

By email: [tpbsubmission@tpb.gov.au](mailto:tpbsubmission@tpb.gov.au)

18 June 2021

Ms Nadja Harris  
Senior Policy and Legislation Adviser  
Tax Practitioners Board

Dear Nadja,

**EXPOSURE DRAFT - TPB PRACTICE NOTE TPB(PN) D45/2021 - BDO SUBMISSION**

BDO refers to the invitation by the Tax Practitioners Board (TPB) to provide comments on the **TPB Practice Note TPB(PN) D45/2021 - Proof of Identity Requirements for Client Verification**.

BDO is pleased to provide comments on the Draft Practice Note TPB(PN) D45/2021 (draft PN). In summary, our main concerns are that:

- The draft PN lacks transitional rules in the proof of identity (POI) requirements. Registered tax practitioners need to put in place or amend client acceptance and continuance mechanisms that include client identification.
- The draft PN relies on general provisions in the Code of Professional Conduct for Tax agents but does not have any specific legislative provisions to back it up. It is also inappropriate to, in effect, attempt to implement the proposed Anti-Money Laundering Legislation without passing it through Parliament
- The PN requirements need to be prescriptive, rather than principles based.
- As both the TPB and the ATO have issued client verification requirements/guidelines for tax agents, which contain differences in their requirements, the TPB and ATO should look to combining their requirements/guidelines so tax agents can apply them both consistently.

BDO's detailed comments in this regard are in the attached appendix.

Should you have any questions, or wish to discuss any of the comments made in our submission, please do not hesitate to contact me on 02 9240 9736 or [lance.cunningham@bdo.com.au](mailto:lance.cunningham@bdo.com.au).

Yours sincerely

Lance Cunningham

BDO National Tax Director

**BDO Submission to the Tax Practitioners Board**  
**TPB Practice Note TPB(PN) D45/2021 - Proof of Identity Requirements for Client Verification**

BDO has considered the **TPB Practice Note TPB(PN) D45/2021 - Proof of Identity Requirements for Client Verification (draft PN)** which requires all registered tax practitioners take appropriate proof of identity (POI) steps prior to providing tax agent, BAS and tax (financial) advice services (including services provided where an individual is representing a client) and on an ongoing basis and we provide the following comments on the issues of concern in the draft PN.

**1. Lack of transitional rules in the draft PN**

The draft PN was issued on 29 April 2021 and applies to all registered tax practitioners from that date. This was confirmed in a joint press release issued by the ATO and the TPB where ATO Assistant Commissioner Sylvia Gallagher stated *there is not an expectation that tax practitioners need to go back and verify the identity of their entire client base as part of the transitional approach (of the draft guidance). "We're asking that they perform identity checks from this point on, at the next opportunity in their normal dealings with clients."*

In order for tax practitioners to meet the POI requirements for client verification, it is recommended an additional timeframe (i.e. transitional rules with an appropriate application date) be provided to implement the draft PN. Accordingly, tax practitioners will need time to educate staff and clients in relation to the requirements of the draft PN, as well as put in place or amend client acceptance and continuance mechanisms that include client identification. We would request that before the draft PN is finalised, the TPB consider providing transitional rules giving tax practitioners additional time and the best chance to prepare for compliance with the draft PN.

**2. No legislative requirements for POI rules**

Whilst the draft PN provides practical guidance in relation to verifying client identities, the TPB is relying on existing general provisions in the Tax Agent's Code of Professional Conduct to require tax practitioners to act honestly and with integrity, to provide tax agent services competently, taking reasonable care and being a fit and proper person. These general provisions were not specifically issued to deal with verifying client identities and therefore may not be adequate for this purpose.

In our view, it is inappropriate for the TPB/Federal Government to be attempting to implement stage 2 of the Anti-Money Laundering (AML) reforms in this 'back door' manner in circumstances where the government cannot obtain sufficient support to pass them through the legislature.

Accordingly, as the draft PN does not have any specific legislative rules to back up the POI requirements, prior to finalisation of the draft PN it is recommended that consideration should be given to providing direct legislative backing for these requirements.

**3. The Guidelines need to be more prescriptive**

If implemented at all the guidelines need to be clear and prescriptive, rather than principles based. At present, there are too many uncertainties that will leave practitioners at risk of being told retrospectively that they have not complied.

**4. TPB and ATO should combine requirements/guidelines for consistency**

Both the TPB and the ATO have simultaneously issued client verification requirements and guidelines that tax practitioners are required to follow. The two documents have a lot of similarities but also some differences. The most important difference is that the ATO applies a transitional approach that asks that tax agents voluntarily apply the ATO guidelines over the course of 2021 with the guidelines becoming compulsory in the future. Whereas the TPB requirements apply from the date of issue, 29 April 2021.

To ensure uniformity between authorities responsible for the requirements/guidelines, we would request that before the draft PN is finalised, the TPB and the ATO should look to combining their requirements/guidelines so tax practitioners can apply them both consistently.