executive on the management of the participation of relevant partners and staff in confidential tax consultations with Treasury, the Board of Taxation and/or other Australian Government agencies.
- 4 provide a compliance statement to the Board every 6 months from the date of this Order confirming:
 - a that PwC AU has complied with the requirements detailed in (1), (2) and (3) above
 - b the names of all relevant partners and staff who attended the training outlined in (1) above
 - c the content of the training provided under (1) above.

*"Relevant partners and staff" is a defined term and means:

All partners and staff engaged in PwC's tax practice who are registered tax agents;

All other partners engaged in PwC's tax practice; and

All other PwC staff for whom the training is considered, by PwC, to be relevant.

2

Training

“ensure that appropriate training is provided...”

2.1 Mandatory six-monthly training commitment

In early November 2022, PwC developed a targeted training course focused on the Tax Agent Code of Conduct and Regulatory Consultation processes. This course specifically covered the TASA code and TPB Code of Professional Conduct, PwC policies on conflicts of interest and PwC policy for managing conflicts of interest arising from confidential consultations. This course was completed by all Registered Tax Agent Partners and Managing Directors (via video conference) during the period November 2022 through February 2023. The training was tracked for attendance.

Specifically in response to the 25 November 2022 TPB Order this training course material was converted to an eLearn format and was subsequently provided to all Tax and Private Tax Partners and staff during May and June 2023. The eLearn course content appears in **Appendix B**. The eLearn was tracked for attendance and involved the successful completion of a test.

As at 29 June 2023, 100% of individuals who were not on extended leave during the relevant period, have completed the mandatory training. To provide further context, as at 29 June 2023, the training has been completed by 1,329 individuals. There are 83 people who were on leave during the training period (including parental leave, secondments, leave of absence, etc.) and hence have not completed the training (including three tax agent partners). These individuals will be required to complete the training upon their return from leave. A list of all personnel completing this training is provided in **Appendix C**.

This training module will be required to be completed again during the six-month period from 1 July 2023 to 31 December 2023, as part of the firm's Quality Essentials Program.

2.2 Ongoing education

In addition to the training prescribed by the TPB Order, PwC continues to maintain an ongoing required course curriculum and elective training opportunities related to tax matters as well as professional behaviours, which are undertaken throughout the year by partners and staff. Examples in the past twelve months include:

- **"How we provide complex tax advice" and "Legal services in relation to tax advice" training** – This was mandatory training for all partners and staff providing tax services in Tax and Private practice which was presented (both by in-person and video-conference sessions) during the period March to June 2023. Tax practitioners who were unable to attend the scheduled sessions as currently on extended leave will complete the mandatory training upon their return.
- **Essential IQ e-learns (all business lines)** – This is an annual curriculum provided cross-line of service (assurance, tax and financial advisory, consulting) as refresher training and which is undertaken by all partners and staff across the firm. A brief summary of the training modules that were completed during fiscal 2023 follows.
 - Independence – Independence training highlights the key personal independence from audit clients, Non-Assurance Services and Business Relationship requirements that apply to staff and partners. The training reinforces the importance of auditor and Firm independence, the controls

and systems PwC uses for independence compliance, the key actions to maintain independence and where to get information and assistance.

- Confidentiality – The importance of safeguarding client information, PwC confidential information and the confidential information and personal data of others, and the significant implications for all stakeholders of any failures.
 - Ethics “Being our best selves” – How ethics is articulated through PwC’s global strategy, the importance to PwC and our stakeholders and where to find support if in an ethical dilemma.
 - Anti-corruption, Money Laundering and Economic Sanctions “Keeping PwC safe” – How PwC uses the client acceptance and continuance process to identify risk with respect to financial crime.
 - Information Protection “Protecting trust” – Looks at the principles that act as the cornerstone of information protection, recognizing that everyone in the organization faces the risk of compromising the security of our information every day through our actions.
 - Anti-Trust and Fair Competition “Doing the right thing by the market and competitors” – Explores what we can and cannot discuss with competitors, and importance and consequences of individual actions.
- **New Starter Essential IQ e-learns** – All partners and staff receive compliance training upon commencement with the firm. The curriculum for new joiners includes modules explaining our Code of Conduct, Audit Independence, Confidentiality, Conflicts of Interest, Cyber, Ethics and Integrity and Data Protection policies.
- **Technical training** – PwC Tax practice coordinates the delivery of national tax technical training.
 - The Tax Boost Program involves monthly in-depth virtual sessions and other periodic topics (e.g., Federal Budget event). The sessions are run nationally which, although open to all, are targeted at our Partner/Director/Manager group. These sessions typically focus on recent developments to ensure that our tax teams are up to date with their tax knowledge. Sessions are also recorded and available on demand.
 - Tax technical programs specifically designed for our Managers and staff
 - Tax Fundamentals program – virtual monthly fundamentals training which is also recorded and available on demand
 - Tax Case Study Series (Program 1 & 2) – 2 days of in-person training per program run annually or biannually (depending on nominations). The training is case study focused on tax topics such as Tax Consolidation, targeted at Senior Consultants and Managers
 - Graduate Foundations – run annually for all new tax graduates with over a week of in-person and virtual training sessions
- **Team training** – Local team-based training is also run which supplements the content delivered centrally via national programs. These sessions specifically focus on industry/client specific tax technical issues – looking at either new developments or revisiting core concepts – and consider how the tax technical concepts are applied on the job.

3

Confidentiality Agreement Register

“take all reasonable steps to maintain the central register of confidentiality agreements...”

3.1 Australian Policy – Confidentiality agreements with clients, prospective clients or third parties

PwC AU's Policy *Confidentiality agreements with clients, prospective clients or third parties* (last updated on 10 February 2023), in broad terms provides that:

“PwC personnel shall not enter into a confidentiality agreement or undertaking with any government, government agency or Relevant body listed below in relation to involvement in regulatory reform or policy consultation (including but not limited to work done under commercial engagements, pro bono, low bono or secondment arrangements) without prior approval of the relevant Business Risk Partner and Chief Strategy, Risk and Reputation Officer. ...

PwC personnel are required to inform the Head of Regulatory Affairs of any confidentiality agreement or undertaking they enter into with any government, government agency or Relevant body in relation to involvement in regulatory reform or policy consultation.”*

3.2 Confidentiality Agreement Register

The Head of Regulatory Affairs has established and maintained a central register of relevant confidentiality arrangements, in accordance with PwC Australian Policy *“Confidentiality agreements with clients, prospective clients or third parties”* entered into with relevant PwC partners and staff*. The Head of Regulatory Affairs has taken all reasonable steps to ensure the register contains all current confidentiality agreements and undertakings entered into by PwC AU personnel in relation to consultation on regulatory reform or policy consultation with government agencies, regulators and professional bodies. Additionally, the process was refreshed at the beginning of July.

3.3 Steps taken to maintain the register

Steps that have been taken to maintain and to refresh the register have included:

- Under the revised confidentiality agreement policy, approval is required prior to PwC AU personnel entering into any confidentiality agreements in relation to involvement in regulator reform or policy consultation with government agencies, regulators and professional bodies. Since this policy has been established, there have been no such approvals requested or approved.
- The Business Risk Partners in each Line of Service have confirmed that they have communicated the revised confidentiality policy to their partners and staff, and that the confidentiality register has been updated to include all relevant confidentiality agreements of which they are aware.
- All partners and staff were required to provide a confirmation as part of the firm's Annual Compliance Confirmation in June 2023 that they have not entered into a relevant confidentiality agreement without prior approval.
- A current periodic refresh has been undertaken with regard to the ongoing maintenance of the confidentiality register, including:
 - Reconfirmed with, and obtained from, relevant partners and staff any confidentiality agreements that have been signed – specifically:
 - stand-alone agreements (not part of another engagement or statement of work,
 - that are entered into with government bodies or for work undertaken with a government body, and
 - are active and are currently applicable.
 - Reconciled confidentiality agreements and external appointments indicated in PwC Annual Compliance Confirmations received from relevant partners and staff with those reflected in the register.
 - Cross-referenced PwC external government appointments approved for relevant partners and staff and confirmed whether confidentiality agreements were applicable and reflected in the register.
 - Reviewed available public information regarding ATO advisory committees as to participation by relevant partners or staff, and confirmed whether confidentiality agreements were applicable and reflected in the register.

4

Reporting

“report every 6 months to the Executive...”

4.1 Reporting

We note that whilst the TPB Order refers to the reporting being undertaken by the Chief Strategy, Risk and Reputation Officer (or delegate), this role was restructured on 15 May 2023 and is now titled the **Chief Risk and Ethics Leader**.

The Chief Risk & Ethics Leader as at 29 June 2023 (Tony O'Malley), provided a report addressing these matters to the Executive Board on 29 June 2023.

On 4 July 2023, PwC AU announced that:

- Tony O'Malley had provided notice of his intention to retire from the PwC AU partnership
- Jan McCahey had been appointed to the role of Chief Risk & Ethics Leader.

This report is provided to the TPB by Jan McCahey in her capacity as Chief Risk & Ethics Leader.

5

Compliance Statement

“provide a compliance statement to the Board every 6 months...”

5.1 Compliance Statement for purposes of Item 4 of TPB Order

On the basis of the information contained in sections 1 to 4 of this Report, it is considered that PwC AU complies with items 1, 2 and 3 of the TPB Order, and this Report forms PwC AU's Compliance Statement as required by item 4 of the TPB Order.

For completeness, we note that the TPB confirmed that this Compliance Statement was due within 14 days of the end of the six-month period ending 30 June 2023.

Appendices

Appendix A	TPB Order dated 25 November 2022	14
Appendix B	Copy of eLearn Training Material	18

TPB Order dated
25 November 2022

A

TAX AGENT SERVICES ACT 2009

ORDER UNDER SECTION 30-20

To: The Partners
PricewaterhouseCoopers Australia
PO Box 2650
Sydney NSW 2001

Pursuant to section 30-20 of the *Tax Agent Services Act 2009* (TASA), the Tax Practitioners Board (the Board) orders PricewaterhouseCoopers Australia (registration number 16226000), to take the following actions during the 2023 and 2024 calendar years:

1. ensure that appropriate training is provided on a 6-monthly basis to relevant partners and staff* on compliance with s 30-10(5) of the Code of Professional Conduct in the TASA and PwC's policies on conflicts of interest, particularly including PwC's policy for managing conflicts of interest arising from engagements of partners and staff by Treasury, the Board of Taxation and/or other Australian Government agencies;
2. ensure that the Head of Regulatory Affairs (or their delegate) takes all reasonable steps to maintain the central register of confidentiality agreements, including regular status-checks with relevant partners and staff* on the register;
3. ensure that the Chief Strategy, Risk and Reputation Officer (or their delegate) report every 6 months to the Executive on the management of the participation of relevant partners and staff* in confidential tax consultations with Treasury, the Board of Taxation and/or other Australian Government agencies; and
4. provide a compliance statement to the Tax Practitioners Board every 6 months from the date of this Order confirming:
 - a. that PwC has complied with the requirements detailed in (1), (2) and (3) above;
 - b. the names of all relevant partners and staff who attended the training outlined in (1) above; and
 - c. the content of the training provided under (1) above.

*"Relevant partners and staff" is a defined term and means:

- All partners and staff engaged in PwC's tax practice who are registered tax agents;
- All other partners engaged in PwC's tax practice; and
- All other PwC staff for whom the training is considered, by PwC, to be relevant.

Dated this day 25 November 2022

Yours sincerely,

Michael O'Neill
Secretary and CEO
Tax Practitioners Board

Sanctions For Failure To Comply With This Order

A failure to comply with this order under section 30-20 of the TASA may be a breach of subsection 30-10(14) of the Code of Professional Conduct (Code) in the TASA.

If, after conducting an investigation under Subdivision 60-E of the TASA, the Board decides that a breach of the Code in the TASA has been established, the Board may do one or more of the following under section 30-15 of the TASA:

- give the agent a written caution;
- give the agent an order under section 30-20;
- suspend the agent's registration under section 30-25 of the TASA;
- terminate the agent's registration under section 30-30 of the TASA;
- terminate the agent's registration under Part 4/Division 40 of the TASA without commencing an investigation re fitness and propriety.

A failure to comply with this order under section 30-20 of the TASA may also reflect adversely on the fitness and propriety of the individual partners, company partner directors and supervising practitioners.

Copy of eLearn
Training Material

B

Tax Agent Code of Conduct and regulatory consultation processes

Navigation of the course

Follow on-screen directions and use the > and < arrows to advance or back out of pages within a module.

Scroll down on each screen to ensure all screen content has been viewed.

All interactions in the course must be selected in order to advance.

Links within the course displayed **like this** will launch a popup with further information, when selected.

There is a quiz at the end of the course for you to test your knowledge.

Select Home to return to the main screen.

Select Exit on the upper right of the screen to exit the course at any time.

Select the right arrow to continue.

Tax agent code of conduct and regulatory consultations

This training will work through your obligations under the Tax Practitioners Code of Conduct and PwC's internal policies on conflicts of interest and confidential information. We will also work through managing conflicts of interest when working with Government.

This training will take approximately 30 minutes.

There is a short quiz at the end of this course.

Select the right arrow to continue.

A message from our Tax Leader, Chris Morris

Play the video to find out more.

Hi Team, welcome to this eLearn.

The provision of tax agent services in Australia is a regulated industry.

The license to operate our tax business is subject to our satisfaction of certain professional standards and obligations. These obligations must be met by PwC and all of our tax agent partners.

While PwC has strong governance processes and controls in place, it is also important that each of us has direct awareness of the Tax Agent Services Act and Code of Conduct.

This training will provide you with that awareness.

We will work through your obligations regarding conflicts of interest and confidentiality.

We will then focus on how to manage potential conflicts of interest if you are involved in confidential consultations with government or regulators.

As Tax Leader, I am committed to ensuring that our firm, and all our tax professionals, comply with the Tax Agent Code of Conduct.

Thank you for your time undertaking this elearn. If you have any questions please contact R&Q.

Confirm

By selecting the 'I confirm' button below, I certify that I will complete this module on my own and that no one else will take any portion of this training on my behalf.

Topics covered in this eLearn

Click the first topic to get started.

Topics covered in this eLearn

Click the first topic to get started.

- Registered tax agents ✓
- Code of Professional Conduct ✓
- Managing conflicts of interest ✓
- Confidential information ✓
- Tax confidential consultations ✓
- Quiz ✓



Registered tax agents

Code of Professional Conduct

Managing conflicts of interest

Confidential information

Tax confidential consultations

Quiz

1. Registered tax agents

- Anyone who provides **tax agent services** for a fee or other reward must be registered with the Tax Practitioners Board. We will refer to the Tax Practitioners Board as the TPB in this eLearn.
- As PwC provides tax agent services to its clients, it is a registered tax agent (partnership).
- To become a registered tax agent, a partnership must satisfy a number of requirements. One of the key requirements is that the partnership has a sufficient

number of **registered individual tax agents** to provide tax agent services to a competent standard and to carry out supervisory arrangements.

