



## THE TAX INSTITUTE

11 June 2021

Ken Kua  
Individuals and Intermediaries  
Australian Taxation Office  
By email: [TaxPractitionerConsultations@ato.gov.au](mailto:TaxPractitionerConsultations@ato.gov.au)

Cc: Janette Luu  
Policy and Legislation  
Tax Practitioners Board  
By email: [tpbsubmissions@tpb.com.au](mailto:tpbsubmissions@tpb.com.au)

Dear Ken,

### **ATO Consultation Paper – Transition to strengthening client verification**

The Tax Institute welcomes the opportunity to make a submission to the Australian Taxation Office (**ATO**) in relation to the [Consultation Paper - Transition to strengthening client verification](#) (**Consultation Paper**).

#### **Summary**

The Consultation Paper sets out the ATO's proposed guidelines for client verification within tax and superannuation practices. The ATO has expressed the view that:

*The guidelines are designed to set a minimum standard to be applied across the tax profession to ensure due diligence is taking place when engaging new clients, or where you suspect an existing client may have had their identity compromised. This is being done to address the growing risk of identity theft and fraud.*

The Tax Institute understands the importance of client verification and supports the application of a minimum standard across the tax profession. However, this needs to be balanced with the compliance burden that the verification requirements outlined in the Consultation Paper will impose on tax professionals.

Prior to any measures outlined in the Consultation Paper becoming compulsory, proper consideration should be given to the type of instrument that would be appropriate to implement the requirements. Further, consultation should be undertaken in relation to the implications associated with not satisfying the verification requirements.

The Tax Institute acknowledges the concurrent release by the Tax Practitioners Board (**TPB**) of the [Exposure Draft TPB Practice Note TPB\(PN\) D45/202](#) (**Practice Note**) which provides practical guidance to registered tax practitioners (being, registered tax agents, BAS agents and tax (financial) advisers) in relation to proof of identity requirements for client verification.. In our opinion, the requirements in the Practice Note have been set out in a clear and concise manner and are easier to follow than the requirements set out in the Consultation Paper. We acknowledge that the approach outlined in the Consultation Paper is intended to apply to a broader sector of tax practitioners, beyond those who are regulated under the *Tax Agent Services Act 2009* (**TASA**).

We consider that a simple approach which would achieve this outcome would be for the ATO to adopt a similar and consistent approach to that set out in the Practice Note, both in terms of content and style. It would be beneficial to clearly outline any differences in the approach taken by the ATO as compared to the Practice Note. Overall, this approach would reduce the potential for even further red tape for some tax professionals in needing to comply with two similar but ultimately distinct regimes.

Notwithstanding our comments above, our submission below addresses the consultation questions outlined in the Consultation Paper and outlines our main concerns in relation to the verification requirements set out in the Consultation Paper.

## **Discussion**

The Consultation Paper sets out five consultation questions. Our responses to the questions are set out below.

### **1. What impact will this new client verification method have on your existing processes?**

The Tax Institute has a broad membership base with tax professionals working across a variety of firms and practices which differ in structure, size, and location. Based on feedback and information gathered from our members, we understand that some tax professionals already conduct verification procedures similar to the verification procedures required under the Consultation Paper. Some tax professionals have adopted client verification protocols similar to those required for financial planners. However, for other tax professionals, who do not have such verification policies and procedures in place, the verification requirements in the Consultation Paper will place a new burden on their practices and firms. Therefore, the impact of the client verification procedures in the Consultation Paper will vary greatly depending on the specific circumstances of the tax professional in question.

At a minimum, all tax professionals will need to review and update their practices' compliance policies, procedures, and their professional engagement documentation to ensure that their policies and procedures satisfy the ATO client verification requirements. Although these requirements are voluntary for now, the Consultation Paper notes that the requirements will become compulsory in the future.

For many tax professionals, this will require extra time and expenses to establish policies and procedures to satisfy the verification requirements. Further, there are likely to be ongoing expenses incurred to satisfy these verification requirements for each new client. Tax professionals will need to explain the verification requirements to clients, follow up new clients for the relevant verification documents and record the sighting of documents. It is likely that tax professionals will be required to address privacy concerns raised by new clients and deal with information inconsistencies in client documentation that arise during the verification process (e.g. change of address). All of which will place a significant burden on tax professionals.

