

9 July 2014

General Manager
Tax System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxagentservices@treasury.gov.au

Dear Gerry

Tax Agent Services Amendment (Tax (Financial) Advisers) Regulation 2014

CPA Australia and the Institute of Chartered Accountants Australia (the Institute) welcome the opportunity to comment on the *Tax Agent Services Amendment (Tax (Financial) Advisers Regulation 2014* exposure draft, released 25 June 2014.

CPA Australia and the Institute represent over 200,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government, not-for-profits and academia throughout Australia and internationally. Increasingly, members of the accounting profession are becoming more widely involved in financial services and related advisory and service roles.

The Board has previously stated 'taxation law is an overlay of the existing legal system and a fundamental understanding of the components of common law, equity and statute that comprise commercial law is a crucial requirement in enabling a tax agent to provide tax advice at the requisite level required by the Code of Professional Conduct' (TPB (PG) 02/2010).

We therefore believe completing a course in commercial law is integral to ensuring a registered tax (financial) adviser understands complex arrangements and is equipped to provide investment and divestment advice appropriate for a wide range of entities, including sole traders, partnerships, companies, trusts and SMSFs. This is supported by the Explanatory Statement to the draft regulations which state Australian taxation law and commercial law '..are core aspects of tax (financial) advice services'.

Given this, CPA Australia and the Institute strongly support the proposed pathways to register as a tax (financial) adviser, including the undertaking of a Board approved course in commercial law for pathways requiring the completion of formal training.

We also support the proposed criteria for the Tax Practitioners Board (Board) to recognise an organisation as a recognised tax (financial) adviser association. The requirements reflect existing requirements for accreditation as a recognised BAS agent association and a recognised tax agent association. Ensuring consistency in the recognition and registration requirements is essential in maintaining the integrity and rigour of the Tax Agents Services framework.

Representatives of the Australian Accounting Profession



cpaaustralia.com.au



Institute of
Chartered Accountants
Australia

charteredaccountants.com.au

CPA Australia and the Institute support the inclusion of a pathway to registration for members who are a voting member of either a recognised tax (financial) adviser association or a recognised tax agent association and have a minimum of six years full time relevant experience. While this pathway does not require the specific completion of formal training, an adviser who registers under this pathway will be obliged to comply with The Code of Professional Conduct (the Code).

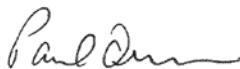
The Code states a number of fundamental responsibilities that establish an overarching framework for the provision of all advice and services provided by registered tax (financial) adviser. An integral element of the Code is Competence. This requires, among other obligations, that all services must be provided competently and that a registered tax (financial) adviser must maintain knowledge and skills relevant to the tax agent services provided. This will ensure that regardless of which registration pathway, a registered tax (financial) adviser will need to adhere to the same standard of knowledge and skills in order to provide competent tax (financial) advice services.

The registration pathways are also consistent with the approach adopted for registered tax agents, that is, the highest academic qualification is complemented by the lowest experience requirements, and the lowest academic qualification is complemented by the highest experience requirement.

Our detailed comments in this submission are outlined in the attachment to this letter.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller (CPA Australia) at keddie.waller@cpaaustralia.com.au or Hugh Elvy (the Institute) at hugh.elvy@charteredaccountants.com.au.

Yours sincerely



Paul Drum
Head of Policy
CPA Australia



Rob Ward
Head of Leadership & Advocacy
Institute of Chartered Accountants Australia

Tax Agent Services Amendment (Tax (Financial) Advisers) Regulation 2014 Exposure Draft

Schedule 1 – Amendments

Tax Agent Services Regulations 2009

CPA Australia and the Institute have no specific comments on the proposed amendments.

Schedule 1 – Requirements to become a recognised association

CPA Australia and the Institute support the proposed criteria for the Board to recognise an organisation as a recognised tax (financial) adviser association.

These requirements replicate the existing requirements for organisations to be recognised as a BAS agent association and a recognised tax agent association, with appropriate amendments for each category of registration depending on the discipline.

Ensuring consistency in the registration requirements is essential in maintaining integrity and rigour in the Tax Agents Services framework.

It is also important that the Board ensures a consistent and robust approval process in recognising that an association meets the set criteria. While some discretion may be appropriate, consistency must be applied to ensure the framework retains its integrity.

Schedule 2 – Eligibility for registration as BAS agent, tax agent or tax (financial) adviser: prescribed requirements.

Paragraph 101(c) and 102(d) of Schedule 2

Extension of period to accrue experience

CPA Australia and the Institute support the proposed amendment to increase the number of years from 3 to 4 in which an individual must have undertaken at least 1400 hours of relevant experience for the purposes of registration as a BAS agent.