Tax agent service

A tax agent service is defined as:

Ascertaining or advising about liabilities, obligations or entitlements of your client under a taxation law.

Representing your client in their dealings with the Commissioner of Taxation (Commissioner) in relation to a taxation law.

Where it is reasonable to expect the entity will rely on the service to satisfy liabilities or obligations, or to claim entitlements under a taxation law.

The TPB provides a large list of examples: <https://www.tpb.gov.au/tax-agent-services>

Select the right arrow to continue.

Tax Agent Services Act 2009 (TASA)

- The Tax Agent Services Act 2009 (TASA) is the legislation that governs the registration and regulation of tax agents.
- The object of the TASA is to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. The Code of Professional Conduct sits within the TASA and was created to assist in achieving this objective. All registered tax agents (partnership or individuals) must comply with the requirements in the TASA and the tax agents' Code of Professional Conduct.
- The TASA requires that a tax agent must satisfy the following to maintain their registration.

Select each heading below to learn more, then select the right arrow to go back to the menu.

Continuing Professional Education

All Tax Agents are required to complete [Continuing Professional Education \(CPE\)](#). Complying with CPE requirements will assist you to maintain knowledge and skills relevant to the tax agent services. You must complete 120 hours over a 3 year registration period.

If you are a member of a recognised professional association (e.g. CAANZ or the Tax Institute) your compliance with that association's CPE requirements will be accepted as meeting the TPB's CPE requirements, subject to the CPE activities:

- being relevant to the tax agent services you provide;
- being provided by persons or organisations with suitable qualifications and/or practical experience in the subject area; and
- meeting your minimum amount of CPE hours as mentioned above.

Fit and proper person

One key requirement for PwC's partnership registration is that **each partner of the firm** is a **fit and proper** person. If a partner of the firm is not a fit and proper person, the firm is not eligible to hold a partnership registration.

In deciding whether an individual is a fit and proper person, the TPB considers:

1. whether the individual is of **good fame, integrity and character**
2. whether any of the following events have occurred during the previous 5 years:
 - (i) the individual has been convicted of a **serious taxation offence** or has been convicted of an offence involving **fraud or dishonesty**;
 - (ii) the individual has been penalised for being a **promoter of a tax exploitation scheme**;
 - (iii) the individual has been penalised for **implementing a scheme** that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling;
 - (iv) the individual has had the status of an **undischarged bankrupt**; and
 - (v) the individual has been sentenced to a term of imprisonment, or served a **term of imprisonment** in whole or in part.

Code of Professional Conduct

The Code of Professional Conduct regulates the personal and professional conduct of a registered tax agent. We will delve further into the Code of Professional Conduct in the next section.

It is important to know that tax agents can face an investigation and disciplinary consequences for failure to comply with any of the above. The outcome of this may be a written caution, an order, or a suspension or termination of registration.

2. Code of Professional Conduct

The [Code of Professional Conduct](#) sets out the professional and ethical standards that registered tax practitioners are required to comply with. It outlines the duties that registered tax practitioners owe to their clients, the TPB and other registered tax practitioners. The Code of Professional Conduct is legislated and sits in Division 30 of the TASA.

We will refer to the Code of Professional Conduct as “the Code” for the remainder of this eLearn.

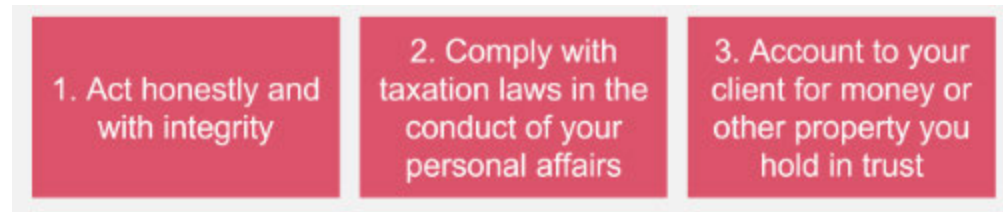
The Code sets out principles under 5 separate categories.

Select each category to learn more and then the right arrow to continue.



1. Honesty and Integrity

The principle: Honesty and Integrity requires tax agents to:



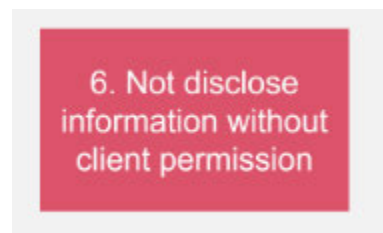
2. Independence

The principle: Independence requires tax agents to:



3. Confidentiality

The principle: Confidentiality requires tax agents to:



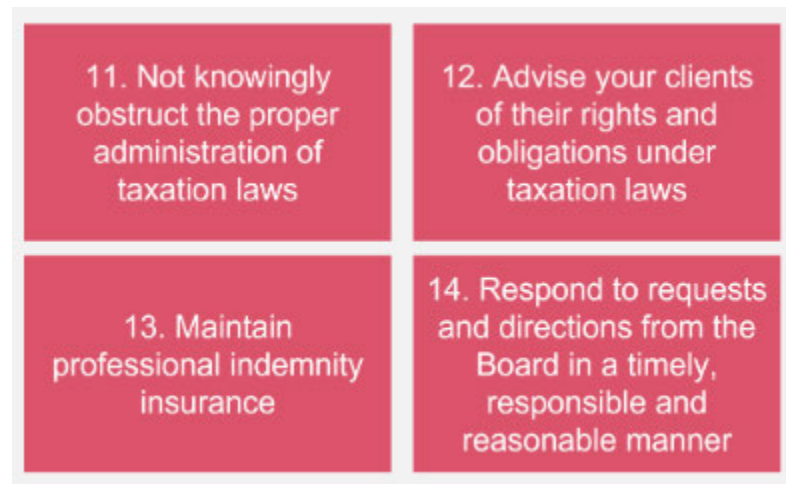
4. Competence

The principle: Competence requires tax agents to:



5. Other

The principle: Other requires tax agents to:



Code of Professional Conduct (Contd.)

You can also learn more about the Code in [TPB\(EP\) 01/2010 Code of Professional Conduct](#).

In the next few sections we will focus on the following principles.

Select the right arrow to go back to the menu.



3. Managing conflicts of interest

Item 5 of the Code states that you must have in place **adequate arrangements** for the management of **conflicts of interest** that **may arise** in relation to the activities that you undertake in the capacity of a registered tax agent (section 30-10(5) TASA).

Let's explore this a little further.

Select each hotspot to learn about each principle and then select the right arrow to continue.

What is a conflict of interest?



What are the adequate arrangements
for managing a conflict?



What is a conflict of interest?

A conflict of interest is where a registered agent has a personal interest or has a duty to another person which is in conflict with the duty owed to the client.

A conflict of interest may be an actual or potential conflict. Also, it can arise before the registered agent accepts an engagement or at any time during the engagement. A registered agent has a duty to manage actual and potential conflicts of interest.

[TPB Information Sheet TPB\(I\) 19/2014](#) paragraph 7 and 8.

The Code does not prohibit you from having conflicts of interest. However, you must have adequate arrangements in place to manage any conflicts of interest that may arise relating to the activities that you undertake as a registered tax practitioner.

What are the adequate arrangements for managing a conflict?

Registered agents must have adequate arrangements to identify and manage conflicts of interest that arise or may arise. Whether conflict management arrangements are sufficiently adequate will be a question of fact having regard to the particular circumstances of the matter in question.

A number of mechanisms could be used to manage a conflict and it will be up to a registered agent to exercise their professional judgement to determine the most appropriate method for managing a particular conflict of interest.

Three mechanisms that registered agents may use to manage conflicts of interest are:

- Disclosing conflicts of interest
- Controlling conflicts of interest

- Avoiding conflicts of interest

[TPB Information Sheet TPB\(I\) 19/2014](#)

Mechanisms for managing conflicts of interest

Let's explore the mechanisms that registered Tax Agents can use to manage conflicts of interest.

Select each heading below to learn more and then select the right arrow to continue.

Disclosing conflicts of interest

You should sufficiently disclose conflicts of interest to your clients in a manner which will enable them to make an informed decision and give them reasonable time to assess how the conflict may affect the services being provided and about its management.

Controlling conflicts of interest

This involves identifying, assessing, evaluating, deciding and implementing an appropriate response to manage conflicts of interest. For example, depending on the particular circumstances, you may be able to control a conflict of interest by isolating the persons in your practice who will provide the relevant advice from those who are privy to the material information which gives rise to the conflict.

Avoiding conflicts of interest

You may decide to decline to act for the client in situations where you will be unable to manage the conflicts of interest regardless of arrangements put in place.

How does this work at PwC?

- Identification and management of potential client conflicts is embedded in our client / engagement acceptance processes and coordinated and overseen by our central Conflicts team. You can learn more by visiting the **Conflicts of Interest** page.
- PwC requires you to complete regular training, which includes content on managing conflicts of interest and maintaining confidentiality.
- One type of conflict of interest we want to focus on in this elearn is where we have been asked to participate in a tax confidential consultation with government or a regulator. These types of consultations mean that we are privy to **confidential information**. Before we look at confidential consultations, let's explore the rules on confidential information.

4. Confidential information

Item 6 of the Code states that unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission (section 30-10(5) TASA).

PwC's Network Risk Management Policy 4 **Confidentiality and Data Protection** governs your obligations on how to handle personal and confidential information properly. This is to protect PwC and our clients and also to comply with applicable data protection rules and regulations. In summary, the policy states that confidential information as well as personal data should be kept confidential and handled properly.

Select the heading below to learn more and then select the right arrow to continue.

What is confidential information?

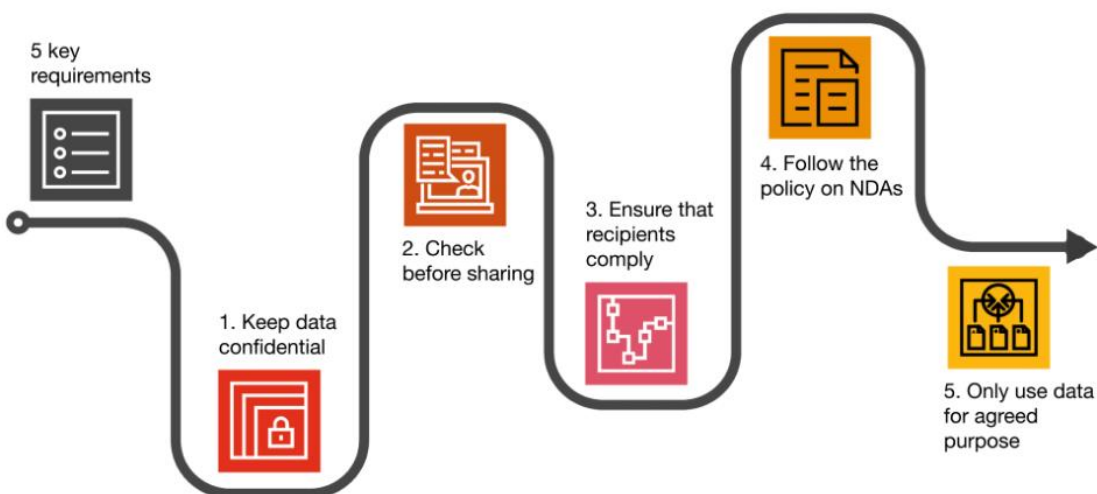
'Information' refers to knowledge you have acquired or derived about a client, whether directly or indirectly. It is only necessary that the information relates to the affairs of a client. Further, the information does not have to necessarily belong to the client or have been directly provided by the client to you.

[TPB Information Sheet TPB\(I\) 21/2014](#)

Confidentiality and data protection

The Confidentiality and Data Protection Policy also sets out 5 key requirements on how to keep information confidential. All partners and staff should be familiar with these requirements. More detail on each of these requirements is within the Confidentiality and Data Protection Policy.

However, we wanted to expand on "Follow the policy on NDA's".



Obligations of confidentiality are covered in PwC's standard **Terms of Business**.

Clients may ask us to sign confidentiality agreements (non-disclosure agreements). PwC can enter into a confidentiality agreement if the terms are not unnecessarily onerous and fall within the parameters of PwC's policies. The **Confidentiality Agreements with Clients, Prospective Clients or Third Parties Policy** outlines what you should consider when you are negotiating a confidentiality agreement.

Select the heading below to learn more and then select the right arrow to continue.

What to do if you have been asked to sign a confidentiality agreement

You should ensure that any confidentiality agreement you agree with the client are within PwC's risk profile.

The firm's [Confidentiality Agreement Guidance](#) allows you to respond to a request by a client or other party to sign a confidentiality agreement.

If the client has changes or wishes to use their own confidentiality agreement (i.e. not the PwC template), consult this guidance and, if the agreed terms are consistent with it, the engagement leader can sign the confidentiality agreement without consultation with R&Q.

If there are any departures from this guidance you must consult with R&Q in the first instance, who may refer the issue to OGC if required.

If we have signed a confidentiality agreement we must be aware of our confidentiality obligations under PwC's policies, the TPB's Code of Professional Conduct and the terms of the confidentiality agreement.

Finally, confidential information is not limited to client information. It may also extend to any information you receive when you are working on a tax confidential consultation with government or a regulator where you have entered into a confidentiality agreement.

5. Tax confidential consultations

- A **tax confidential consultation** is where PwC has been asked to contribute ideas or make recommendations to government, government agencies or regulators (e.g. ATO / Board of Taxation / Treasury) as they develop policy positions or undertake regulatory reform.
- PwC's contributions may, on a case-by-case basis, analyse the technical and / or broader merits of proposals and in doing so we may identify inherent weaknesses and biases for consideration by a government, government agency

or regulator.

- These consultations may be performed under normal commercial engagements, pro bono / low bono or on secondment.
- You may also be asked to sign a confidentiality agreement when working on a tax confidential consultation.

Conflicts of interest and confidential information

- Participation in a tax confidential consultation with government or a regulator means that the participant will receive and have access to confidential information.
- The participant must at all times observe their duty of confidentiality to the relevant government department or regulator. Different consultations may involve different obligations.
- The confidential information may be relevant to the commercial or strategic interests of one or more of our clients but still may not be disclosed to the client and, in many cases, cannot be disclosed even to fellow colleagues.

In some circumstances, disclosure of confidential information can constitute a criminal offence. If you are not sure about the scope or content of a confidentiality obligation, please seek advice from the Office of General Counsel and FA Risk & Quality.

Confidentiality when working with government

- PwC's **Confidentiality Agreements with Clients, Prospective Clients or Third Parties Policy** covers confidentiality when working with government.
- In summary, this policy helps manage the conflicts of interest that may arise from participation in confidential consultations. All tax partners and staff at PwC are expected to be familiar with this policy.

Select the hotspot to learn more and then select the right arrow to continue.

[Click here to learn more about this policy](#)

- **Approval required:** Approval is required from FA's Business Risk Partner and PwC's Chief Strategy, Risk and Reputation Officer before entering into a confidentiality agreement in relation to consultation on regulatory reform or public policy with a government department, regulatory body, professional standards body, etc where the arrangement is a pro bono / low bono or a secondment.
- **Register of undertakings:** A central register is maintained by the Head of Regulatory Affairs to record confidentiality obligations which have been agreed by partners and staff in relation to a tax confidential consultation.

