



12 March 2013

General Manager
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The Treasury
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Dear Treasury,

AFA Response to Creating a Regulatory Framework for Tax Advice (Financial Product) Services

Thank you for the opportunity to provide feedback on the draft legislation and regulations for Tax Advice (Financial Product) Services.

The Association of Financial Advisers Limited (“AFA”) has been serving the financial advising industry for over 65 years. Its aim is to provide members with a robust united voice, continually improve practices and focus firmly on the exciting, dynamic future of the financial advising industry. The AFA also holds the client to be at the centre of the advice relationship and thus supports policies that are good for consumers and their wealth outcomes.

With over six and half decades of success behind it, the AFA’s ongoing relevance is due to its philosophy of being an association of advisers run by advisers. This means advisers set the agenda, decide which issues to tackle and shape the organisation’s strategic plan.

We appreciate that the inclusion of Financial Advisers under the Tax Agent Services Act (TASA) has been an issue under review for an extended period of time. The current proposals have been under review for over two years, and we are now down to a matter of less than 4 months until the current regulatory carve-out expires. We are certainly concerned about the timing implications with this legislation and the resultant issues that may arise. We will discuss this and other issues below:

Timing

On one hand there is the issue that the carve-out from TASA for financial advisers expires on 1 July 2013 and on the other hand there is the fact that with less than 4 months to go, this is only draft legislation and high level detail in terms of the regulations. There are obligations that will apply from 1 July 2013 including being subject to the Code of Professional Conduct and the

Professional Indemnity Insurance requirement (discussed further below). 1 July 2013 is the same timing as the commencement of the Future of Financial Advice obligations, so it will be very difficult for advisers to place the necessary focus on their TASA obligations. We believe that this timeframe is impractical. We recommend that the application of TASA to financial advisers should be deferred for 6 to 12 months. We are conscious that there is a notification period, however important obligations apply during this period. A delay in the start-date, does not need to mean that the commencement of the full application on 30 June 2016 needs to be deferred. Either the notification phase or both transitional phases could be reduced.

We would also like to question the intent of deeming all registrations during the notification phase to be effective from 1 July 2013. Are there deeper implications from this, including treating advisers as being subject to the code and required to hold PI prior to their actual date of notification? We see this requirement as problematic and seek clarification of the purpose and implications of this.

Definition of Tax Advice (Financial Product) Service

The definition of Tax Advice (Financial Product) Service is based upon advising on one or more financial products. The complication here is that a financial adviser may provide advice to a client that does not include any product recommendations. For example a financial adviser might recommend to a client that they consider making salary sacrifice contributions to superannuation, without referring to a specific product. This form of strategic advice is not uncommon and once the client is comfortable with the strategy then the adviser may move on to the provision of specific product advice. We are therefore very concerned that financial advisers providing strategic advice may not be correctly covered under this definition and therefore in breach of TASA. It is essential that this definition is modified to ensure that it includes strategic advice that does not include the recommendation of a financial product.

Role of AFS Licensees versus Individuals

All financial advisers need to be licensed or authorised by someone who holds an Australian Financial Services License. The vast majority of advisers work under a licensee. Under the Corporations Act, the Licensee has broad responsibilities for the conduct of their advisers. The TASA legislation does not appear to adequately reflect the role of AFS Licensees. We seek greater clarity on the separate responsibilities of Licensees and the individual. We also seek clarification as to the different implications for registration at the licensee level as opposed to the individual level.

Sufficient Number Requirement

We seek further clarification on the sufficient number requirement in the context of different business models. This also needs to be addressed in the context of licensees of various sizes. Some licensees have a number of large practices, whereas others may have predominantly small practices. Further we seek clarity on the supervisory requirements? We are aware that not all advisers in a practice are required to be registered, however we seek clarity as to whether someone who is unregistered can provide tax advice, or do they need to issue their advice in the name of someone from the practice that is registered. We seek greater clarity on how this is intended to work.

Professional Indemnity Insurance

It is already an AFSL requirement to have PI insurance. It may be necessary for licensees and/or advisers to negotiate an extension of existing PI cover to include Tax Advice (Financial Product) Services. We seek confirmation that this can be facilitated by modification of the existing PI cover, rather than an obligation to obtain separate stand-alone insurance.

We would also like to question the requirement to have fully compliant (upgraded if required for Tax Advice (Financial Product) Services) PI cover from the time of notification, and potentially backdated to 1 July 2013. It may take some time to resolve any necessary changes to the existing cover and think it is unlikely that all changes can be in place by 1 July 2013. We also do not believe that there should be a necessity for this PI cover during the notification phase.

Insufficient Details and Further Questions

There is much within the TASA regime that remains unclear to us. In particular, we would like further guidance on the following:

- What type of education requirement will the TPB have for Tax Advice (Financial Product) Services. We would like to think that this can be aligned with existing financial adviser education. For example there is a tax subject within the Advanced Diploma of Financial Planning. It would be appropriate to have the TASA education requirement linked to existing education pathways, rather than set up as a standalone course.
- We would like to see further details on the proposal with respect to the TPB accrediting professional associations. We note the likely benefit for members in a reduced experience requirement, however we would like to understand how the professional association requirements might be varied from the existing tax agent association requirements.
- What are the university degrees that will be approved by the TPB? Will these change from time to time as course curriculums change?
- How is relevant experience defined? Will this be limited to time in a practice, or might it be more specific?
- The relevant experience section in the draft regulations refers to experience under the supervision and control of a tax (financial product) adviser registered under the Act. How does this allow for experience pre 1 July 2013?
- Do the provisions in relation to recognized tax (financial product) adviser associations need to apply from 1 July 2013, as they appear to have no practical application until after 1 January 2015?
- Are the fees quoted in the draft regulations in the prescribed fee section per a three year period? Does the same fee apply for an individual as per a licensee or corporate?

Eligibility for the Transitional Provisions

We note that the transitional provisions are available to licensees, authorised representatives and representatives as at 30 June 2013. We need to ask the question of what happens with respect to an adviser who is not currently authorised as at 30 June 2013, even if they may have been authorised in the recent past and may be authorised again shortly afterwards. Further what are the implications for new advisers who join the industry after 30 June 2013, but during the notification period?

Conclusion

We thank you for the opportunity to provide feedback on the draft legislation/regulation.

Should you have any questions, please do not hesitate to contact me on (02) 9267 4003.

Yours sincerely,

Philip Anderson**Chief Operating Officer**