Providing an additional 12 months will provide greater flexibility, which will assist individuals who may have periods out of the workforce for a variety of reasons including family commitments.

However, as the draft Explanatory Statement states, the objective of this amendment is overcome 'difficulties for some applicants who have had disruptions to their career, for example, by reason of parental leave, or extenuating circumstances, such as health conditions'.

We note that the above difficulties may equally be experienced by tax agents, and although longer periods are available under the tax agent pathways in which to accrue the required amount of experience, those pathways also require the periods of experience to be 'full time equivalent' periods, which is more onerous than the 'hours' requirements applicable for the BAS agent pathways.

For this reason, we believe that it would be preferable to apply the proposed 'extension of period' amendment to both the tax agent and BAS agent registration pathways. As such, it may be better for this amendment to be made by way of conferring a discretion on the Board to take into account experience obtained during an additional period of time, i.e. no longer than 2 years earlier, for tax agents and BAS agents, 'in extenuating circumstances'.

Importantly, we note that many members of CPA Australia and Chartered Accountants who would otherwise choose to register as a BAS agent are currently forced into registering under the tax agent category (due to the very narrow and prescriptive requirements for registering as a BAS agent). This means that many of our members who are in the demographic at which this amendment is aimed, i.e. women who have taken maternity leave and have resumed working on a part-time basis from home to care for their children, will need to show they have the experience required to register as a tax agent in order to provide their BAS services. This issue is discussed separately below.

In this regard, we are aware of particular cases in which our members in the above demographic cannot qualify for registration under the tax agent rules by reason of the experience requirements under the tax agent pathways. For example, the applicant has had two children over the past 5 years, which involved taking maternity leave of two years in total and has returned to providing BAS services on a part-time basis, which equates to less than 2 years 'full time equivalent' out of the past 5 years. As a result of the career break, their considerable 'relevant experience' gained prior to having their children falls outside of the prescribed 5 year period and cannot be counted.

In summary, a discretion that is available under both tax agent and BAS agent registration categories would provide the Board with the appropriate powers for flexibility to deal with any extenuating circumstances that arise.

The discretion could be drafted and included as a simple amendment to the 'relevant experience' definitions in the Regulations to allow the Board to count relevant experience outside of the prescribed periods in extenuating circumstances, for a further limited period, such as up to a maximum of 2 years earlier.

Additional pathway for BAS agent registration – 'Professional membership'

As mentioned above, there is another important amendment that needs to be made to the BAS agent registration eligibility rules - Part 1 of Schedule 2 - which we urge Treasury to support. This amendment is critical so that the BAS agent registration rules:

- are consistent with the tax agent and tax (financial) adviser rules from a policy perspective; and
- operate as intended by allowing appropriately qualified BAS practitioners to register as a BAS agent.

The BAS agent registration pathways are currently too limited, too narrow and prescriptive, and accordingly are not fit for their purpose. Fully qualified professional accountants (CPAs and Chartered Accountants) do not typically meet the current BAS agent registration requirements, which to our minds, is a manifestly inappropriate outcome and is an 'unintended consequence' of the overly prescriptive rules.

There are only 2 available pathways to register as a BAS agent, as compared with six (6) pathways for tax agents, and four (4) proposed pathways for tax (financial) advisers.

Both of the BAS agent registration pathways have prescribed academic requirements. This is inconsistent from a policy perspective with the pathways available to tax agents, and those proposed for tax (financial) advisers. For both of those categories, the rules include a pathway for registration without the need to meet any specific academic requirements, provided the applicant is a voting member of a recognised association, and has the required amount of relevant experience.

It should be noted that the "Professional membership" pathway has recently been added to the pathways that were originally proposed for tax (financial) advisers, in recognition of the need for consistency in approach and policy, and to ensure that appropriately experienced practitioners are not confronted with an undesirable barrier to entry. For the same reason, the BAS agent registration rules should have a pathway that does not depend on a specific academic course being undertaken. That is, there should be a 'Professional membership' pathway that is the equivalent of item 206 for tax agents, and the proposed item 304 for tax (financial) advisers – no academic requirements applicable.

The new item 103 for BAS agents could be drafted in words to the following effect:

Item 103

A requirement is that:

- (a) the individual is a voting member of:
 - (i) a recognised BAS agent association; or
 - (ii) a recognised tax agent association; and
- (b) the individual has undertaken at least 2,000 hours of relevant experience in the past 6 years.

Part 3 – Tax (financial) advisers

CPA Australia and the Institute support the proposed requirements for registration as a tax (financial) adviser, including the requirement that the individual is, or was within the preceding 90 days, an Australian Financial Services licensee or a representative of a licensee.