What does this mean for you?

- **Approval will NOT be given** to partners or staff to enter into a confidentiality obligation in relation to a tax confidential consultation where that individual has:
 - a client-facing role **and**
 - the subject of the consultation could be relevant to their client (e.g, the subject of the consultation could impact the client's tax position).
- **Seek clarification UPFRONT** if you are in any doubt whether a conversation or correspondence with government or a regulator is confidential, if it is confirmed that the correspondence:
 - **is NOT confidential** - make a written record of this confirmation.
 - **IS confidential** - you should seek details, in writing, as to the terms of confidentiality.
- If you are involved as a member of a **technical working or advisory group** to an industry or professional body (e.g. CAANZ or TIA), discussions in relation to regulatory reform or public policy in these forums will generally not be confidential and not covered by the [Confidentiality Agreements with Clients, Prospective Clients or Third Parties Policy](#). However, if as part of your consultation with such a body has confidentiality obligations, the policy will have application.
- The **Tax Markets and Knowledge team is the central point of contact** to reach out to regarding participation in consultations with Treasury, the ATO or the Board of Taxation. If you are contacted about a consultation, please refer it to the Tax Markets and Knowledge team.

Information protection and quarantine for relevant confidential consultations

- If you are involved in a relevant confidential tax consultation (having received the required approvals under the policy), you may not contribute to external or internal discussions or calls on the subject matter of the consultation (unless that contribution relates only to information in the public domain).
- Confidential information received in the course of consultations must be kept confidential.
- To further protect confidential information, you should:
 1. Implement **ethical walls** to quarantine the confidential information.
 2. Ensure there is **secure storage of electronic and hard copy material** containing confidential information.

For more information, please see PwC's policies on [data protection](#) and [conflicts of interest](#).

Speak up

- Breaches of requirements to maintain confidentiality or to manage conflicts of interest can be difficult to detect.
- It is important that we all do our part to speak up and raise issues where we see them.
- As you are all aware, a key component of the PwC Code of Conduct is the “speak up” policy.
- Additionally, PwC has a [Whistleblower Policy](#).

Available resources

- There are a wealth of resources available to you at the firm.
 - PwC policies are accessible via the [FA R&Q Hub](#).
 - PwC training modules are accessible via [Vantage](#).

- More information on the Code and other tax agent requirements are available on the [TPB's website](#).
- If you have any questions, please reach out to:
 - the R&Q team
 - the Head of Regulatory Affairs
 - the Office of General Counsel (OGC)
 - your Business leader

6. Quiz

Knowledge Check

Which of the following is not a requirement a tax agent must satisfy in order to maintain their registration?

Select the correct answer, then click confirm.

- a. Continuing professional education
- b. Code of Professional Conduct
- c. Fit and Proper Person
- d. Second Partner on High Risk Engagements

Incorrect.

All registered tax agents must adhere to the Code of Professional Conduct which regulates the personal and professional conduct of a registered tax agent.

Select the reset button to try again.

Incorrect.

All registered tax agents must be a fit and proper person. This includes being of good fame, integrity and character, not being convicted or penalised for a tax offence or fraud or dishonesty, not being an undischarged bankrupt and not having been sentenced or served a term of imprisonment.

Select the reset button to try again.

Incorrect.

All registered tax agents must complete 120 hours over a 3 year registration period.

Select the reset button to try again.

Correct.

This is not a requirement under the TASA for a tax agent maintaining their tax agent registration. However, PwC's Higher Risk Engagement Policy does have rules in place for Second Partner involvement on high risk tax engagements.

Knowledge Check

In the event that PwC was found to breach the Tax Practitioners Board Code of Professional Conduct, what is the potential effect on PwC?

Select the correct answer, then click confirm.

- a. Reputational risk with clients, Government and regulators
- b. Termination of PwC's Tax Agent registration
- c. Potential monetary fines and / or disciplinary sanctions / orders
- d. All of the above

Incorrect.

Whilst there is a real risk that PwC could lose its Tax Agent registration, there are also other potential impacts to PwC from a breach of the Tax Practitioners Board Code of Professional Conduct.

Select the reset button to try again.

Incorrect.

Whilst there is a real risk that PwC could face monetary fines and/or disciplinary sanctions/orders, there are also other potential impacts to PwC from a breach of the Tax Practitioners Board Code of Professional Conduct.

Select the reset button to try again.

Incorrect.

Whilst PwC's reputation would likely be affected, there are also other potential impacts to PwC from a breach of the Tax Practitioners Board Code of Professional Conduct.

Select the reset button to try again.

Correct.

All of these can apply if PwC was found to breach the Code of Professional Conduct.

Knowledge Check

A conflict of interest has been identified when completing your engagement acceptance questionnaire. Which of the following is an example of managing this conflict of interest per the Tax Agent Services Act 2009 (TASA)?

Select the correct answer, then click confirm.

- a. Disclosing the conflict of interest to your client before you provide them the final deliverable
- b. Do nothing as different teams are working on the separate engagements
- c. Ensure the teams are working on different floors for the duration of the engagement in accordance with instructions from the PwC conflicts team

Incorrect.

TASA requires you to control conflicts of interest.

Select the reset button to try again.

Incorrect.

TASA requires you to disclose to your client and give them reasonable time to assess how the conflict may affect the services being provided and about its management. In this example, the conflict should have been disclosed when you were engaging with the client.

Select the reset button to try again.

Correct.

TASA requires you to control conflicts of interest. Setting up ethical walls is one way to control conflicts of interest.

Knowledge Check

You have been asked to sign a confidentiality agreement by a client. The template agreement has been provided by the **client** (i.e. it is not a PwC template). What do you do?

Select the correct answer, then click confirm.

- a. Sign the agreement
- b. Decline the engagement as PwC's standard Terms of Business cover our obligations of confidentiality
- c. Follow PwC's policy and procedures before entering into the confidentiality agreement

Incorrect.

PwC can enter into a confidentiality agreement if the terms are not unnecessarily onerous and fall within the parameters of PwC's policies and procedures.

Select the reset button to try again.

Incorrect.

PwC's policies and procedures require you to review the confidentiality agreement to ensure it fits within PwC's risk profile.

Select the reset button to try again.

Correct.

You should always consult our policies and procedures before signing a confidentiality agreement. If it is a client supplied confidentiality agreement you should escalate to R&Q/OGC once you have applied the Confidentiality Agreement Guidance. This approach ensures the terms are not unnecessarily onerous and fall within the parameters of PwC's policies.

Knowledge Check

Which of the following is an example of a tax confidential consultation?

Select the correct answer, then click confirm.

- a. A PwC Director has been asked to participate in a technical working group of CAANZ. The minutes of the working group are published on the CAANZ website after each meeting
- b. A PwC Partner has been asked by Treasury to make recommendations for them to consider in regards to a proposed tax reform. This will be undertaken on a pro bono basis and the PwC partner has been asked to sign a confidentiality agreement
- c. A PwC Partner has had an informal phone conversation with the ATO regarding a particular tax technical issue affecting a number of clients. The Partner does not mention any client names on the call

Correct.

A tax confidential consultation is where PwC has been asked to contribute ideas or make recommendations to government, government agencies or regulators to consider as they develop policy positions or undertake regulatory reform. These consultations may be performed under normal commercial engagements, pro bono / low bono or on secondment. You may also be asked to sign a confidentiality agreement when working on a tax confidential consultation.

Incorrect.

This is not a tax confidential consultation as there are no conditions of confidentiality.

Select the reset button to try again.

Incorrect.

This is not a tax confidential consultation as there are no conditions of confidentiality and the outcomes of discussions are in the public domain.

Select the reset button to try again.

Knowledge Check

Who is approval required from before entering into a confidentiality agreement with government, a government agency or regulator on a consultation on regulatory reform or public policy?

Select the correct answer, then click confirm.

- a. FA's Business Leader
- b. FA's Risk and Quality Leader
- c. FA's Business Risk Partner and PwC's Chief Strategy, Risk and Reputation Officer

Incorrect.

The [Confidentiality Agreements with Clients, Prospective Clients or Third Parties Policy](#) sets out the approval process.

Select the reset button to try again.

Incorrect.

The [Confidentiality Agreements with Clients, Prospective Clients or Third Parties Policy](#) sets out the approval process.

Select the reset button to try again.

Correct.

Ultimate approval is from FA's Business Risk Partner and PwC's Chief Strategy, Risk and Reputation Officer as per the **Confidentiality Agreements with Clients, Prospective Clients or Third Parties Policy**. However, you should reach out to the Tax Markets and Knowledge team or R&Q in the first instance and they will work you through the approval process.

Knowledge Check

You have been asked by the ATO to consult on a confidential basis on the regulatory reform of an existing tax law. If these reforms were to come into effect, they would impact a number of clients you work on. Will approval be granted to work with the ATO?

Select the correct answer, then click confirm.

- a. Yes
- b. No

Correct.

Approval will NOT be given for a partner or staff member to enter into a confidentiality obligation in relation to a tax confidential consultation where that partner has a client-facing role and where the subject of the consultation could be relevant to their clients

(for example, where the subject of the consultation could have an impact on the client's tax position).

Incorrect.

Approval will NOT be given for a partner or staff member to enter into a confidentiality obligation in relation to a tax confidential consultation where that partner has a client-facing role and where the subject of the consultation could be relevant to their clients (for example, where the subject of the consultation could have an impact on the client's tax position).

Select the reset button to try again.

Thank you!

You have now completed the training on conflicts of interest, confidentiality and tax confidential consultations. If you have any questions following completion, please contact R&Q.

Select Exit to close this course.



Appendix F: Partner pay details (Question 20)



Appendix G: Bruce Quigley report (Question 26)

PwC: Design Effectiveness Review of Tax Governance and Internal Control Framework

March 2021

Bruce Quigley

Table of Contents

Table of Contents	2
Terms of Reference	3
Review Methodology.....	4
Testing Control Effectiveness: ATO	4
Document review and Interviews	5
Key Findings and Observations	6
Recommendations.....	7
Large Market Tax Adviser Principles	7
TLS QMS Global Reporting Process.....	8
Overview	8
FY20 TLS QMS Requirements.....	8
Requirement 1: Leadership Responsibility.....	9
Requirement 4: Accountability Framework	10
Requirement 5: Purpose, Values, Tax Policy Panel & Global Tax Code of Conduct	11
Requirement 7: Operational Risk Management and Higher Risk Engagements	15
Requirement 8: Training	15
Requirement 10: Higher Risk Engagements	16
Requirement 11: Engagement Completion Reviews (ECRs)	17
Requirement 12: Quality Assurance Reviews	18
Interviews	19
PwC interviews	19
ATO Interview.....	21
APPENDIX I.....	22
APPENDIX II.....	32
Interview Schedule	32
APPENDIX III.....	33
Document Listing	33

Terms of Reference

Undertake a review of PwC's Tax Governance and Internal Control Framework (the Control Framework) to determine whether it meets the following principles and standards contained in the draft 'Large Market Tax Adviser Principles' (the draft Adviser Principles)¹:

- Acting with integrity
- Providing Advice to clients which meets or exceeds the "Reasonably Arguable" standard
- Having regard to the wider risks and circumstances relevant to the matter when providing Advice
- Working honestly and openly with the Commissioner
- Having appropriate quality control processes in place which includes regularly testing those processes
- Meeting their statutory and regulatory obligations
- Not engaging in activities which would constitute a breach of the promoter penalty provisions.

Assess whether the Control Framework includes suitable policies and controls covering the following key elements:

- Adoption and adherence to firm codes of conduct and related probity matters
- Client acceptance
- Engagement acceptance
- Periodic review
- Team competency
- Engagement management and delivery
- Opinion levels
- Dealing with higher risk/higher significance engagements
- The framework should be supported by relevant training programs.

¹ The draft Adviser Principles were drafted by the Big 4 Accounting firms and Greenwood & Freehills in September 2019 (Appendix 1).

Review Methodology

Testing Control Effectiveness: ATO

The review methodology drew on the Australian Taxation Office's (ATO) website guidance on 'Testing Control Design Effectiveness' in the context of the tax governance framework of a large company (tax control framework) recognising that there are different purposes and application between the ATO's guidance and PwC's Control Framework.

The ATO guidance on testing and evaluating a large organisation's tax control framework provides for two components:

- Testing control design effectiveness; and
- Testing the operational effectiveness of a control.

The most common method for testing control design effectiveness according to the ATO guidance is to perform a walkthrough of the control processes, which includes the following actions:

- Conducting an inquiry of appropriate personnel
- Observing the company's operations
- Inspecting relevant documentation and addressing the following objectives
 - understanding the flow of transactions including how those transactions are initiated, authorised, processed, recorded and treated
 - identifying the points within the process at which a potential error is likely to occur
 - identifying the controls that have been implemented to address these potential errors.

The review of PwC's Control Framework included all of the above actions.

If the design effectiveness of a control is adequate and is expected to reduce the identified tax risk, the control should then be tested for operational effectiveness to determine whether controls have operated effectively. The ATO considers that a combination of methods can be used to determine control effectiveness:

- Re-performance provides the most evidence in determining operational effectiveness of a control
- Examination/inspection tests provide the second-most amount of evidence
- Observation provides the third-most amount of evidence
- Inquiry provides the least amount of evidence (inquiry alone does not provide sufficient evidence to support a conclusion about the effectiveness of a control).

The review of PwC's Control Framework included examination/inspection, observation and inquiry, however given the nature of the review, it did not include re-performance.

Document review and Interviews

Numerous Global and Australian PwC (PwCA) policies, guidelines and other materials were reviewed, in particular documents provided for the PwC Global Tax Governance Review in November 2020. These consisted of:

- Documents prepared for PwC reporting purposes in relation to the Quality Management System (QMS) for the Tax and Legal Services (TLS) business for FY20; and
- Documents prepared to demonstrate operational risk management and operational effectiveness of the TLS governance process, in accordance with the draft Adviser Principles.²

Interviews were conducted with a sample of PwC partners and staff as well as Second Commissioner Jeremy Hirschhorn to get the ATO perspective. No clients or other stakeholders were interviewed. A number of matters (8) that had been considered by PwC's Tax Policy Panel (TPP) were reviewed and discussed with two of the Chairs of the TPP. There was no opportunity to participate or observe any TPP calls or meetings.

The above document reviews, examination and observation, together with interview responses formed the basis for the assessment of PwCA's Control Framework.

² Appendix III contains a list of documents made available by PwC for this review.

Key Findings and Observations

The draft Adviser Principles provide sound guidance and best practice for large market tax advisers providing complex tax advice and need to be finalised. PwCA has developed an effective Control Framework which is consistent with the principles and standards contained in the draft Adviser Principles.

There is a high correlation between the draft Adviser Principles and the PwC Global Tax Code of Conduct (GTCOC). The standards and principles contained within the GTCOC are regularly communicated within the firm and reinforced in a number of ways with the Australian Financial Advisory (FA) Risk & Quality (R&Q) team³ reporting on compliance annually.