Further, the verification procedures may impact tax professionals' ability to conduct business remotely unless further clarification is provided in the Consultation Paper. As currently drafted, The Tax Institute considers that there may be potential issues arising for tax professionals with the requirements for sighting identification documents. These include:

- the organisation of physical meetings may not be practical or allowed – this could be because clients are located interstate or overseas, because of COVID-19 related restrictions or various other reasons; and
- the ATO guidance should expressly state whether a client showing a tax professional their drivers licence or passport through electronic video conferencing technology (e.g. Zoom, Microsoft Teams) would be sufficient.

The final guidance issued by the ATO should have practical examples that contemplate circumstances involving clients who are not physically located in the same place as the tax professional. The guidance should thoroughly outline how tax professionals can satisfy client verification requirements in such circumstances. The Tax Institute considers that physical copies of documents should not be required to be handed from one person to another in the same physical setting. This would be a significant step backwards from the 'digital by default' settings currently in place. We note that these matters are addressed, in our view, appropriately, in the TPB Practice Note.

The Tax Institute also considers that tax professionals may be adversely impacted as a result of the types of documents that the ATO is requiring for verification purposes in the Consultation Paper. In this regard, we again note the approach taken in the TPB Practice Note is clear and easily understood. We would recommend that the ATO outline the types of documentation that may be accepted for verification purposes in a consistent manner to the Practice Note.

The Consultation Paper confirms that copies of the proof of identity are not required to be maintained, but a contemporaneous record of the date and time that proof of identity checks were conducted is recommended. The Tax Institute agrees that tax professionals should not be required to maintain copies of identification documentation.

## **2. How would you prepare new clients for this process?**

Once the ATO's approach is finalised, the next step is for the ATO to communicate the new requirements to all tax professionals and taxpayers. The Tax Institute considers that the ATO should ensure that all taxpayers and tax professionals are aware of the verification requirements since they are to be mandated by the ATO.

The Tax Institute considers that the ATO should conduct an education campaign in relation to any new client verification requirements. In addition, the ATO website should have a clear outline of the documents that tax professionals may request for the purposes of verifying a person's identity – so that tax professionals can easily explain and justify to clients the reasons for seeking proof of identity documentation.

Tax professionals will also need to clearly communicate to new clients, or potential new clients, the obligations of tax professionals regarding client verification and identification documents. Tax professionals will need to refer new clients to the ATO verification requirements so that they understand the process.

Although some clients may not be concerned about the verification process, it would be remiss not to acknowledge that there will be resistance from clients to the process not because of identity fraud, but purely for personal concerns about sharing such information.

The ATO should clearly state what they expect tax professionals to do in such circumstances. Further clarification is required in some respects, for example, would the ATO expect tax professionals to deny the provision of professional services to the relevant clients even where there is no legitimate concern about their identity?

### **3. What could the ATO do to assist in this?**

In relation to this question, The Tax Institute also refers to our response in Question 2. As noted above, we consider that the ATO is responsible for ensuring all taxpayers and tax professionals are aware of the verification requirements particularly since they are to be mandated by the ATO. To achieve this, the ATO should conduct an extensive education campaign in relation to the new client verification requirements. The Tax Institute would be pleased to assist in a consultation process on information products to raise broader awareness amongst taxpayers regarding these requirements.

The Tax Institute also considers that it is essential that clear information in relation to the client verification requirements is set out on the ATO's website. As noted in our response to Question 5, we do not consider that the requirements as currently drafted are as clear and concise as they could be, particularly having regard to the TPB Practice Note (refer below for further information).

The ATO should consider including the client verification requirements in its Online services (i.e. the Business Portal and Tax Agent Portal) (which may serve as a helpful reminder to taxpayers and tax professionals). Additionally, the ATO should consider whether myGov could be used (e.g. the client could log in and send a QR code to the tax agent that is then matched on the Tax Agent Portal).

