

## Creating a regulatory framework for tax (financial product) advisers

### Proposed amendments to the Tax Agent Services Regulations 2009

1. The *Tax Agent Services Act 2009* (TASA 2009) provides for a range of matters to be prescribed in the Tax Agent Services Regulations 2009 (the Regulations). This includes, for example:
  - 1.1. paragraph 20-5(1)(b) which provides that the regulations may prescribe a range of eligibility requirements that an individual must satisfy to be registered as a tax agent or BAS agent; and
  - 1.2. paragraph 20-20(1)(b) which requires an entity's application for registration as a tax agent or BAS agent to be accompanied by the prescribed application fee.
2. To give effect in full to the new regulatory regime for tax (financial product) advisers, it will also be necessary to amend the Regulations to:
  - 2.1. specify the requirements for an individual to be eligible for registration as a registered tax (financial product) adviser (per section 20-5 of the TASA 2009 in conjunction with Schedule 1, Part 1, item 4 of the draft legislative amendments);
  - 2.2. establish a system for the Tax Practitioners Board (TPB) to accredit professional associations for the purposes of recognising professional qualifications and experience relevant to the registration of individuals as a registered tax (financial product) adviser (per section 20-10 of the TASA 2009 in conjunction Schedule 1, Part 1, item 9 of the draft legislative amendments);
  - 2.3. prescribe the registration fee for entities applying for registration as a registered tax (financial product) adviser (per paragraph 20-20(2)(b) of the TASA 2009 in conjunction with Schedule 1, Part 1, item 10 of the draft legislative amendments); and
  - 2.4. prescribe the details that the TPB must enter on the register of registered entities (per subsection 60-135(2) of the TASA 2009 in conjunction with Schedule 1, Part 1, items 36 and 37 of the draft legislative amendments).
3. This paper sets out what these amendments could look like. We seek comments on the specific elements of these proposed changes to the Regulations and comments on how these proposed changes would interact with the draft amendments to the TASA 2009.

### Eligibility requirements to be registered as a tax (financial product) adviser

4. A new regulation 8A inserted into Part 2 of the Regulations would prescribe the requirements for tax (financial product) advisers. Consistent with the approach in existing regulations 7 and 8 that apply to BAS agents and tax agents respectively, the specific requirements would be inserted into a new Part 3 to Schedule 2. This new Part would consist of two Divisions — Division 1 would set out the specific requirements and Division 2 would provide the meaning of relevant experience.
5. These changes would have an application date of 1 January 2015.

### *Specific requirements*

6. The overarching requirement would be that the individual is either:
  - 6.1. a financial services licensee, as defined in Chapter 7 of the *Corporations Act 2001*; or
  - 6.2. a representative of a financial services licensee, as defined in paragraph 910A(a) of the *Corporations Act 2001*.
7. To provide flexibility in situations where an individual has had a change of circumstances (such as becoming a representative of a different financial services licensee due to a change of employment), it would only be necessary for the individual to meet this requirement at some point during the preceding 30 day period.
8. In addition, the individual would need to:
  - 8.1. have successfully completed a TPB approved course in Australian tax law for tax (financial product) advisers and engaged in the equivalent of two-years of full time relevant experience in the preceding five years; or
  - 8.2. hold a degree or award that is approved by the TPB from an Australian tertiary institution, or an equivalent institution, in a discipline that is relevant to tax advice (financial product) services; have successfully completed a TPB approved course in Australian tax law for tax (financial product) advisers and engaged in the equivalent of 18-months of full time relevant experience in the preceding five years; or
  - 8.3. have successfully completed a TPB approved course in Australian tax law for tax (financial product) advisers, be a voting member of a recognised tax (financial product) adviser association or a tax agent association and engaged in the equivalent of 12-months of full time relevant experience in the preceding five years.

### *Relevant experience*

9. Relevant experience would include work by an individual:
  - 9.1. as a tax (financial product) adviser registered under the Act;
  - 9.2. as a tax agent registered under the Act or as a tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936*;
  - 9.3. under the supervision and control of a tax (financial product) adviser registered under the Act;
  - 9.4. under the supervision and control of a tax agent registered under the Act or as a tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936*; or
  - 9.5. of another kind approved by the Board;

where the individual has had substantial involvement in one or more types of tax advice (financial product) services or substantial involvement in a particular area of the tax laws to which one or more of these types of services relate.

### **Recognised tax (financial product) adviser associations**

10. Part 1A of the Regulations provides for the system to allow the Board to accredit professional associations. Of this Part, Division 1 applies in relation to recognised BAS agent associations and Division 2 applies in relation to recognised tax agent associations. A new Division 2A inserted into Part 1A would apply in relation to recognised tax (financial product) adviser associations and would mirror the existing Division 2 as modified for recognised tax (financial product) advisers.
11. Part 1A also contains Division 3. This Division provides for the publication of various notices on the TPB's website and the review of decisions relating to recognised BAS agent associations and tax agent associations. Both provisions in this Division would be updated to apply to recognised tax (financial product) adviser associations.
  - 11.1. Specifically, new paragraphs (e) and (f) inserted into regulation 6 would require the TPB to publish on its websites its decisions to recognise an organisation as a recognised tax (financial product) adviser association and its decisions to terminate the recognition of an organisation as a recognised tax (financial product) adviser association respectively.
  - 11.2. Similarly, new paragraphs (e) and (f) inserted into regulation 6A would allow application to be made to the Administrative Appeals Tribunal for review of the TPB's decision not to recognise an organisation as a recognised tax (financial product) adviser association and a decision to terminate a recognised tax (financial product) adviser association's recognition.
12. A new Part 3 to Schedule 1 would set out the requirements that an organisation would need to meet in order to become a recognised tax (financial product) adviser association. These requirements would mirror the requirements that apply in relation to registered tax agent associations as modified for recognised tax (financial product) advisers.
13. These changes would have an application date of 1 July 2013.

### **Prescribed fees**

14. The table in regulation 9 would be amended to include:
  - 14.1. a new item 5 for an application for, 'Registration as a financial adviser who carries on a business as a financial adviser' with a fee of \$400; and
  - 14.2. a new item 6 for an application for, 'Registration as a financial adviser who does not carry on a business as a financial adviser' with a fee of \$200.
15. This change would have an application date of 1 January 2015.

### **The TPB's register of registered and unregistered entities**

16. All of the current references to tax agents and BAS agents in regulation 12 would be amended so they also refer to tax (financial product) advisers.
17. This change would have an application date of 1 July 2013.