PwCA TLS Leadership appropriately assumes responsibility for TLS Lines of Service (LoS) risk management, quality, tax policy, reputation and regulation. There is a strong focus on values, quality, accountability and risk. Recent structural changes have elevated the focus of risk management and quality within the firm. A comprehensive suite of training and development activities underpins the Executive Board's (EB) focus on delivering quality service.

The comprehensive Enterprise Risk Management (ERM) Framework approved (and reviewed annually) by the Governance Board Risk Committee reflects the firm's commitment to managing risk and how risk management activities are embedded in business practices, systems, processes and behaviours, at all levels of the firm.

It is considered that FA TLS has the appropriate governance and internal control framework to address the key elements of operational risk management. There is a robust QMS in place consistent with PwC Global requirements. There are well documented policies and procedures in the Control Framework around key elements such as client acceptance, engagement acceptance and delivery. Upfront systems have been developed to help ensure that these policies and procedures are followed. They are also a focus of regular ECRs and QARs with outcomes of those reviews linked to the partner performance system. Recently introduced and proposed enhancements to these systems, and more frequent reviews will further strengthen controls in these areas.

A Higher Risk Engagement (HRE) policy forms a key element of the R&Q policy for the Australian tax and private client businesses. There is a fully functional Tax Policy Panel (TPP) that reviews high risk advice (per defined triggers) as part of a broader HRE strategy and Complex Tax Advice Protocols/requirements which may also require 2nd partner reviews. Although the TPP has been operating since 2016, there has been no independent evaluation of its effectiveness.

The ATO has been concerned about certain PwCA behaviour in the past around such things as providing aggressive advice, clients being 'pushed' into legal engagements, the lack of discipline around these engagements, and the perception that 'commercial purpose' was

³ The FA R&Q team is comprised of highly experienced, specialist resources.

manufactured by certain advisers. The Control Framework addresses these concerns in a number of ways including the HRE and TPP policies and processes, and the '10 requirements' when providing complex tax advice (e.g., positive advice will only be at a minimum 'reasonably arguable position', material facts and assumptions must be confirmed in writing, clients must not be required or encouraged to obtain legal advice from the firm, advice must be 'holistic', advice will recommend engagement with the ATO in certain circumstances, etc).

Recommendations

It is recommended that:

- The Business Risk Partner (BRP) commence discussions with the other professional firms and the ATO with the view of finalising the draft Adviser Principles by 30 June 2021
- The R&Q team, as part of the reassessment of the application of the R&Q Metrics process in FY21, review the appropriateness of the current criteria in assessing a person as either 'Exceeding expectations' or 'Not meeting expectations'
- As a part of reviewing the adequacy of the TPP triggers, the R&Q team and the BRP consider whether there are specific risks to one or other of the Tax or Private Client businesses only, and the HRE policies amended accordingly
- To provide greater independence (or perception of independence), that the Chair of the TPP re-examine how an external consultant could participate as an observer at a number of TPP calls/meetings during the year as initially proposed
- The BRP and R&Q team engage with the ATO to develop a range of indicators that the ATO considers would assist in assessing the effectiveness of the TPP
- The R&Q team ensures that every partner and business unit is subject to a QAR each year
- The BRP formalise a series of meetings (say every 3 to 6 months) to update Second Commissioner Hirshhorn and other senior ATO officers on the progress that PwC has made, and continues to make, with respect to the Tax Governance and Internal Control Framework.

Large Market Tax Adviser Principles

The Large Market Tax Adviser Principles (the Draft Principles) were drafted by the Big 4 Accounting firms and Greenwood and Freehills (the professional firms) in September 2019 following discussions with the ATO, and Chartered Accountants Australia and New Zealand.

The Draft Principles set out expectations of large market tax advisers, and are relevant to the giving of advice by tax advisers, on which a client is able to rely, which recommends or

supports the implementation of a transaction or arrangement. There is a high correlation between the Principles and the PwC GTCOC (see below).

The Draft Principles provide sound guidance and best practice for large market tax advisers providing complex advice to taxpayers. They remain in draft form and it is stated that it is expected that the wider environment will continue to evolve (e.g., International Ethics Standard Board for Accountants (IESBA), review of the Tax Practitioners Board) and may impact the development and implementation of the Principles. Work on finalising the Principles was also affected by Covid-19 restrictions.

It is recommended that discussions with the ATO and other professional firms be restarted with the view to finalising the Adviser Principles by 30 June 2021. The Government's response to the finalised Review of the Tax Practitioners Board was released in November 2020, and any new standards or other pronouncements of the IESBA (or any other relevant body) can be considered as they occur. Covid-19 restrictions will no doubt remain to some extent for some time, however this should not be used as a reason to delay the finalisation of the Principles.

TLS QMS Global Reporting Process

Overview

The PwC Network Standard for QMS and Risk Standards (the QMS Standard) has the following objectives:

'Member firms shall establish through their lines of service quality and risk management systems and business processes that promote and facilitate the delivery of quality services and enable the firm and its personnel to meet applicable professional standards, regulatory and legal requirements and PwC Network Standards and policies.'

The Global TLS Risk and Quality (R&Q) team provides guidance on the requirements for the development, implementation and monitoring of an appropriate QMS consistent with these objectives. FY20 involved an expansion of the reporting requirements from earlier years with an enhanced focus on evidence supporting compliance with the QMS requirements and demonstrating the effectiveness of the QMS processes and controls. The FY20 TLS QMS contains fourteen requirements, eight of which are most relevant to this review. The Australian FA R&Q Team compiled the reference documentation in consultation with various other teams. All documentation was reviewed by the FA BRP and FA R&Q Leader with the FA Leader approving the QMS reference documentation.

FY20 TLS QMS Requirements

The following TLS QMS requirements are considered to be the **most** relevant for this review:

- Requirement 1: Leadership Responsibility
- Requirement 4: Accountability Framework
- Requirement 5: Purpose, Values, TPP and Global Tax Code of Conduct (GTCOC)
- Requirement 7: Operational Risk Management and higher risk engagements (HREs)
- Requirement 8: Training
- Requirement 10: High Risk Engagements (HREs)
- Requirement 11: Engagement Completion Reviews (ECRs)
- Requirement 12: Quality Assurance Reviews (QARs).

Each of these requirements is discussed below.

Requirement 1: Leadership Responsibility

It is considered that the TLS leadership appropriately assumes ultimate responsibility for TLS LoS risk management, quality, tax policy, reputation and regulation. Senior Management has a strong focus on values, quality, accountability, risk, independence and the drive to manage stakeholder expectations. This is supported by strong communication at all levels, including numerous presentations, webcasts and a 'Tone at the Top' self-assessment initiative for senior leaders to have ongoing discussions with their leadership teams to reinforce expectations.

The BRP is a senior partner responsible for risk management in the FA business and ensuring the risk management and quality frameworks are operating effectively.

Structural changes made in FY20 and FY21 elevated the focus of risk management and quality within the firm:

- With the appointment of the BRP to the FA Leadership Team (FALT)
- With the appointment of an additional risk BRP responsible for the Deals and Infrastructure & Urban Renewal (IUR) businesses to allow the FA BRP to increase focus on R&Q matters for TLS
- Having the FA BRP and R&Q Team report directly to the FA Leader with broken-line reporting to the Chief Risk Officer (CRO)
- With each business (the FA, Assurance and Consulting LoS) having their own responsibility and teams for risk and quality.

One of the responsibilities of the BRP is to foster a risk awareness culture within the FA Business. Risk culture is an important part of the comprehensive Enterprise Risk Management (ERM) Framework approved (and reviewed annually) by the firm's Governance Board Risk Committee. The ERM Framework is aligned with International Standard ISO 31000:2018 Risk Management Guidelines (ISO 31000:2018) and reflects the firm's commitment to managing risk and describes how risk management activities are embedded in business practices, systems, processes and behaviours, at all levels of the firm. The ERM Framework is supported by a Risk Management Handbook which provides the processes and procedures for effective risk management across the firm, and appropriate resourcing and training.

The FALT supports the achievement of the QMS standard by approving the FA R&Q Annual Plan and Global reporting. In addition, the FA BRP and FA R&Q Leader make regular presentations to the FALT in relation to R&Q matters.

Requirement 4: Accountability Framework

PwCA's Accountability Framework (The Partner Performance and Income System) in relation to R&Q matters applies consistently across all LoS. There is no separate or additional Accountability Framework for the TLS LoS. This is considered appropriate.

Many of the requirements and processes for the Accountability Framework are mandated by the Global Network. The objective of the R&Q metrics rating process is to ensure risk and quality leadership, accountability and recognition are appropriately aligned utilising both qualitative and quantitative criteria. These criteria are considered in aggregate in reaching a partner rating in one of the following categories:

- Exceeds expectations (matters identified as demonstrating leadership quality)
- Meets expectations (matters on balance expected of the individual's role and responsibility)
- Meets expectations with review comments (minor matters noted but no penalty recorded)
- Does not meet expectations (matters identified as requiring a penalty)⁴.

These inputs are then moderated by the FA R&Q team to ensure consistency for similar behaviours across all businesses. All data supporting ratings are shared and discussed between partners and FA R&Q Team members who have the support and authority of FA Leadership.

This is a thorough process consistent with processes found in other large organisations.

The R&Q Metrics ratings for FA for FY20 are shown in table 1.

Table 1: FA R&Q Metrics ratings FY20

	Number	Percentage
Exceeds expectations	7	2.4%
Meets expectations	223	77.4%
Meets expectations with review comments	43	15.0%
Does not meet expectations	15	5.2%
Total	288	100%

In addition to the Partner R&Q ratings, financial penalties were imposed in relation to three partners in respect of FY20 for behaviour contrary to the firm's values. This demonstrates a strong commitment to the introduction of cultural change within the organisation.

⁴ A negative adjustment for a R&Q rating is determined by the severity of the matter(s) and is generally between 2% and 5% of Personal Income.

It is difficult to make generalisations from the figures alone, however it would appear that there is a very high bar for a person to be assessed as 'Exceeds expectations'. Whilst there were more partners assessed as not meeting expectations, it also appears that negative behaviour would have to be quite significant to warrant a rating of 'Did not meet expectations'. It has been decided to reassess the application of the R&Q partner metrics process in FY21 as part of improving the firm's quality culture. The reassessment includes consideration of the level of penalties relative to the type and significance of matters, comparison of other Network firms and relativity to performance uplifts and bonuses. It is recommended that the review also consider the appropriateness of the current criteria in assessing a person as either 'Exceeding expectations'⁵ or 'Not meeting expectations'. PwC advises that they believe their governance processes are intended to ensure that those not meeting expectations are kept to a bare minimum whilst those who abide by the strict measures are doing what is expected and would only exceed expectations in limited circumstances.

Requirement 5: Purpose, Values, Tax Policy Panel & Global Tax Code of Conduct

Requirement 5 requires that the TLS LoS promotes a PwC Purpose-driven and values-led culture, including adherence to the GTCOC. The training deck "How we provide complex tax advice" is fundamental in promoting the PwCA Purpose, Values and Global Tax Code of Conduct.

Purpose and Values

Much of the firm's concept of purpose and values is embodied in the training deck "How we provide complex tax advice" (Complex Advice training deck) where it is stated (at p.3) that:

*'How we advise our clients on the complex tax implications of positions, transactions, structures and financial arrangements should be aligned to our global **purpose**, guided by our **values**, within the parameters set by our **global tax code of conduct**, and supported by our local **R&Q policies**.'*

The highlighted concepts are then explained in some detail later in the deck. The firm's purpose and values are promoted and reinforced in a number of ways including:

- The 'Tone from the Top' self-assessment process
- Expectation that partners promote and personally uphold PwC values
- Linking appraisal processes to this expectation
- Engagement Completion Reviews (Requirement 11) and Quality Assurance Reviews (Requirement 12)
- Global and local surveys
- Learning & development activities.

An important new FA initiative in FY21 is the *Leadership in Quality* (LiQ) survey which, for the first time, allowed all staff to provide anonymous upward feedback on how partners

⁵ For example, partners who took on broader firm-wide responsibilities in addition to their LoS responsibilities may be considered for a rating of 'exceeds expectations'.

lived and shared PwC values, acted consistently with the GTCOC, and adhered to R&Q policies, protocols and procedures. The results of this survey are remarkable with 65 percent of all partners who were eligible for an individual feedback rating being rated as 'exceeds expectations' overall and 33 percent rated as 'meets expectations' overall. The remaining 2 percent were rated as 'meets expectations some of the time'. No partners were rated as 'does not meet expectations' overall.

Tax Policy Panel (TPP)

PwCA's TPP was introduced in April 2016. It is chaired by the BRP who also chairs the Global TPP Network. Its role is to review high risk advice (per defined triggers) in the Higher Risk Engagement Policies (HRE) for both the Tax and Private Client businesses to ensure appropriate specialist involvement, consistency of technical positions and the provision of holistic tax advice. The TPP forms part of and assists in the execution of the firm's Complex Tax Advice Protocols (the Protocols). The Protocols consist of a set of 10 requirements that facilitate the delivery of high-quality services when advising on complex tax matters. An important role of the Chair of the TPP is to regularly meet with the ATO (and other regulators as appropriate) to raise awareness of current TPP and HRE protocols and to discuss emerging or contentious tax issues.

The triggers for either referral to the TPP, for TPP Triage or 2nd partner review are factors that one would reasonably consider to be inherently of higher risk. This may be due to technical complexity, the amount of tax involved, the nature of the particular client, potentially sensitive issue or other matters. Examples include:

- Advice involving an analysis of a General Anti-Avoidance Rule (GAAR)
- Advice on a new position or idea that may have application to multiple clients
- Engagements involving a sensitive issue that may attract media or political interest
- Engagements which involve positive advice on a technical position which is contrary to an ATO Ruling, Determination or Taxpayer Alert.

The triggers are not static. For example, in a matter that the TPP considered in 2020, it resolved to recommend to Tax Leadership that a new mandatory Panel trigger be introduced where PwCA was advising on an arrangement where an interest deduction is claimed on borrowings from a related non-resident lender but interest withholding tax is not payable (other than as a consequence of specific exemption or operation of a Tax Treaty).

It is intended that the R&Q Team in conjunction with the BRP will undertake an annual review in relation to the adequacy of the TPP triggers in the HRE policies with regard to feedback from the ATO and key trends/issues. Currently the triggers are the same for the Tax and Private Client businesses. It is recommended that as part of any review, consideration be given to whether there are specific risks to one or other of the businesses only and the HRE policies amended accordingly.

TPP triggers are required to be considered at the engagement acceptance stage, either independently by the teams, or as prompted through the risk assessment system. The risk

assessment system requires teams to answer questions regarding the TPP triggers and HRE policies, to determine whether a triage or TPP review meeting is required. When one of the triggers is selected, an additional confirmation box appears advising the team that under the HRE Policy, TPP involvement is required for the engagement and that a notification has been sent to the TPP to notify them of the engagement. The FA R&Q team relies on these system notifications to address the risk that engagement teams do not appropriately consult the TPP. It is recognised that the system alone may not adequately address the risk and other measures are proposed in FY21 to help mitigate the risk (see Requirement 12).