The ATO should also include this information under a general section, for example 'Engaging tax professionals' or 'What is required if you engage a tax professional' on their website. For example, in the 'Privately owned and wealthy groups' section of the ATO's website, there is guidance regarding '[engaging professional tax advisers](#)'. However, it currently does not make any reference to the obligations of the tax professional in relation to verifying the client details.

### **4. In regards to relationship verification, what challenges do you see in regards to your clients?**

The Tax Institute is concerned about the obligations that may arise for tax professionals to be aware of the current status applicable to authorised relationships for clients. In certain circumstances, it may not be clear whether the tax professional should be making further enquiries to test an existing authorised relationship. This can be particularly problematic where there is a relationship breakdown, family or domestic violence or other coercive control. Similarly, if an employee ceases employment, unless the client notifies the tax professional, it is unreasonable to expect the tax professional to be aware of the current status.

To what extent is the tax professional required to make investigations to ensure that there has been no change to the relationship status? The ATO should be clear on the factors that will trigger client re-verification including, but not limited to, the passage of time, known change of circumstances etc. We note that the Practice Note provides helpful guidance on the frequency with which tax practitioners should undertake proof of identity steps. It may be useful for the ATO to include consistent guidance. We consider that further consultation is important and necessary in relation to this, particularly where these requirements are intended to be mandated in the future.

Further, we note that many tax professionals work with financial planners. Often, the financial planner will advise the tax professional of changes (e.g. change of address). The ATO guidance needs to provide clarity in relation to various considerations including, whether the tax professional would be required to verify such changes with the client, whether they would need to verify the authorised representative or whether some other verification process will be required.

## 5. Are the guidelines clear and easily understood?

The Tax Institute considers that the verification requirements should be presented in a table format to allow for the requirements to be clear and concise.

Consider the following passage from the Consultation Paper:

*“As an agent, you can verify clients **in any of three ways:***

- *Visual*
- *Source ATO*
- *Source DVS (Document Verification Service)*

*For each client, the information they provide must match the details of the documents used for client verification; for example, name, TFN or ABN, address and/or date of birth (DOB).*

***For each method a total of two separate proofs** of identity must be verified. The exception is when a primary photographic proof of identity document can be verified using the Visual method.*

*Agents may also apply these methods in combination to achieve a total of **two separate proofs** of identity.” [emphasis added]*

The Tax Institute considers that this format is unnecessarily unclear. The words for “each method a total of two separate proofs” must be verified could be interpreted as meaning a practitioner must use each method (i.e. Visual, Source ATO and Source DVS). However, the words “in any of three ways” indicate that tax professionals may choose which method to apply. The ATO should consider a consistent approach to the Practice Note.

In addition, the ATO could provide identification verification templates.

The Consultation Paper provides, “*Tax and BAS agents should take reasonable care in each interaction and where there are heightened risks consider applying additional identity verification checks.*” The Tax Institute considers that in relation to the areas the ATO lists as having a “heightened risk”, it is unclear whether this requires a re-verification at that time (e.g. a change in bank account). It is also unclear what will constitute “reasonable care”. These points should be clarified before the guidance is finalised. One option which may assist would be to provide examples of circumstances where reasonable care has or has not been taken. Further, a safe harbour provision should be considered.

The paragraph quoted above illustrates another point. The Consultation Paper refers to “tax professionals” in parts of the paper and to “Tax and BAS Agents” in other parts. The Consultation Paper should be consistent.

Further guidance would be helpful, particularly given the intention to mandate this process in the future, to demonstrate approaches that would be acceptable in relation to clients without conventional identity documents, such as:

- authorised representatives overseas or newly arrived migrants who have no history in Australia, do not yet have sufficient Australian documents, and the tax professional may not be able to verify foreign documents;
- homeless people that do not have access to records acceptable to the ATO; and
- individuals experiencing family or domestic violence (e.g. how can their identity be verified without compromising their privacy and safety).

\* \* \* \* \*

The Tax Institute is the leading forum for the tax community in Australia. Please refer to **Appendix A** for more about The Tax Institute.

If you would like to discuss any of the above, please contact me or Tax Counsel, Angie Ananda, on (02) 8223 0050.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Godber', with a long horizontal flourish extending to the right.

**Peter Godber**  
President

## **Appendix A**

### **About The Tax Institute**

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge, and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.