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CREATING A REGULATORY FRAMEWORK FOR TAX (FINANCIAL) ADVICE SERVICES AND OTHER AMENDMENTS

SUMMARY OF CONSULTATION PROCESS

On 29 November 2010, the then Assistant Treasurer and Minister for Financial Services and Superannuation released an options paper entitled 'Regulation of tax agent services provided by financial planners' for public consultation. Following an ongoing consultation process with industry stakeholders, these amendments were announced in the 2012-13 Mid-year Economic and Fiscal Outlook.

The *Tax Agent Services Act 2009* (TASA 2009) will be amended to bring entities that give tax advice in the course of providing financial advice within the regulatory regime administered by the Tax Practitioners Board (TPB). These amendments ensure the consistent regulation of all forms of tax advice, irrespective of whether it is provided by a tax agent, a Business Activity Statement (BAS) agent or an entity in the financial services industry. These amendments also correct a range of technical issues with the TASA 2009.

These amendments were included in Tax Laws Amendment (2013 Measures No. 2) Bill 2013, which was introduced into Parliament on 29 May 2013. These amendments were subsequently removed from the Bill to allow for consideration by the Parliamentary Joint Committee on Corporations and Financial Services. These amendments were reintroduced as part of the Tax Laws Amendment (2013 Measures No. 3) Bill 2013 on 20 June 2013.

Consultation process

Consultation on the options paper was conducted between 29 November 2010 and 25 December 2010. Twenty-two submissions were received.

Ongoing roundtable consultation between the Assistant Treasurer, Treasury and stakeholders followed throughout 2011 and 2012.

Consultation on the draft legislation was conducted between 8 February 2013 and 8 March 2013. Thirty-three submissions were received, including three confidential submissions. The non-confidential [submissions](#) are available on the Treasury website.

[Draft legislation](#)

An additional roundtable consultation was conducted by Treasury with key industry stakeholders, the TPB and the Australian Securities and Investments Commission (ASIC) on 13 May 2013 to discuss issues raised during the public exposure of the draft legislation.

The Parliamentary Joint Committee on Corporations and Financial Services (the Committee) also conducted a public hearing on the proposed amendments to the TASA 2009 on 12 June 2013, with



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key industry stakeholders, Treasury and ASIC appearing before the Committee. The Committee received several submissions from stakeholders and tabled a [report](#) on the amendments on 17 June 2013.

Summary of key legislative issues arising from consultation on the draft legislation

General Tax Information Only

Submissions argued that the provision of generally available (factual) tax information is not a tax agent service and should be expressly exempted in the TASA 2009 or related regulations for licensees and individuals.

The explanatory memorandum makes it clear that giving tax-related factual information (including calculators) is not a tax agent service and will also not be treated as a tax (financial) advice service, even if the advice is given in the course of providing financial advice.

The Government will also consult on whether any changes are needed to the *Tax Agent Services Regulations 2009* to put beyond doubt what services should be excluded from the Tax Agent Services Regime.

Scope of regulated services

A number of submissions were concerned that the exposure draft definition of a tax advice (financial product) service was too narrow to appropriately reflect the scope of advice provided by financial advisers.

In light of these concerns, and as part of the ongoing consultation process, a broader definition has been developed to ensure that all services usually provided by financial services licensees (that are a tax agent service) will qualify as a tax (financial) advice service. This will ensure that financial services licensees that provide tax advice in the course of providing financial advice will be able to register as tax (financial) advisers, rather than as tax agents (which provide a broader range of tax agent services and will generally have higher registration requirements).

Alignment between the TASA 2009 and the Corporations Act 2001

Submissions noted that the potential duplication of regulatory frameworks for financial advice activities by ASIC and the TPB. Specifically, submissions called for the integration of existing obligations under the *Corporations Act 2001* (Corporations Act) for financial advisers into the TASA 2009.

Where appropriate, the final legislation ensures a better alignment of these regimes. For example, in determining whether a company or a partnership has a sufficient number of individuals that are registered tax (financial) advisers, the TPB will now be required to take into account the relevant parts of the Corporations Act.



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Notification/Transitional Phase

Submissions were also concerned about the backdating of registration during the notification phase as proposed in the exposure draft legislation. Some submissions argued for a reduction in the notification and/or transitional period, or a delayed start date for the application of the proposed amendments to the TASA 2009.

In addition the Government has deferred the start date of the new regime so that it will commence on 1 July 2014.

Whilst the notification and transitional periods remain in place, registration will now apply from notification or registration (as relevant). This also allows an entity to register later in the notification phase, should it choose to do so.

Training/Competency and Experience Standards

Submissions sought clarification on the training and competency and experience requirements applicable for tax (financial) advisers.

The existing legislative framework of the TASA 2009 provides for competency and experience requirements to be specified in the regulations rather than the Act. This legislation also provides competency and experience requirements for tax (financial) advisers to be specified in the regulations.

The Government is currently consulting on these competency and experience requirements. The [discussion paper](#) is available on the Treasury website. Submissions close Thursday, 11 July 2013.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Philip Akroyd on (02) 6263 4385.

Thank you to all participants in the consultation process.