Engagement teams must implement the recommendations/instructions from any TPP review and document the outcomes and actions in the engagement file. The TPP Secretariat follows up to ensure this is done.

The TPP composition for any matter typically consists of three partners – the BRP as the TPP Chair and two partners selected by the Chair based on tax or other expertise relevant to the matter, and independent of the matter under consideration. It was envisaged that to enhance TPP effectiveness and provide a further degree of independence that an external consultant would be appointed to:

- Review materials provided by the TPP Chair each quarter in relation to key TPP matters of the prior quarter;
- Meet with the TPP Chair, TPP Secretariat, and member of the PwC Tax Policy team on a quarterly basis to run through key TPP matters; and
- Be an observer at a number of TPP calls/meetings (target 10% of formal panels) during the year.

This did not occur as planned. The consultant has not participated in any TPP calls or meetings since being appointed in May 2020, primarily due to Covid-19 restrictions and privacy concerns. The only interaction he has had with respect to TPP matters is consideration (and discussion with the Chair and one other member of the TPP) of eight matters that had been considered by the TPP in FY20.

Based on this limited interaction, examination of relevant documentation (e.g., TPP Overview, Tax Policy Panels PwC Australia Compliance, etc) and interview responses, it is considered that the TPP has a robust process in place that supports the PwCA Tax business in achieving its stated objectives (slightly modified):

- To help clients and PwC people make informed and considered decisions on tax, taking into account the relevant considerations and risks involved, both for clients and the firm, including technical, economic, commercial, reputational and the broader stakeholder context
- To ensure that PwC takes a broader and forward-looking view when engaging with clients.

Nevertheless, to inject more independence (or perceived independence) into the process, it is recommended that the Chair of the TPP re-examine how an external consultant can in future be involved with the TPP as originally envisaged, especially with the easing of Covid-19 restrictions and considering that consultants are required to sign the PwC Confidentiality, Privacy & Intellectual Property Deed.

The PwC Global Network has taken a number of steps in recent years which seek to assess the effectiveness of the TPPs operating in its key territories (including Australia). For instance, the Australian Tax R&Q team was required to provide a report to the Global Tax R&Q Leader which documented the status of the implementation and embedding of their local TPP and established a plan for further testing of the effectiveness of the TPP.⁶ This process was based on a framework which was intended to assess the following areas of the firm's TPP policy: Existence, Communications, Understanding, Sponsorship, and Monitoring and Enforcement (referred to as the "EXCUSME framework"). The annual Network review of the Australian firm's T&L Quality Management System (QMS) also focussed on the operation of the TPP as part of the 2019 and 2020 reviews. However there has not been any external assessment of the effectiveness of the PwCA TPP since it was established in 2016.

FA Leadership has been considering whether there is a need to develop further effectiveness measures for the TPP. Some initial thoughts they have had on what those measures might be included:

- the number of adverse media reports
- number and scale of 'Troublesome Practice Matters'
- number and scale of investigations by the ATO.

The ATO has done a lot of work around assessing effectiveness of activities and measures.⁷ It is recommended that the BRP and R&Q Team engage with the ATO in developing a range of indicators that the ATO considers would assist in further assessing the effectiveness of the TPP.

Global Tax Code of Conduct

To a large extent the standards and principles set out in the GTCoc parallel those in the draft Adviser Principles and embodied in the '10 requirements' for the provision of complex tax advice by PwCA. In particular:

- Tax advice must be based on a 'credible basis in law' ('Reasonable Arguable Position' in the Australian context)
- No tax advice relies for its effectiveness on any tax authority having less than the relevant facts
- Tax advice is given in the context of the specific facts and circumstances as provided by the client concerned and is appropriate to those facts and circumstances
- Tax advice involves discussion of the wider considerations involved, as appropriate in the circumstances
- PwC firms advise clients of appropriate options available to them under the law having regard to all of the principles contained in the applicable tax codes.

⁶ Refer to *TPP Australia Compliance Report* submitted to the Global Tax R&Q Leader on 18 February 2020 and *Global Tax R&Q Report – TPP Assessing Implementation and Embedding* November 2020.

⁷ *The Compliance Effectiveness Process* was developed by the ATO to measure the effectiveness of compliance strategies and has been reflected in the publication OECD (2010) *Evaluating the effectiveness of compliance risk strategies*. Whilst in a different context, the principles should be relevant.

The importance of adhering to these standards and principles is communicated and reinforced in a number of ways including:

- Training, including 'How we provide complex tax advice' and 'Risk & Quality' training
- HRE policies
- Monitoring of the Annual Compliance Confirmation (ACC) process requiring all partners to confirm that they understand they have a personal responsibility to comply with the GTCOC and that they believe that their conduct has been consistent with the principles
- Engagement Completion Reviews (ECRs)
- Quality Assurance Reviews (QARs)
- It is emphasised by the TPP.

Requirement 7: Operational Risk Management and Higher Risk Engagements

It is considered that FA TLS has the appropriate governance and internal control framework in place to address the key elements of operational risk management.

As documented elsewhere in this report, FA TLS has a comprehensive suite of policies and procedures in relation to the following matters:

- Adoption and adherence to PwCs Global Tax Code of Conduct and the Tax Agents code of professional conduct
- Client acceptance including the need for independence, to have no conflicts of interest, and a requirement that clients must meet minimum standards of character and integrity
- Engagement acceptance and the systems, questionnaires and reviews pertaining thereto
- Client acceptance 3 yearly testing requirement
- HRE policies including a risk escalation framework
- Complex Tax Advice protocols ('10 requirements')
- Promoter Penalty regime and false and misleading statements
- Ensuring engagement teams are appropriately skilled and trained.

Requirement 8: Training

An assessment of the quality of the firm's training is beyond the scope of this review. However, it is necessary to understand the scope, relevance and comprehensiveness of available training, coaching and support programs to be able to form an opinion on whether they support the Control Framework, enable professionals to comply with relevant external regulatory requirements and ensure that Engagement Teams are able to deliver quality services. It is considered that the suite of training, coaching and support activities available to partners and staff at all levels satisfies these standards.

Technical quality is a specific priority area in FY21 for the Tax and Private Client Businesses.⁸ This is intended to be achieved 'by a focus on empowering and enabling our people through best in class Learning & Development, Tax Markets & Knowledge team support and a partner led technical focus'.⁹ A national learning and development curriculum focuses on the delivery of tax technical training by Subject Matter Experts (SME) on core concepts and new developments to all levels. This is supplemented by tailored programs for Managers and below, and more in-depth sessions for Partners, Directors and Managers. Local training is also undertaken in offices around the country typically focussing on industry/client specific tax technical issues.

Training on 'How we provide complex advice' was presented to all Tax and Private Clients staff in FY20, and is also presented to all graduate recruits. This training is critical in reinforcing PwC's Purpose, Values and Global Tax Code of Conduct. Items that have been identified by FA R&Q Leadership as higher risk¹⁰ are presented to Partners and Directors in sessions to increase awareness of these risks and discuss mitigation strategies.

The FA R&Q team provides ongoing support for engagement leaders providing Tax Agent Services to ensure they are appropriately registered with the Tax Practitioners Board (TPB), and also to legal partners in respect to Law Society requirements. Specific training is also provided for the Core Legal team on a quarterly basis.

The provision of tax advice as a legal service including claims of Legal Professional Privilege (LPP) has been an issue of tension with the ATO in recent times.¹¹ In response, a new governance framework and engagement acceptance protocols for tax advice as a legal service were implemented in December 2018. Legal advice in respect of tax services training has been given to the Tax and Private Clients practices to reinforce the protocols to be followed in respect of such engagements.

There is a strong focus on formal and informal coaching and mentoring at all levels of the firm. Technical quality of deliverables is managed 'on the ground' through the '4 eye review' concept and support of specialists in Tax Markets & Knowledge. Importantly, whilst there were a few less than positive comments, feedback in client surveys has generally indicated that clients are satisfied with the quality and level of advice that they receive.

Requirement 10: Higher Risk Engagements

A fundamental aspect of the FA QMS is the HRE policies which require the identification and escalation of higher risk engagements and the application of enhanced risk procedures. They complement the GTCOC and are outlined in the Complex Advice training deck. There are HRE policies in place for both the Tax Business Unit and Private Clients Business Unit. As discussed in relation to Requirement 5, the policies include mandatory escalation to the TPP (for triage or meeting) or to a 2nd Partner Review. In addition, the Complex Tax Advice

⁸ This reflects the Executive Board priority on Quality.

⁹ TLS QMS Reference Documentation FY20: Requirement 8, p.1.

¹⁰ See FA R&Q Update "War Stories" and FA Risk Register.

¹¹ Risk 8 on the FA Risk Register.

protocols (including application of the '10 requirements') in the Complex Advice training deck focus on ensuring that high quality advice is provided when the firm is advising a client on a complex matter.

Application of the R&Q policies is supported, reviewed and verified by the FA R&Q framework, including:

- Questions and prompts as part of the engagement acceptance process
- Training and learning
- R&Q Engagement completion reviews
- R&Q Quality/business reviews
- Confirmation of compliance with PwC Network standards.

Non-compliance with R&Q policies may result in partner financial penalties.

Requirement 11: Engagement Completion Reviews (ECRs)

ECRs (and EQRs) are important elements in ensuring compliance with the firm's engagement protocols, regulatory regimes and legal requirements. They are an integral part of the partner metrics process in determining an Engagement Partner's Overall R&Q Rating. It is a robust program with an engagement leader being subject to one ECR annually.¹²

The ECR program has a number of strong features:

- Engagements to be reviewed are selected following a risk-based process, considering various risk parameters, as applicable for each engagement leader
- All reviews are conducted by Reviewers trained in conducting R&Q Reviews, with a senior R&Q Team member (Validator) experienced in performing R&Q Reviews conducting a '4 eye' review
- Reviewers are provided with Annual R&Q Reviewers training
- There is a detailed (138 page) procedural manual for Reviewers
- The automation of 'ECR Demerit Points' based on factual criteria enhances objectivity and consistency of judgments by Reviewers and Validators
- A multi-stage moderation process ensures that assessments are valid and fair
- There is an open communication and feedback process¹³
- Results are reported to FA Leadership, and ultimately the Executive Board (EB)
- A Continuous Improvement Strategy (that is reviewed regularly throughout the year) is also presented to the FALT.

¹² Engagement leaders that received a Non-compliant rating in the previous year are subject to two reviews in the current year.

¹³ This includes the R&Q Leader communicating with R&Q Global with respect to ECR results and outlier situations to seek feedback on appropriateness of ratings applied in the ECR process.

Requirement 12: Quality Assurance Reviews

The overall goal of the QAR program as defined by Global R&Q¹⁴ is to:

- Assess the appropriateness of a business unit's controls, systems and environment for driving quality services
- Monitor, benchmark and where appropriate, improve the quality of the services offered by the business unit
- Assess whether the business unit is appropriately managing risk.

There are two dimensions to the QAR program¹⁵:

- The "business unit review" – a review of the business unit environment, including its policies, procedures, systems and controls, and the way in which it is managed
- The "engagement quality review" – a review of a sample of engagements, focusing on the quality of services provided.

The FA R&Q team runs a robust QAR program which complies with Global R&Q directions for completing QARs. The QARs are performed by a combination of file review and interviews with the Engagement Leader and other engagement team members. It was decided that from FY20, there would be some enhancements to the FA QAR Program consistent with the EB's emphasis on Quality in the FY20 strategy.

Global R&Q recommends that every tax business unit should be reviewed at least every five years, with larger business units (and any smaller units where it is deemed appropriate) reviewed every three years.¹⁶ The Australian FA LoS applied a process of reviewing each partner and business unit every 3 years up until FY19. For FY20 it was decided to enhance the QAR program even further with the intention that every partner and business unit in FA would receive a quality review. One-third of reviews would be conducted by the FA R&Q Team and two-thirds by Partner Peer Reviewers. However, the Covid-19 pandemic meant that there were less Partner Peer Reviewers available to perform quality reviews than was originally planned. Nevertheless, 67% of FA partners were subject to a quality review in FY20. The aim for FY21 is to achieve the 100% coverage. This is an important initiative supporting the upfront risk systems in ensuring compliance with the firm's engagement protocols, regulatory regimes and legal requirements.

Other enhancements included:

- Each engagement leader to receive an annual overall R&Q QAR rating (including 'superior' where appropriate) which will input into the overall Partner Metrics process
- Making it a mandatory requirement for a client feedback survey to be obtained in respect of all engagements selected for EQR, with any outlier feedback to be followed up with a discussion with the client

¹⁴ Global Risk and Quality: *Quality Assurance Review programme*, p.3, May 2018.

¹⁵ Ibid, p.4.

¹⁶ Ibid, p.3.

- All FA partners required to include specific risk and quality objectives in their partner personal plans
- Continued focus on HRE policies by focussing engagement selections for reviews on larger engagements; ensuring application of HRE policies is a key focus of the EQR process; including additional questions in the ACC around compliance with HRE enhanced procedures; continued refinement of HRE triggers across FA
- Better differentiated ECR results.

These enhancements will, over time, help to drive quality and provide an increased recognition and accountability for engagement quality in FA.

In addition, in FY20, the R&Q team developed an R&Q Metrics Dashboard. By using data analytics tools to enable visualisation of all the underlying data collected through the ECR/EQR process, the Dashboard enables the R&Q team to better identify and understand trends, outliers, and patterns in R&Q results. Further enhancements to the Dashboard are planned for FY21.

The QAR program also has many of the features noted in the ECR process:

- Engagements to be reviewed are selected following a risk-based process, considering various risk parameters, as applicable for each engagement leader
- All reviews are conducted by FA R&Q team quality reviewers experienced in conducting QARs who do not perform any client facing work, and peer reviewed by an independent FA partner
- Partner peer reviewers receive either face to face or online training
- A multi-stage moderation process ensures that assessments are valid and fair
- There is an open communication and feedback process
- Results are reported to FA Leadership, and ultimately the Executive Board (EB)
- A Continuous Improvement Strategy (that is reviewed regularly throughout the year) is also presented to the FALT.

Interviews

A number of interviews were conducted with a sample of FA partners and staff, as well as Second Commissioner, Jeremy Hirshhorn, to get the ATO's perspective.

PwC interviews

Interviews were conducted with the FA BRP, TPP members, the TPP Secretariat, Private Clients Business Leader, Tax Business Leader, a sample of Private Clients and Tax partners and staff (including some who had had matters considered by the TPP), FA R&Q Leader and members of the FA R&Q team.¹⁷ The interviewees' experience within PwCA ranged from around 2 years to in excess of 20 years. The purpose of the interviews was to:

- Gain an understanding of the various R&Q policies, protocols and procedures

¹⁷ The schedule of interviews is included at Appendix II.

- How those policies, protocols and procedures are implemented on the ground
- Gain insights from the interviewees' experiences.

