



1 November 2024

Ms Carlie Beach
Director - Tax Agent Regulation Unit
Personal, Indirect Tax and Charities Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxintegrity@treasury.gov.au

Dear Ms Beach,

Review of Tax Promoter Penalty Laws

As the representative of over 150 large corporates that operate across 22 industries, the Corporate Tax Association (CTA) welcomes the opportunity to respond to the Treasury's *Review of Tax Promoter Penalty Laws* Consultation Paper.

In response to the Consultation Paper, our focus is on consultation questions 8 and 9 (extracted in the Appendix) relating to the 'mere advice' exception contained in subsection 290-60(2) of Schedule 1 to the *Taxation Administration Act 1953* (Cth).

Paragraph 1.43 and Examples 1.2 and 1.3 of the Explanatory Memorandum to [Treasury Laws Amendment \(Tax Accountability and Fairness\) Bill 2023](#) (extracted in the Appendix) explain how the recently amended promoter penalty provisions could be applied to in-house tax advisers.

We seek confirmation that the 'mere advice' exception continues to apply to in-house tax advisers providing advice in the ordinary course of performing their duties¹. This exception should extend to the circumstance where an in-house tax adviser relies on advice sought from an external adviser.

Should you have any questions or if you wish to arrange a meeting to discuss this matter, please do not hesitate to contact me on 0408 028 196 or at scaredes@corptax.com.au.

Yours sincerely

Stephanie Caredes
Senior Tax & Policy Adviser

¹ Of course, the 'mere advice' exception should not apply in outlier cases where an in-house tax adviser may in fact be promoting a tax exploitation scheme.

Appendix

1. Consultation Questions

8. Is the mere advice exception able to be clearly understood and applied in practice? Do tax intermediaries understand what behaviour is acceptable under this exception?

9. Does the mere advice exception achieve a clear and adequate balance for tax practitioners between the protection of advice, and the potential application of the TPPL [tax promoter penalty laws] to the development and marketing of schemes to one or more clients?

2. Extract from the Explanatory Memorandum to [Treasury Laws Amendment \(Tax Accountability and Fairness\) Bill 2023](#)

1.43 While the concept of a ‘promoter’ can include both advisers within a professional services firm and in-house advisers, the broadening of the meaning of ‘promoter’ does not seek to undermine the requirement that the promoter encourage the growth of, or interest in, a tax exploitation scheme. In addition, the exclusion for merely providing advice is unaffected.

Example 1.2 - In-house advice

A tax practitioner is employed to provide in-house advice to a company. The tax practitioner provides advice in relation to a scheme which the company has asked them about and which purports to be consistent with an ATO ruling. The advice notes that the tax structure could be beneficial for the company, but also notes that the assertion that the scheme is consistent with the ATO ruling should be tested before the scheme is adopted.

In these circumstances, the practitioner is not promoting or encouraging the growth of the scheme and would not be considered a ‘promoter’ for the purposes of the promoter penalty laws.

Example 1.3 - In-house promotion

An in-house adviser develops and promotes a tax exploitation scheme to entities within its corporate group by actively encouraging participation in a scheme of which the related entities were not previously aware. The adviser does not charge the related entities professional fees for providing this advice, but receives a bonus based on the tax saving the group has achieved. Because the benefit element of the promoter penalty provisions is satisfied, in these circumstances the in-house adviser could be considered a ‘promoter’ for the purposes of the promoter penalty laws.