The proposed pathways are also consistent with the approach adopted for registered tax agents, that is, the highest academic qualification is complemented by the lowest experience requirements, and the lowest academic qualification is complemented by the highest experience requirement.

Tertiary qualifications, Diploma or higher award, Work experience

We believe the specific requirements set out in sections 301, 302 and 303 achieve an appropriate balance between academic qualifications and relevant experience, while providing the flexibility for individuals to demonstrate their competence in different ways.

The key element is to ensure that the individual has an appropriate breadth of knowledge based on two main competencies; an understanding of the taxation laws and an understanding of commercial law.

Australian taxation law

As we have consistently maintained during the development of this regulatory framework over a number of years, it is vitally important that tax (financial) advisers have a sound and relevant knowledge of Australian taxation law. It is also broadly accepted within the industry that taxation is an integral and key component of any financial advice service provided. Understanding the taxation implications of investment and divestment actions is an integral part of providing appropriate financial planning advice to consumers. This includes understanding complex arrangements and transactions in relation to a wide range of entities, structures and circumstances, and across a broad range of taxes.

We therefore support the Board's preliminary view that the course in Australian taxation law should comprise of 100 to 130 hours, being one semester length subject, as stated in Note 1 in the Attachment to the Discussion paper and previously in Exposure draft proposed guideline TPB(PG) D04/2013.

This is appropriate given the Explanatory Statement states '...services offered by tax (financial) advisers are not as broad as services provided by tax agents' and registered tax agents are required to complete two semester length subjects in Australian taxation law (TPB(PG) 03/2010). Therefore a reduced requirement of completing one course in Australian taxation law is appropriate to register as a tax (financial) adviser.

Further, we believe there are a range of key tax topics and importantly, sub-topics that must be covered in a 'course in Australian taxation law'. This includes, individuals (e.g. non-commercial loss rules, personal services income, PAYG variation and employee share schemes (ESS)), and other core areas such as CGT and the taxation treatment of superannuation.

We believe the topics proposed can be tailored into a semester length subject appropriate for financial planners to satisfy the requirement to register as a tax (financial) adviser.

Importantly, the requirement to complete a Board approved course in Australian taxation law will play a pivotal role in meeting the policy objectives of this regulatory reform and will be integral to its integrity and success.

Commercial law

Previously the Board has stated 'taxation law is an overlay of the existing legal system, and a fundamental understanding of the components of common law, equity and statute that comprise commercial law is a crucial requirement in enabling a tax agent to provide tax advice at the requisite level required by the Code of Professional Conduct' (TPB (PG) 02/2010).

It is therefore appropriate that a financial planner complete a Board approved course in commercial law to ensure they understand complex arrangements and provide investment and divestment advice appropriate for a wide range of entities, including sole traders, partnerships, companies, trusts and SMSFs.

This is also appropriate given registered tax agents are required to complete three semester length subjects in commercial law.

CPA Australia and the Institute believe the content to be covered and to what depth should be a decision for the Board, but should include the following the core areas previously identified by the Board:

- a) Australian legal systems and processes
- b) contracts
- c) the law of entities and business structures
- d) property law; and
- e) the tort of negligence.

Membership of professional associations

CPA Australia and the Institute support the inclusion of a pathway to register for members who are a voting member of either a recognised tax (financial) adviser association or a recognised tax agent association and have a minimum of six years full time relevant experience in the past eight years.

This pathway is consistent with section 206 for experienced advisers who are members of a registered tax agents association to register as a tax agent.

Importantly, while this pathway does not require the specific completion of either a course in commercial law or a Australian taxation law approved by the Board, advisers who register under this pathway must still comply with the requirements of the Code.

The Code states a number of fundamental responsibilities, including Competence which specifically requires:

- You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
- You must maintain knowledge and skills relevant to the tax agent services that you provide.
- You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of a client.
- You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

This ensures that all registered tax (financial) advisers will have the requisite level of knowledge and skills both upon registration and on an ongoing basis to ensure the provision of quality tax (financial) advice services to consumers.

Division 2 – Definitions

Relevant discipline and relevant experience

CPA Australia and the Institute are supportive of the proposed definition of relevant discipline and relevant experience. We believe the proposed definition is consistent with the meaning of relevant experience for registered tax agents and registered BAS agents.

CPA Australia and the Institute also support that the Board has the discretion to recognise other types of experience.

Exclusion from the meaning of a tax agent service

While appreciating section 90-5 of the Act defines tax agent services and subsection 90-5(2) allows services to be excluded from this definition through regulations we do not believe the services provided by actuaries should be exempt. An important component of this framework is consistency. We therefore believe actuarial services should come under the definition of a tax agent service.