The interviews were conducted in a free-flowing manner adapted to the particular role that the interviewee(s) had within the firm, rather than adhering to a strict, formal set of questions. A number of common themes emerged from the interviews.

The firm has been undergoing an overwhelming cultural shift since at least 2016. This has been led by the EB and the FALT in emphasising that behaviours, messages, actions and initiatives reflect the firm's values and focus on quality, accountability, risk management and the drive to manage stakeholder expectations. The strengthening of R&Q activities through the ECRs and QARs has also led to behavioural change. Partners do not want to be seen as not complying with the various R&Q policies and protocols – not only because it may result in a financial penalty - but also because there is a culture of 'responsibility to each other'. Some credit also needs to go to the ATO in 'forcing' behavioural change through their positioning around advisers. There was acknowledgment that there were 'issues' in the past and that there is now a more open, honest and transparent relationship with the ATO.

How complex tax advice is provided has shifted. Previously, the approach was very much black and white - 'here is the advice, so go and do it'.¹⁸ There is now an expectation that advice needs to be more 'holistic' and complete to include comment on practical and reputational risk, in addition to technical risk.¹⁹ There is now more discipline around engagements (including client acceptance) and formality in providing advice. For example, material facts and assumptions must be confirmed by the client in writing.²⁰ In addition, the TPP often directs the engagement team to seek additional explanation and evidence from the client to support the reasons for the use of relevant entities.

There was universal support for the TPP (and '4 eyes' concept). Rather than being seen as a 'watchdog' to be avoided, the TPP was perceived as a positive resource with some partners erring on the side of caution by referring matters for guidance even though they didn't fall under one of the mandated triggers. Commitment to providing quality service and staff training to facilitate this came through strongly in many of the interviews.

Legal engagements have been a particular area of focus in the last 4 years in response to increased activity by the ATO to ensure there is discipline around legal engagements. PwCA will not encourage or direct clients to sign up in relation to a legal service engagement for advice.²¹ This has not always been the case. A lot more resources and formality have been devoted to processes to ensure that legal services are robust, and that the client's privilege is protected. The risk assessment process 'flags' if an engagement needs to be approved by the FA R&Q Legal Leader or she needs to test whether a legal service is within the scope of the engagement. There are specific questions in the ECRs relating to legal advice and all engagements that are legal advice are reviewed by the FA R&Q Legal Leader and her team

¹⁸ Not all interviewees agreed that this was ever the case.

¹⁹ Item 6 of '10 requirements'.

²⁰ Item 4 of '10 requirements'.

²¹ Item 7 of the '10 requirements'.

to ensure that a lawyer initiated the advice, opined on it, and delivered it. As every letter is reviewed, LPP is not such an issue of contention (although PwCA would like more clarity around LPP). Risks are more around waiver of privilege or scope creep. There is a training pack around the systems and approval process, as well as an explanation of what LPP is and how it is applied. The BRP and FA R&Q Legal Leader conduct training annually on recent case law around LPP.

A couple of interviewees who had come to PwCA from other Big 4 firms commented on the differences in culture and attitude. The R&Q function at PwCA had a lot higher level of authority, respect and their support more valued than elsewhere. The general culture of the firm was said to be more consultative, collaborative, affiliate and collegiate than at other firms.

ATO Interview

Second Commissioner Hirshhorn was interviewed on 24 November 2020 to get the ATO perspective on PwC's Tax Governance and Internal Control Framework. Mr Hirshhorn has been involved in discussions in relation to the Principles and has provided feedback and suggestions in relation to the operation of PwC's TPP.

Mr Hirshhorn shared some of the concerns that the ATO has had with PwCA in the past. These included the 'Rover' model where tax structures (many including cross-border arbitrage) would be 'rolled out' to the market; PwCA was at the 'centre' of a number of the Taxpayer alerts that the ATO issued; clients would be 'pushed' into legal engagements; there was insufficient attention given to the proper engagement of legal practitioners; a perception that 'commercial purpose' in relation to General Anti-avoidance rules were manufactured by PwCA and not the taxpayer's actual purpose of entering into particular transactions.

Mr Hirshhorn acknowledged that PwCA's appetite for risk has probably reduced and that some of the partners who were involved in aggressive behaviour in the past may no longer be with the firm. He considered that the relationship between PwC and the ATO was now much more open and transparent. He was very supportive of the Principles and the directions of PwC's governance processes, in particular the TPP. However he reserved judgment until he witnessed changes in behaviour ('the proof is in the pudding'). It is recommended that the BRP formalise a series of meetings, say every 3 to 6 months, to update Second Commissioner Hirshhorn and other senior ATO officers on the progress that PwC has made, and continues to make, with respect to the Control Framework, to demonstrate the positive cultural and behavioural changes that have been made, and continue to be made.

Large market tax adviser Principles [25 September 2019]

This document has been jointly developed further to previous discussions as between the ATO, CA ANZ and the 5 firms for discussion purposes. It is expected that the wider environment will also continue to evolve (eg, IESBA, review of the Tax Practitioners Board) and may impact the development and implementation of these Principles

The ATO's purpose is to contribute to the economic and social wellbeing of Australians by fostering willing participation in the tax and superannuation systems. One of the ATO's key aspirations for 2024 relates to "building trust and confidence"¹. A related ATO strategic initiative is to "support intermediaries to ensure clients do the right thing, and increase internal transparency around the risks in their professional practices"².

Taxpayers are responsible for their affairs even if someone else, including a registered tax agent, assists in connection with their tax affairs³. However, registered tax agents and other tax advisers (collectively 'tax advisers') play an important role in assisting their clients manage their tax affairs.

These Principles set out our expectations of large market tax advisers, and are relevant to the giving of advice by tax advisers, on which the client is able to rely, which recommends or supports the implementation of a transaction or arrangement (referred to in this document as 'Advice').

Executive Summary

Large market tax advisers perform an important role in making a positive contribution to the effective operation of the tax system. The provision of high quality advice underpins self assessment and builds confidence in the tax system.

It is important in a proper functioning tax system that advisers are able to provide taxpayers with advice on the law. Tax advisers have an obligation to act within the law and in the best interests of their clients.

The tax laws are often complex and uncertain in their application, and there are frequently matters on which different views can be reasonably held. It is, with recognition of this, that Parliament has set the standard of 'reasonable care' and 'reasonably arguable position' for the purposes of provisions which deal with taxpayer penalties and which in turn shape the expected conduct of taxpayers and their tax advisers. Tax advice should be based on a tax position which is reasonably arguable or a higher level of comfort, if possible.

There are multiple existing legal, professional and regulatory regimes that set the standards of a tax adviser and provide strong external oversight together with appropriate penalties and sanctions where necessary.

1 ATO Corporate Plan 2019-2020, page 2
<https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/ATO%20corporate%20plan%202019-20.pdf>

2 Ibid, page 6

3 [note only for drafting reference, delete when finalised – paraphrased from the Taxpayers Charter, <https://www.ato.gov.au/print-publications/taxpayers--charter---what-you-need-to-know/>]

Large market tax advisers make a positive contribution to the effective operation of the tax system by conduct which meets these Principles:

- Acting with integrity;
- Providing Advice to their clients which meets or exceeds the “Reasonably Arguable” standard;
- Having regard to the wider risks and circumstances relevant to the matter when providing Advice;
- Working honestly and openly with the Commissioner;
- Having appropriate quality control processes in place which includes regularly testing those processes;
- Meeting their statutory and regulatory obligations;
- Not engaging in activities which would constitute a breach of the promoter penalty provisions.

The following Guidelines and best practices reflect conduct consistent with these Principles, which are not intended to impose additional standards or duplicate existing regimes.

The Guidelines and best practices cover the following aspects:

- An outline of existing regulatory regimes
- The role of advisers
- Some aspects of the Reasonably arguable position criterion in practice
- Tax advisers will ensure they have Governance and internal control framework, addressing key elements of operational risk management.
- The design effectiveness of the framework will be assessed by a party who is independent of the framework design teams within firms.
- Internal testing (by people or a function within the firm who is independent of the client advising teams) will be undertaken periodically to test the operational effectiveness of the framework.
- Open and regular communication between the tax adviser firm and the ATO and TPB, including feedback from these bodies on the conduct of, or positions taken by, the adviser (and its partners/staff).
- The results of the testing and tax regulator feedback will be reported to the tax leadership of the tax adviser firm and actions taken in relation to any confirmed breach of framework standards or requirements, as appropriate.
- Annual confirmation of the continued operation of the framework will be made to the broader community

In our experience, the vast majority of tax advisers contribute positively to the effective operation of the tax system. However, tax advisers who engage in egregious conduct can expect additional focus from the TPB and the ATO and the full force of the law.

Guidelines and best practices

Existing regulatory regimes

There are multiple existing legal, professional and regulatory regimes that set the standards of a tax adviser, and which in turn, govern the way in which tax advisers are required to operate. These regime provide strong existing external oversight together with penalties and sanctions.

The *Tax Agents Services Act 2009* (TASA) established the TPB. The statutory object of the TASA is to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. The TASA also includes the Code of Professional Conduct. The TPB is an independent body which has three strategic objectives:

- protect consumers
- maintain, protect and enhance the integrity of the registered tax practitioner profession
- the TPB is recognised as an effective and efficient regulator.
- acting on misconduct
- shaping and influencing law and policy
- strengthening capability
- supporting the legal and ethical standards of the profession
- supporting consumers.⁴

The ATO has the power of general administration of the *Income Tax Assessment Acts*. The concept of a “reasonably arguable” position as defined in the tax laws is an essential element of the effective functioning of the tax system. The *Taxation Administration Act 1953* (TAA) includes various administrative penalties (Division 284) for:

- a) Making false or misleading statements
- b) Taking a position that is not reasonably arguable
- c) Entering into schemes

Such penalties are determined by reference to the conduct of either the taxpayer or the tax adviser.

In addition, Division 290 of the TAA is intended to deter the promotion of tax avoidance schemes and tax evasion schemes. A breach of these rules can result in civil penalties or injunctions, and the Commissioner can enter into voluntary undertakings.

The Accounting Professional and Ethical Standards Board has published APES 110 Code of Ethics for Professional Accountants, In addition, it has also published APES 220 which sets the standards in the provision of quality and ethical “Taxation Services”, which is mandatory for members of CPA Australia, Chartered Accountants ANZ and Institute of Public Accountants. APES 220 covers a range of matters including Public Interest, Integrity and professional behaviour, Objectivity, Confidentiality, Professional Competence and due care, as well as tax return lodgements, tax schemes and arrangements and false or misleading information. One of the requirements of APES 220 is that “A Member shall not promote, or assist in the promotion of, or otherwise encourage any tax schemes or arrangements where the dominant purpose is to derive a tax benefit, and it is not reasonably arguable that the tax benefit is available under Taxation Law. Accordingly, a Member shall not provide advice on such a scheme or arrangement to a Client or Employer other than to advise that in the Member’s opinion it is not effective at law.”

⁴ Ibid, page 19

Legal practitioners are subject to the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, including in relation to the provision of tax advice.

Role of advisers

Given the complex and often uncertain nature of Australia's taxation laws, taxpayers and their advisers will from time to time be acting in an adversarial capacity with regards to the ATO. This position is different in many ways to the relationship and interactions between professionals in other industries and their regulators.

It is important for the proper functioning of our tax system, including due process, that advisers are able to provide taxpayers with advice on the law. Tax advisers have an obligation to act within the law and in the best interests of their clients⁵. In some cases, advisers may hold a technical view which they consider is "reasonably arguable" and is in accordance with the adviser's protocols but which is considered by the ATO as not being reasonably arguable. It is unremarkable that such differences of opinion will occur from time to time, and in such cases, all parties should engage in good faith endeavours to resolve the dispute.

The ATO is not concerned by differences of opinion reasonably held, and of itself, such differences will not attract any sanction, or be indicative of inappropriate conduct. Parliament has determined appropriate penalties for conduct that shows intentional disregard of the law, recklessness, lack of reasonable care and lack of a reasonably arguable position. In addition, there are penalties and sanctions under the promoter penalty legislation (which also uses the "reasonably arguable" position standard), and the TPB has powers to impose penalties and sanctions under the TASA, by reference to the TASA Code of Conduct. These existing regimes are subject to the right to appeal to the courts.

Where the above regimes are being considered by the ATO and the TPB, it can be expected that regard will be had to matters covered in these Principles, to the extent that the advice or conduct of a tax adviser is relevant to such matter. Expressed differently, compliance with these Principles will generally reflect conduct and processes that would be indicative of demonstrating reasonable care and adopting reasonably arguable positions.

Reasonably arguable position

The concept of a "reasonably arguable" position is an essential element of the effective functioning of the tax system. A matter is reasonably arguable if it is about as likely to be correct as incorrect, or if it is more likely to be correct than incorrect⁶. This threshold level of opinion forms a key plank in the standard expected of tax advisers.

Whether a position is reasonably arguable requires an "objective analysis of the law and the application of the law to the relevant facts"⁷. It involves a "question of judgement"⁸. The tax law currently prescribes particular times when the existence or otherwise of a reasonably arguable position is to be tested⁹. Whether a position is reasonably arguable is to be objectively determined

⁵ Code of Professional Conduct, item 4, section 30-10 *Tax Agent Services Act*

⁶ Section 284-15(1), *Taxation Administration Act*

⁷ Explanatory Memorandum, *A New Tax System (Tax Administration) Bill (No. 2) 2000*, paragraph 1.22

⁸ Refer *Pagone J in Orica Limited v Commissioner of Taxation* [2015] FCA 1399, paragraph 41 referencing *Hill J in Walstern v Commissioner of Taxation* [2003] FCA 1428

⁹ Refer Division 284 and Division 290, *Taxation Administration Act*

at the relevant time: it is not to be conclusively determined or re-determined by the view of the ATO, the view of the taxpayer or the adviser, or the terms of any settlement outcome.

Taxpayers are expected to take reasonable care and adopt positions that are at least reasonably arguable.

Tax advisers have an obligation to act within the law and in the best interests of their clients. Tax advisers are also required to take reasonable care in advising their clients. Tax advisers should ensure that the Advice they provide and the recommendations contained in that Advice is at least reasonably arguable based on the law as it stands at the time of providing the Advice.

In the course of advising a taxpayer, it is to be expected that a tax adviser may consider or discuss various positions, some of which may not be reasonably arguable, prior to reaching their conclusions. However, recommended positions or Advice provided by tax advisers should be at least reasonably arguable, based on the law as it stands at the time of providing the Advice.

In the course of a tax adviser's engagement with a client, the client may have previously taken, or may intend to take, positions which in the tax adviser's view may not be reasonably arguable. It is in the interest of the ATO and the health of the tax system as a whole, that tax advisers advise clients in such situations. The adviser should outline how they assess such positions and advise the client about the risk assessment of the matter, ATO engagement options, disclosure obligations and penalty considerations. Depending on the scope of the engagement, the adviser may also comment on alternative positions and arrangements that are not reasonably arguable. Tax advisers may also assist the taxpayer in rectifying their affairs in such a situation.

