



10 July 2014

Mr Gerry Antioch
General Manager
Tax System Division
The Treasury
Langton Crescent
PARKES, ACT, 2600

Email: taxagentservices@treasury.gov.au

Dear Mr Antioch,

AFA Response to the Exposure Draft – Registration Requirements for Tax (Financial) Advisers

The Association of Financial Advisers Limited (“**AFA**”) has served the financial advice industry for over 65 years. Our aim is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

Thank you for the opportunity to provide feedback on the draft Tax Agent Services Amendment (Tax (financial) Advisers) Regulation 2014.

It is important to note that the Tax Agent Services Act legislation has already commenced for tax (financial) advisers and yet there is still much that is uncertain and needs to be finalised. We also consider that commitments that were made by the former Government at the time of the debate of the legislation in June 2013 have not yet been delivered. We note that there are issues with respect to the **definition of tax (financial) advice services** that are outstanding. Whilst there are some amendments to address services provided to members of trusts and managed investment schemes,

this lacks the necessary specificity and there is still no provision for life insurers. No doubt there are other parties who remain unclear as to the implication of TASA on their business activity. Further consultation is required to identify these outstanding concerns. This needs to be resolved as a matter of some urgency.

Nonetheless with respect to the registration requirements, we welcome the release of this exposure draft and look forward to working with the Government to address all the remaining issues.

Our detailed response to the Draft Regulation is as follows:

The Registration Requirements for Tax (Financial) Advisers

We generally support the registration model and the provision of a range of options and particularly an option for the membership of a recognised professional association. This registration model proposal raises the consideration of a relevant degree qualification category. It is important to note that at present a degree is not mandatory for a financial adviser. Whilst this is being put forward in this draft regulation as one of a range of options, it is being put forward in advance of the necessary consultation around the future change required for education standards for financial advisers. Consideration of the education requirements for financial advisers needs to be coordinated across both the AFSL and TASA regimes.

As stated in previous submissions, we do not believe that it is necessary for financial advisers, who largely provide peripheral tax advice to complete both a taxation law and a commercial law subject. In particular we question the necessity for a commercial law subject. Both of these subjects contain material that is simply not required for the vast bulk of financial advisers. The feedback on this point has been broadly consistent across the industry. In our opinion the taxation law and commercial law education requirement should be one single subject that addresses the necessary parts of each and is aligned with the existing financial adviser education pathway.

The experience requirements as set out in Division 2 – Definitions, only reflects experience that is gained post the commencement of TASA. This does not reflect an expected transition arrangement for financial advisers who have long been providing peripheral tax (financial) advice. We note the option in 305 (e) for another kind approved by the Board, however we consider that it is necessary for the regulations to contain a specific reference to previous AFSL or representative experience. Financial advisers should have certainty with respect to the experience requirements rather than need to await a determination of the Tax Practitioners Board (TPB).

We further believe that there are other roles within the financial advice industry, such as para-planners, where relevant experience is being gained and time in these roles should qualify as relevant experience. Working as a para-planner is often a stepping stone towards a role as a financial adviser.

Whilst the experience issue may not be such an important matter for existing advisers who we expect will be allowed to rely on their experience to date, we are much less clear in terms of how new advisers will be able to address the experience requirement.

Supervision

Even with the degree qualified registration option, 12 months experience is required before they can be registered. Neither the draft regulation or the explanatory statement address how that experience can be gained in a supervisory context. It is particularly important to address this as at present there is no experience requirement for someone who is commencing work as a financial adviser.

It is now generally accepted that a financial adviser cannot provide financial advice, which invariably will include some reference to tax, without either being registered with the TPB or being supervised by someone who is. Thus this experience requirement will significantly change the pathways into financial advice. This has not been explained. We believe that this is an issue that needs to be

addressed with consideration across both the AFSL and TASA regimes.

An understanding of how a new financial adviser might obtain the experience requirement, in the context of the way the financial advice industry operates, is critical.

Accreditation of Recognised Tax (Financial) Adviser Associations

Subject to the resolution of the experience issues raised above, we welcome the professional association membership category and the recognition of someone who has extensive experience. We believe that it is appropriate for someone with six years experience in the last eight years to be given an exemption from the taxation law and commercial law education requirements (even where these requirements might be scaled back as proposed above).

We do not oppose the professional association accreditation criteria with respect to governance and membership discipline, however we do have the following reservations:

- The AFA currently has at least one significant membership category who are not practitioners, however are voting members. To comply with the requirements of registration we would have no other practical option other than to remove the voting rights from these membership categories. We believe that the requirements of “voting” members as set out in Part 3 should only apply to “voting practitioner” members, rather than all “voting” members, thus not requiring a change in our Constitution or By-Laws.
- We would like to commence the accreditation process as soon as possible. With the sufficient numbers issue yet to be resolved and with not all members seeking to notify immediately, we expect that there will be some delay in obtaining certainty that we have reached the 500 registered tax (financial) advisers member level. For this reason, given that we have far in excess of 500 practitioner members, we believe that it is much more appropriate and practical for this requirement to not be applied at the time of initial accreditation, but rather applied at the end of the notification period or some later date. Our members are seeking certainty on our status as a recognised tax (financial) advisers association and we need to be able to confirm this for them as soon as possible. We also note that there will be significant work involved in determining exactly which of our members are registered tax (financial) advisers, which would also delay any application.

Item 303(e) places a requirement on the voting member having professional indemnity insurance, yet in the vast majority of cases the insurance will be held by the licensee rather than the adviser. The Tax Practitioners Board has recognised this in their recent explanatory paper, however we recommend that this should be recognised in the regulations.

Conclusion

We welcome the release of this draft regulation and we ask that you consider our feedback with a view to ensure that this regulation will work in practice and will give the necessary level of clarity and certainty for financial advisers seeking registration as tax (financial) advisers.

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

Yours sincerely,

Philip Anderson
Chief Operating Officer