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General Manager
Revenue Group Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600
Email: taxagentservice@treasury.gov.au

Dear Sir/Madam,

CREATING A REGULATORY FRAMEWORK FOR TAX ADVICE (FINANCIAL PRODUCT) SERVICES

Thank you for the opportunity to comment on the exposure draft legislation to amend the *Tax Agent Services Act 2009* (TASA) to bring entities that give tax advice in the course of advising on one or more financial products within the regulatory regime administered by the Tax Practitioners Board.

The Association of Superannuation Funds of Australia (ASFA) is supportive of the decision to regulate and the regulatory approach adopted. In our submission on the 2010 discussion paper, *Regulation of taxation services provided by financial planners* we identified regulation by the Tax Practitioners Board as being our preferred option.

Our comments on the exposure draft are restricted to matters that we consider could be included in the explanatory material to provide those affected with a better understanding of certain operational aspects of the change and certain areas of the proposed amending Regulations.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds (SMSFs) and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General Comments

Having reviewed the draft legislation ASFA considers that it will be effective in implementing the Government's policy. We have not identified any other parts of the TASA requiring amendment.

Comments on the explanatory memorandum

Context of amendments

Paragraph 1.6 notes that different registration requirements apply to partnerships and companies. Given that the TASA is new territory to licensed financial advisers, it would assist if the explanatory material was expanded to better explain the registration process. Specifically it is important for new entities to

understand whether and in what circumstances, in addition to the company/partnership being registered and paying a registration fee, it is necessary for individual employees of the entity to also register with the Tax Practitioners Board in their own right and pay a registration fee. Information is also required as to whether that registration can be undertaken on an individual's behalf by their employer.

Recommendation

ASFA recommends that the explanatory material be expanded to provide those new to the TASA regime an improved understanding of the registration requirements and processes.

Registration requirements

The legislative framework operates by requiring entities that provide tax agent services for fee or other reward to be registered if they are to avoid the potential civil penalties. *Tax agent services* is defined to include *tax advice (financial product) services*.

Within the superannuation industry it is reasonably common for funds to provide financial advice (including subject matter that will be covered by *tax advice (financial product) services*) to fund members without charge. Effectively the provision of the advice is a benefit of membership with the cost of providing the service regarded as a general cost of fund administration. As such, the cost is recovered from administration fees that are charged to all members, whether or not they avail themselves of the service. It is unclear whether, under such an arrangement, a trustee of a superannuation fund is required to be registered.

Recommendation

ASFA recommends that clarification be provided in the explanatory memorandum as to the applicability of registration requirements to situations in the superannuation industry where access to financial advice is a benefit of fund membership and is not separately charged for. The use of an example would assist.

Operation of the penalty provisions

Following on from the above example, new subsection 50-10(2A) inserts a civil penalty provision for circumstances where 'you advertise that you will provide a *tax advice (financial product) service' and you are not registered. There may be uncertainty in the minds of some as to the meaning of the word 'advertise'. In the superannuation context, funds who provide, but do not charge a fee for, financial advice may advise their members of their entitlement to that financial advice by way of a notice on their website, information in the product disclosure statement and in newsletters and material accompanying member statements.

Recommendations

ASFA recommends that clarification be provided in the explanatory memorandum as to the applicability of the penalty provisions regarding advertising to superannuation funds that do not charge their members a fee for financial advice but advise their members of the availability of such a service. The use of an example would assist.

Comments on the proposed amendments to the Tax Agent Services Regulations 2009

Comments were also sought on a paper which outlines the proposed changes to the Regulations that would underpin the new regime.

Specific requirements

Paragraph 8 sets out the education requirements for registration by an individual. The educational paths, set out in 8.1, 8.2 and 8.3, each require the individual to 'have successfully completed a TPB approved course in Australian tax law for tax (financial product) advisers'. It is unclear from the statement whether the approved course:

- must be solely in Australian tax law, or

- contains appropriate content related to Australian tax law

Given that registration as a tax (financial product) adviser does not entitle the entity to prepare tax returns or act on an individual's behalf in dealings with the Commissioner, ASFA considers that a requirement to contain appropriate content should be sufficient. Such a requirement would provide education providers some flexibility in how the necessary Australian tax law component was delivered.

As to the question of the actual educational content, ASFA's view is that the scope of the required Australian tax knowledge should be narrower than that required for a tax agent. The content should focus on those matters on which financial advice would typically be given. Consideration should be given to having a structured or limited licence arrangement that is aligned with the AFSL regime. That is, individuals should be able to be licensed to provide limited tax advice and the education requirement mapped accordingly. For example, we propose that where the AFSL only permits advice to be given on superannuation products then the Australian tax knowledge requirement should be broad tax knowledge plus detailed knowledge of the tax matters which would normally arise when advising on superannuation products.

An associated issue is the matter of a licensing requirement of continuing professional education (CPE). As:

- financial advisers are already subject to a CPE requirement,
- the tax component of the advice will be one component of a substantial advice piece; and
- the knowledge requirements in this area are lesser than those of a tax agent

ASFA would argue that the CPE requirement for a tax (financial product) adviser should be considerably less than that for a tax agent or a BAS agent.

Recommendations

ASFA recommends that the regulations be worded so as to provide flexibility in how the Australian tax law educational component can be delivered;

ASFA recommends that, as a matter of urgency, the Tax Practitioners Board identifies and advises of the subject matter that will make up the Australian tax law educational component for tax (financial product) advisers;

ASFA recommends that the Government and Tax Practitioners Board representatives consult with relevant industry associations and current providers of financial advice educational services on appropriate/acceptable course structures and content; and

ASFA recommends that the CPE requirement be a lesser number of hours than that currently set for tax agents and BAS agents.

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If you have any queries or comments regarding the contents of our submission, please contact Robert Hodge on (02) 8079 0806 or via e-mail rhodge@superannuation.asn.au.

Yours sincerely



Fiona Galbraith
Director, Policy