Positions adopted by a taxpayer with respect to their tax affairs are ultimately a matter for the taxpayer to decide. Notwithstanding the adviser's recommendation or Advice, a taxpayer may decide to proceed in a manner that is not reasonably arguable in the adviser's opinion. In that case, advisers should consider their various legal and professional obligations, ensure the client is aware of the risks of such an approach, address obligations (if any) under Non-compliance with Laws & Regulations (NOCLAR) and in appropriate cases, cease to act. These Principles do not create any additional obligation to disclose such situations to the regulators: this will continue to be governed by the adviser's obligations to the client and existing legal requirements.

There will be situations where the application of the law to a matter is not clear and where reasonable minds will differ. If the ATO has a different view on a matter, that does not of itself mean that the position of a taxpayer or an adviser is not reasonably arguable.

A tax adviser should have policies to identify and manage matters that may not be reasonably arguable, or which may be "about as likely to be correct as incorrect". These policies should require a relevant risk assessment at the commencement of an engagement and on a continuing basis as the engagement proceeds.

The standards and expectations in connection with reasonable care and reasonably arguable positions are reinforced by various penalty provisions in the tax laws, including in relation to the promotion of tax schemes.

Governance and internal control framework

For the purpose of these Principles, “governance and internal control framework” refers to the risk management framework that tax advisers have in relation to compliance with the tax laws and applicable regulatory regimes.

It is expected that businesses will also have other risk management frameworks and policies to address other risks outside the scope of these Principles.

Tax advisers are expected to:

- develop and continuously improve their governance and internal control framework
- test the robustness of the design of the governance and internal control framework
- test the operational effectiveness of the governance and internal control framework.

General

Tax advisers should at all times have a documented governance and internal control framework.

The framework should also identify the key risks that have a potential material impact on the ability of the firm to comply with the tax laws and applicable regulatory regimes, including but not limited to compliance with the TASA and the Code of Conduct. The framework should also outline the approach to managing those risks.

The leadership of the firm (CEO, Board, Senior partner as relevant) is ultimately responsible for the governance and internal control framework.

Where a firm is part of a broader firm construct (such as a network of member firms) and it uses common policies and risk management frameworks, it must ensure that it identifies any instances where it needs to supplement those policies and frameworks to meet the requirements of these Principles.

A firm should ensure that its governance and internal control framework identifies all risks that could impair its ability to meet the requirements in these Principles, and provide reasonable comfort as to how these risks will be identified and managed.

For firms that are subject to APES, APES 320 (Quality control for firms) and APES 325 (Risk management for firms) are also relevant.

Operational risk management

Best practice in respect of governance and internal control frameworks should include documented policies and processes in relation to the following matters:

- Adoption and adherence to **firm codes of conduct**, and where relevant tax practice codes of conduct, and related **probity** matters (such as compliance with TASA requirements)
- **Client acceptance**: the firm will not accept clients that do not meet minimum standards of character and integrity. Firms are also expected to address Know Your Client requirements, independence and conflicts of interest and have a full view of the facts and circumstances relevant to the engagement

- **Engagement acceptance:** appropriately defining the scope of the engagement, expectations of the adviser and the client including the provision of complete and accurate information by the client, and documenting this in an engagement letter
- **Periodic review** of client and engagement acceptance risk assessment, for example due to change in factual circumstances, engagement scope and tax technical issues which may emerge as the transaction or advice proceeds
- **Competency** including processes to ensure appropriately skilled advisers, minimum education requirements, training (technical, risk and business matters)
- **Engagement management and delivery protocols** to apply across engagements generally, including matters such as ensuring that the engagement team has appropriate skills and experience, documenting the facts and assumptions on which the work is based, review of work (4-eyes review), use of specialists as appropriate
- **Opinion level:** ensuring that advice provided by advisers is at least reasonably arguable, as demonstrated by compliance with these Principles and the governance and internal control frameworks
- Protocols dealing with **higher risk / higher significance engagements:**
 - Identifying triggers which identify such engagements, such as transaction size or significance, positions that may have systemic risks to the Revenue, matters which are known to attract the ATO's attention, contingent and other non-traditional fee arrangements, advice contrary to ATO published positions, advice provided at the "about as likely to be correct as incorrect" level, procedures where it is determined that a client does not have a reasonably arguable position, as well as transactions and arrangements which carry other features which indicate a higher than normal level of risk
 - Establishing appropriate risk mitigation plans, which might include additional partner review, specialist involvement, seeking advice from Counsel, engagement with the ATO and an internal review panel

The framework is to be supported by effective **training programs**. These should be compulsory for all professional practice partners and staff providing tax services and advice, with recorded attendance. Formats might include face-to-face, video and webinar. Topics may include:

- Relevant firm policies
- Tax Agents' Code of Conduct
- ATO administration practices
- Promoter penalty rules
- Definition and requirements for a 'reasonably arguable' position
- Other matters identified from time to time as tax laws, the tax system and the role of advisers evolve

Design effectiveness

Tax advisers should undertake design effectiveness reviews of the controls and governance framework:

- An initial independent review upon commencement of these Principles. To ensure independence and to pursue best practice outcomes, the review should be undertaken by a person external to the firm and with appropriate experience in risk and governance [scope, process, etc to be discussed]
- Regular reviews, on an at least three yearly basis, to assess changes in the external environment, any identified weaknesses and any other changes required

Operational effectiveness

Tax advisers should undertake regular operational effectiveness reviews of the controls and governance framework:

- **Escalation procedures:** The firm should have processes in place by which risk issues are escalated to relevant firm's tax leadership, or other internal advisory panels and governance bodies.
- **Risk policies compliance testing:** A file review program that tests for operating effectiveness of the framework as it relates to engagements, advice and technical competency which is performed by a person who is independent of the engagement team involved and overseen by the firm's Quality and Risk function. The primary focus is on client engagement file reviews. The process should reflect a systematic review that assesses compliance with the firm's Risk Management Framework). Additional reviews of partners/engagement files may also be undertaken based on ATO or TPB feedback.
- **Annual partner declarations:** Partners should be required to make an at least annual internal declaration in relation to compliance with the risk framework.
- **Reporting:** Following completion of the risk policies compliance testing, the firm's Quality and Risk function should report to relevant firm leadership on compliance or otherwise with the governance and internal control frameworks. Instances of non-compliance should be reported to relevant firm leadership, including matters identified through
 - compliance testing
 - partner declarations; and
 - other reviews based on feedback from the ATO or TPB.
- **Outcomes / firm imposed sanctions:** Where partners or staff are found to have been non-compliant with the requirements of the risk framework, there should be a range of prescribed outcomes. These may include
 - counselling/warning letters;
 - additional reviews to identify more systematic breaches;
 - penalties (eg, remuneration impacts or other financial consequences); and
 - removal from the firm.

Engagement with the authorities

Adviser firms are required to comply with TASA and TPB requirements as regards lodging applications for granting and renewal of tax agent registrations. Large adviser firms may also be required to make filings or declarations in order to comply with government requirements from time to time as regards government procurement.

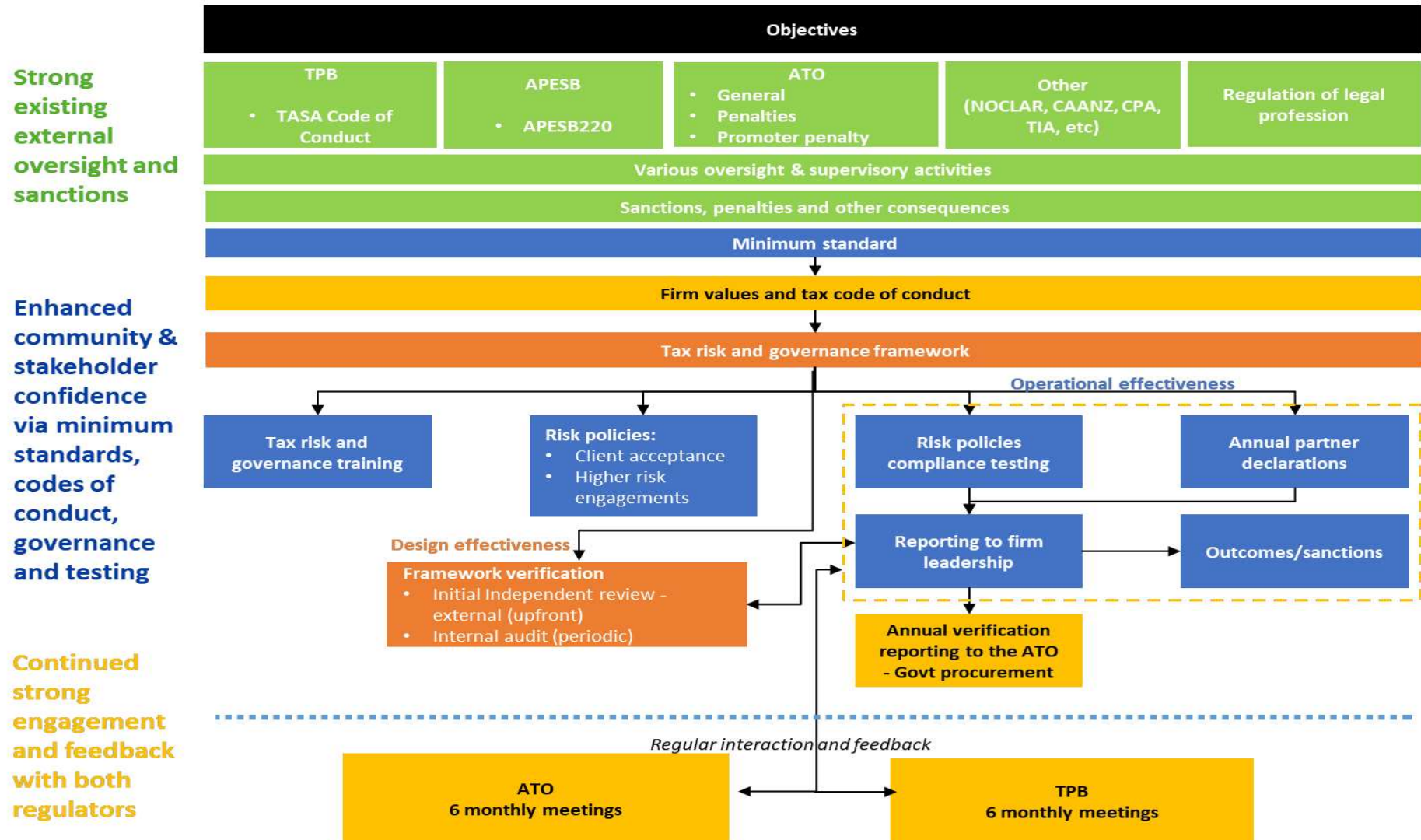
It is expected that senior leadership of large adviser firms will maintain open and regular dialogue with senior officers of the ATO and TPB.

Annual confirmation

Large adviser firms should confirm annually that:

- The firm has in place processes consistent with these Principles.
- The firm has undertaken trainings in respect of governance and internal control framework.
- The firm has sought from all tax partners declarations that they are not involved in promotion of tax schemes that are not reasonably arguable.

- The firm has a program of review of engagement files by persons independent of the client engagement team in accordance with their risk framework, which is continuing. This program includes reporting of results to relevant firm leadership.
- The firm has undertaken appropriate action in respect of any partner or staff member where there are identified instances of non-compliance with the governance and internal control framework.



APPENDIX II

Interview Schedule

Tuesday 24 November 2020

Interview	Role
Jeremy Hirshhorn	Second Commissioner ATO

Tuesday 1 December 2020

Interview	Role & Team
[REDACTED]	Private Clients Business Leader
[REDACTED] (TPP Chair)/ [REDACTED] & [REDACTED] (TPP Alternative Chairs)	Tax Policy Panel (TPP) Chairs
[REDACTED]	Private Clients Partner & Private Clients Risk Management Partner

Tuesday 8 December 2020

Interview	Role & Team
[REDACTED]	Financial Advisory Risk & Quality Team
[REDACTED]	Tax Business Leader
[REDACTED]	International Tax Partner/Corporate Tax Director

Thursday 10 December 2020

Interview	Role & Team
[REDACTED]	Infrastructure & Real Estate Partner/Corporate Tax Director & TPP Secretary
[REDACTED]	R & Q Team member

APPENDIX III

Document Listing

The following documents were provided for review as part of the PwC: Design Effectiveness Review of Tax Governance and Internal Control Framework

Document Number	Folder Name	Document Name
1	QMS Global Guidance Documents	Copy of Quality Requirement 1 - implementation guidance July 2019 final
2		Copy of Quality Requirement 2 - implementation guidance July 2019 final
3		Copy of Quality Requirement 3 - implementation guidance July 2019 final
4		Copy of Quality Requirement 4 - implementation guidance March 2020 update
5		Copy of Quality Requirement 5 - implementation guidance May 2020 update
6		Copy of Quality Requirement 6 - implementation guidance July 2019 final
7		Copy of Quality Requirement 7 - implementation guidance July 2019 final
8		Copy of Quality Requirement 8 - implementation guidance July 2019 final
9		Copy of Quality Requirement 9 - implementation guidance July 2019 final
10		Copy of Quality Requirement 10 - implementation guidance July 2019 final
11		Copy of Quality Requirement 11 - implementation guidance July 2019 final
12		Copy of Quality Requirement 12 - implementation guidance July 2019 final
13		Copy of Quality Requirement 13 - implementation guidance July 2019 final
14		Copy of Quality Requirement 14 - implementation guidance July 2019 final
15		Copy of TLS QMS Guide July 2019 final
16	Reference Documentation	Copy of TLS QMS Reviews and Evaluations July 2019 final
17		Copy of TLS QMS Req 1 – Reference Documentation
18		Copy of TLS QMS Req 2 – Reference Documentation
19		Copy of TLS QMS Req 3 – Reference Documentation
20		Copy of TLS QMS Req 4 – Reference Documentation
21		Copy of TLS QMS Req 5 – Reference Documentation
22		Copy of TLS QMS Req 6 – Reference Documentation
23		Copy of TLS QMS Req 7 – Reference Documentation
24		Copy of TLS QMS Req 8 – Reference Documentation
25		Copy of TLS QMS Req 9 – Reference Documentation
26		Copy of TLS QMS Req 10 – Reference Documentation
27		Copy of TLS QMS Req 11 – Reference Documentation
28		Copy of TLS QMS Req 12 – Reference Documentation
29		Copy of TLS QMS Req 13 – Reference Documentation
30		Copy of TLS QMS Req 14 – Reference Documentation
31		Copy of Copy of FY20 QMS Copy – Our approach to complex tax advice – 2020 presentation deck (21.02.20) (1)
32		Copy of FA risk register – Oct 20 Update
33		Copy of FY20 QMS Copy - BRP Role _ 19 May 2020
34		Copy of FY20 QMS Copy - Business Risk Structure for Network Standard
35		Copy of FY20 QMS Copy - Client Experience FY20 EoFY report
36		Copy of FY20 QMS Copy - Enterprise Risk Management Framework FINAL June 2019
37		Copy of FY20 QMS Copy - ERM Training - For Distribution
38		Copy of FY20 QMS Copy - FA Client Experience Dash April 2020 – Leadership
39		Copy of FY20 QMS Copy - FA Client Experience year end report FY20
40		Copy of FY20 QMS Copy – FA FY21 strategy infographic

41		Copy of FY20 QMS Copy - FA FY21 Strategy_PPT_Partners
42		Copy of FY20 QMS Copy - FA risk register
43		Copy of FY20 QMS Copy – Final FA R&Q Review Results 2020 – FA Leadership [REDACTED]
44		Copy of FY20 QMS Copy - Financial Advisory R&Q Update - Feb 2020
45		Copy of FY20 QMS Copy - Financial Advisory R&Q Update - May 2020
46		Copy of FY20 QMS Copy - Financial Advisory R&Q Update - Nov 2019
47		Copy of FY20 QMS Copy – FY20 Business Risk focus and key contacts for FA – Tom Seymour comms (5 Jul 19)
48		Copy of FY20 QMS Copy - Our approach to complex tax advice - 2020 presentation deck (21.02.20) (1)
49		Copy of FY20 QMS Copy - Risk Management Handbook FINAL
50		Copy of FY20 QMS Copy - SRR _ FY21 Structures (1 Sept 20)
51		Copy of FY20 QMS Copy – Tax Leader comms – PwC Mail – Thank you and the year ahead
52		Copy of FY20 QMS Copy - Tone at the Top Self Assessment-May20-v2
53		Copy of PwC Mail – Financial Advisory Leadership Team (3.4.20)
54		Video link – CEO Webcast – 18 March 2020
55		Video link – CEO Webcast – 6 April 2020
56		Video link – CEO Webcast – 29 April 2020
57		Video link – CEO Webcast – 20 May 2020
58		Video link – CEO Webcast – 3 June 2020
59		Video link – CEO Webcast – 17 June 2020
60		Video link – CEO Webcast – 8 July 2020
61		Video link – CEO Webcast – 3 August 2020
62		Video link – FA Leader Webcast – 4 June 2020
63		Video link – FA Leader Webcast – FA FY21 Strategy – 11 August 2020
64	QMS Req 2 – R&Q Leadership	Copy of FY20 QMS Copy - FA R&Q - FY20 Priorities
65		Copy of FY20 QMS Copy - FA R&Q Contacts
66		Copy of FY20 QMS Copy - Financial Advisory R&Q - Enhanced QAR Program FY20
67		Copy of FY20 QMS Copy - FY20 Resourcing Model
68		Copy of FY20 QMS Copy - FY21 FA R&Q Team Resourcing Model
69	QMS Req 3 – Business Plan	Copy of FY20 QMS Copy - FA Risk Register - Report to GBRC (6 Mar 2020)
70		Copy of FY20 QMS Copy - Our Tax Strategy FY21
71		Copy of FY20 QMS Copy – PC FY21 strategy
72		Copy of FY20 QMS Copy - RMP Meeting Slides - 19 September 2019
73		Copy of Req 3 – PwC Mail – Fwd _ATO Status
74		Link to PwC Google Site – Legal FY21 Growth Priorities
75	QMS Req 4 – Accountability Framework	Copy of FY20 QMS - Copy of War stories FY20
76		Copy of FY20 QMS Copy – Consequence Management Policy
77		Copy of FY20 QMS Copy – EB Paper – 2019 R&Q ratings
78		Copy of FY20 QMS Copy – EB Paper – 2020 R&Q ratings [REDACTED]
79		Copy of FY20 QMS Copy - FA Engagement Reviews - A briefing for engagement leaders (ID 315238)
80		Copy of FY20 QMS Copy - FA R&Q Reviews Moderation Process - FY20
81		Copy of FY20 QMS Copy - FA R&Q Update - Aug 2019 (for Global update 13 Aug 19)
82		Copy of FY20 QMS Copy - Risk & Quality Guidance
83	QMS Req 5 – Purpose, Values, GTCOC and TPP	Copy of Copy of FA How's our Mojo Dec 2019 - Action Planning

84		Copy of FY20 QMS Copy - 2020 Grad Academy - GAAR overview and our approach - Online - part
85		Copy of FY20 QMS Copy – Complex Tax Advice Protocols
86		Copy of FY20 QMS Copy – Engagement Acceptance – High Risk TPP notification Part 1
87		Copy of FY20 QMS Copy – Engagement Acceptance – High Risk TPP notification Part 2
88		Copy of FY20 QMS Copy - Engagement Acceptance High Risk Triggers
89		Copy of FY20 QMS Copy – High Risk Engagements Policy – Private Clients
90		Copy of FY20 QMS Copy – High Risk Engagements Policy – Tax
91		Copy of FY20 QMS Copy - How we will measure success in Financial Advisory_ FY20 bringing it to life in your personal plan
92		Copy of FY20 QMS Copy – Private Clients R&Q Training August 2019
93		Copy of FY20 QMS Copy – Summary Report How's our Mojo Dec 2019 Survey (Values)
94		Copy of FY20 QMS Copy – Summary Report People Perspectives Mojo April 20 (COVID)
95		Copy of FY20 QMS Copy - Tax Policy Panel Overview
96		Copy of FY20 QMS Copy - TPP FY20 Plan on a Page
97		Copy of FY20 QMS Copy – TPP Guidance Comms – PwC Mail – Fwd_ JobKeeper – Tax Panel
98		Copy of FY20 QMS Copy - TPP PwC Australian Compliance FINAL
99		Copy of Training attendance - National Complex Tax & Legal Services FY20
100		Copy of Training attendance - Delivering Distinctive Quality In Financial Advisory FY20
101		Copy of Training attendance - FA Grad Academy Tax Stream FY20
102		Link to speech – ATO Second Commissioner, PwC Global Tax Symposium, Paris, November 2019
103		Link to PwC website – Where next for Australia's Tax System
104		Link to PwC internal training – Global Tax Code of Conduct Training
105		Link to PwC internal training – Delivering Distinctive Quality in Financial Advisory training
106	QMS Req 6 – Independence – Independence Comms	Copy of FY20 QMS - Copy of 191021 CH C34 - The Monday Note - 21 October 2019 - Independence amnesty reminder (1)
107		Copy of FY20 QMS - Copy of 191111 CH C34 - The Monday Note - 11 November 2019 - CES update (1)
108		Copy of FY20 QMS - Copy of 191211 Update on new US restrictions on services to some SEC audit clients - confirmation of the entities impacted (2)
109		Copy of FY20 QMS - Copy of 200203 OFN G+ article - Interested in using micro-investing apps, robo advisers or other digital inve. (1)
110		Copy of FY20 QMS - Copy of 200302 PRI comms - non-assurance partners - Providing services to superannuation funds (1)
111		Copy of FY20 QMS - Copy of 200304 Checkpoint Partner Support - register this week (1)
112		Copy of FY20 QMS - Copy of 200309 PwC Mail - UK FRC - Revised Ethical Standard in relation to services to UK PIEs, their UK parents and global subsidiaries, and some other entities - Update (1)
113		Copy of FY20 QMS - Copy of 200520 G+ - OFN - Independence reminder if you are thinking about leaving PwC to join an audit. (1)
114		Copy of FY20 QMS - Copy of 200520 G+ Reminder for our practice staff_ Hi everyone the uncertainty in our market. (1)
115		Copy of FY20 QMS - Copy of 200616 G+ OFN post - Personal Independence reminder (1)

116		Copy of FY20 QMS - Copy of 200616 Personal Independence - follow on note from the Monday Note (1)
117	QMS Req 6 – Independence	Copy of FY20 QMS – Copy of Essential IQ New Starter_ Scope of Services Practice Staff and Partners 2020 (1)
118		Copy of FY20 QMS - Copy of Essential IQ Refresher_ Independence Below Manager 2019 (1)
119		Copy of FY20 QMS - Copy of Essential IQ Refresher_ Independence Manager & Director 2019
120		Copy of FY20 QMS - Copy of Essential IQ Refresher_ Independence Partner 2019 (1)
121		Copy of FY20 QMS - Copy of Essential IQ_ Independence non practice staff 2020 (1)
122		Copy of FY20 QMS - Copy of Essential IQ_ Independence Partners 2020 (1)
123		Copy of FY20 QMS - Copy of Essential IQ_ Independence practice staff 2020 (1)
124		Copy of FY20 QMS Copy - AFS champions
125		Copy of FY20 QMS Copy - AFS Training - Feb 20
126		Copy of FY20 QMS Copy – BIG Review Process
127		Copy of FY20 QMS Copy - BIG Reviews - Financial Advisory
128		Copy of FY QMS Copy – Essential IQ Independence Training (Partners)
129		Copy of FY QMS Copy – Essential IQ Independence Training (Practice Staff)
130		Copy of FY20 QMS Copy - FA R&Q FY21 Continuous Improvement Plan
131		Copy of FY20 QMS Copy - FA R&Q SNow - allocating enquiry to Independence Team
132		Copy of FY20 QMS Copy – FY18 War Stories Training Tax & Private Clients
133		Copy of FY20 QMS Copy - FY20 Legacy AFS System Report
134		Copy of FY20 QMS Copy - Global Tax Training R&Q Fundamentals (May 2020) - Parts 1 & 2
135		Copy of FY20 QMS Copy – Independence Enquiries - ServiceNow
136		Copy of FY20 QMS Copy - New AFS TLS AFS - FY20-2020-09-19-48-12 (2)
137		Copy of FY20 QMS Copy – New AFS Vantage Training
138		Copy of FY20 QMS Copy – New CES Vantage Training
139		Copy of FY20 QMS Copy - R&Q Refresh - March 2020
140		Copy of FY20 QMS Copy – RMP Meeting Slides – 29 April 2020
141		Copy of FY20 QMS Copy - War stories FY19
142	QMS Req 7 – A&C and HREs	Copy of FY20 QMS Copy – Assignment Acceptance Essentials
143		Copy of FY20 QMS Copy - Client acceptance - automated 3 yearly review
144		Copy of FY20 QMS Copy – Client acceptance – Client acceptance essentials
145		Copy of FY20 QMS Copy - Client acceptance – Ethical Clearance
146		Copy of FY20 QMS Copy - Client acceptance – risk identification
147		Copy of FY20 QMS Copy - Client acceptance policy – all engagements
148		Copy of FY20 QMS Copy - Client and engagement acceptance - TLS
149		Copy of FY20 QMS Copy – Independence Tab – Engagement Acceptance
150		Copy of FY20 QMS Copy – Legal risk assessment flow chart
151		Copy of FY20 QMS Copy – PC risk assessment flow chart
152		Copy of FY20 QMS Copy - Proposed Governance Framework - Engagement Acceptance v2
153		Copy of FY20 QMS Copy – Relationship check tab – Engagement Acceptance
154		Copy of FY20 QMS Copy – Risk Escalation Framework
155		Copy of FY20 QMS Copy – TLS Engagement Acceptance Flowchart
156	QMS Req 8 – Training and Coaching	Copy of Copy of Wage Trust Training Pack - 22.01.20 (for distribution) (1)
157		Copy of FY20 QMS Copy - 2020 FA GA Tax Skills course outline _ Online Delivery.docx

158		Copy of FY20 QMS Copy - 2020 May Tax as a Legal Service
159		Copy of FY20 QMS Copy - FA Sponsorship Program - FY19 Plan
160		Copy of FY20 QMS Copy - FY20 Essential IQ FA
161		Copy of FY20 QMS Copy - Meeting Agenda New Partner R&Q
162		Copy of FY20 QMS Copy - Policies _ Flexible Work policy
163	QMS Req 9 – Engagement Leader Responsibility	Copy of FY20 QMS Copy – Armor Policies – 4 eyes review and Director signing rights
164		Copy of FY20 QMS Copy – T&L Director Signing Rights Policy
165	QMS Req 10 - HREs	Copy of FY20 QMS Copy – FA R&Q Cases by Category
166		Copy of FY20 QMS Copy – Private Clients Tax R&Q Training August 2019
167	QMS Req 11 - ECRs	Copy of FY20 QMS Copy – Draft FA R&Q Review Results 2020 – FA Leadership [REDACTED]
168		Copy of FY20 QMS Copy - ECR - Results email - Non - Compliant (1)
169		Copy of FY20 QMS Copy - ECR - Validator Information
170		Copy of FY20 QMS Copy - ECR Assessment Process - June 2020
171		Copy of FY20 QMS Copy - ECR demerit points draft
172		Copy of FY20 QMS Copy - FA R&Q - Overall Quality Rating
173		Copy of FY20 QMS Copy - FA Reviews Manual FY20 (ID 318039)
174		Copy of FY20 QMS Copy - FY20 - ECR Template (ID 316115) - ECR - Info Req
175		Copy of FY20 QMS Copy - FY20 - ECR Template (ID 316115) - ECR - Review Record
176		Copy of FY20 QMS Copy - FY20 engagement selection process
177		Copy of FY20 QMS Copy - FY20 Results email to Partners - Draft Email for Mail Merge
178		Copy of FY20 QMS Copy - Reviews Training 3 February 2020
179	QMS Req 12 - QARs	Copy of FY20 QMS Copy - 1. National Signers Program Document
180		Copy of FY20 QMS Copy – CAANZ R-045031 Findings and Suggestions Report – completed (Final PwC edited) (2)
181		Copy of FY20 QMS Copy – CAANZ R-045031 Quality Review – Review results
182		Copy of FY20 QMS Copy - FY20 EQR Questionnaire Template (ID 317524) - EQR - Questionnaire
183		Copy of FY20 QMS Copy – Quality Assurance Review Program
184		Copy of FY20 QMS Copy - Quality Review training for FA (1)
185	QMS Req 13 – R&Q Plan	Copy of FY20 QMS Copy - FALT meeting 10.06.20 R&Q Focus Areas
186		Copy of FY20 QMS Copy - FY20 R&Q Plan (annotated for final status)
187		Copy of FY20 QMS Copy – FY20 R&Q Plan (final)
188		Copy of FY20 QMS Copy - FY21 FA R&Q Plan
189	QMS Req 14 - TPMs	Copy of FY20 QMS Copy – Armor Policy - TPMs
190	Additional Documents	Copy of Annual Compliance Confirmation 2020 – Google Form
191		Engagement Acceptance process – engagement letters
192		Large market tax adviser principles 250919
193		PwC Code of Conduct-2017
194		PwC Global Tax Code of Conduct-2015
195		Sample Tax and Legal UEL
196		Sample Tax Consulting SoW
197		TLS Fundamentals Risk Controls
198		Copy of Tax Policy Panels – Assessing Implementation and Embedding
199		Copy of Tax Policy Panels – TPP Effectiveness Monitoring
200	External Tax Governance Review Nov 20	Interview notes – [REDACTED]
201		Interview notes – FA R&Q Team
202		Interview notes – [REDACTED]
203		Interview notes – [REDACTED]
204		Interview notes – Tax Policy Panel Chairs

205		Interview notes – [REDACTED]
206		PwC Tax Governance Review – Interview Agenda
207		Tax Governance Review Nov 20 – Overview and Document List