



20 March 2013

General Manager  
Revenue Group Law Design Practice  
The Treasury  
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PARKES ACT 2600

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Dear Mr. Reid,

### **Creating a regulatory framework for tax advice (financial product) services**

The Self Managed Superannuation Funds Professionals' Association of Australia (SPAA) welcomes the opportunity to make a submission in relation to the draft legislation that amends the *Tax Agent Services Act 2009* (TASA) and the Tax Agent Services Regulations 2009 in order to bring tax advice provided by financial advisers into the TASA regime.

SPAA has a number of concerns regarding the proposed amendments and also the consultation process that has led up to the release of the draft legislation. We are concerned that the requirements for financial advisers to become part of the TASA regime will result in them facing extra compliance burdens on top of their existing legal requirements, that the definition of "tax advice (financial product) service" is unclear and that the proposed registration model is not appropriate for the financial advice industry.

Accordingly, we believe that a more extensive consultation between Treasury and the financial services industry needs to be undertaken before the new regime begins. This further consultation would allow an opportunity to resolve some of the drafting problems of the current proposed amendments.

The key points of this submission are:

- **SPAA believes that Treasury and the Tax Practitioners Board (TPB) should undertake further consultation with the financial services industry to resolve issues in the current exposure draft.**
- **The stage of the transitional period for financial advisers to notify the TPB that they are engaged in tax advice (financial product) services should be delayed by six months to allow for the further consultation.**
- **The definition of tax advice (financial product) services should be more clearly defined to exclude general tax advice related to a financial product.**



- **The requirements for TASA registration and the existing obligations for financial advisers under the *Corporations Act 2001* should be better integrated to reduce the compliance burden for financial advisers.**
- **The AFSL authorised representative business model should be better reflected in the registration model provided for in the exposure draft.**

These issues and SPAA's recommendations are discussed in detail in the [Attachment](#).

### **About SPAA**

SPAA is the peak professional body representing the SMSF sector throughout Australia. SPAA represents professionals, irrespective of their personal membership and professional affiliations, who provide advice to individuals aspiring to higher levels of participation in the management of their superannuation savings. Membership of SPAA is principally accountants, auditors, lawyers, financial planners and other professionals such as actuaries.

SPAA is committed to raising the standard of professional advice and conduct in the SMSF sector by working proactively with Government and the industry. In doing so, SPAA has contributed to SMSF advisors providing a higher standard of advice to SMSF trustees. This in turn has enabled trustees to make more informed decisions addressing the adequacy, sustainability and longevity of their own retirement savings. SMSFs offer trustees greater control and flexibility and have become an integral part of the Australian Superannuation landscape by providing significant and viable options for managers, business owners, executives and retail operators alike.

We would be happy to provide further information or to discuss any questions you may have about this submission with you.

Yours sincerely

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CEO

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**Mrs. Andrea Slattery**  
Chief Executive Officer

**Mr. Peter Burgess**  
Technical Director



## ATTACHMENT

### **Further consultation with financial services industry**

SPAA believes that further consultation on the proposed amendments should be undertaken with the financial services industry. The industry was able to consult on the discussion paper which broadly outlined how financial advisers providing tax advice would be brought into the TASA regime in late 2010 and early 2012, but there has been no substantial consultation on the legislative details which make up the proposed amendments. The current exposure draft has some significant issues which could detrimentally affect the financial planning industry and consumers of financial advice.

We believe extended consultation on the legislation is required to ensure that the integration of financial advisers into the TASA regime is effective and efficient.

We suggest that the proposed start date of 1 July 2016 for full integration of financial advisers into the TASA regime need not be changed. However, the 18 month transitional period proposed to begin on 1 July 2013 could be moved back six months to 1 January 2014 to allow for further consultation on the proposed amendments. Such a delay would need to be accompanied by an extension of the TASA exemption applying to financial advisers for a corresponding length of time.

### **Definition of tax advice (financial product) services**

SPAA believes that the definition of “tax advice (financial product) services” needs clarification so that it covers advice that should appropriately be only provided by a registered tax (financial product) adviser.

We believe that general tax advice relating to financial products should not fall within the definition of tax advice (financial product) services. For example, general information on the tax outcomes of holding equity investments such as general factual information about dividend imputation and capital gains tax should not be considered a tax advice (financial product) service. However, such general information, often provided via a financial planner through a brochure or online webpage, may be relied upon by a taxpayer. This element of reliance would cause the provision of general information to fall within the proposed definition of tax advice (financial product) service.

We believe that the definition of tax advice (financial product) service should be narrowed so that it only applies to advice for a specific client, not general information provided by a financial planner to the public. This would ensure that general tax advice would not fall within the scope of the type of advice that should only be provided by a registered tax (financial product) adviser.

### **Integrating TASA registration for financial advisers with existing AFSL and legislative requirements**

Financial advisers that are providing tax advice need to fulfil a range of licencing requirements under the Australian Financial Services Licence (AFSL) regime and meet statutory obligations in providing advice. The Australian Securities and Investments Commission (ASIC) licence and regulate financial advisers through the AFSL regime. Additionally, financial advisers are bound by



the obligations of the Future of Financial Advice (FoFA) reforms which provide retail investors accessing financial advice increased consumer protection. Including financial advisers providing tax advice (financial product) services in the TASA regime introduces a third layer of regulation on financial advisers providing tax advice.

We believe that the existing requirements for financial advisers found under the *Corporations Act 2001* (Corporations Act) and the AFSL regime as well as their obligations under FoFA should be integrated administratively as far as possible with their requirements under the TASA regime instead of having separate requirements under the TASA regime. Such integration would work as the proposed changes to the *Tax Agent Services Regulations 2009* (TASR) will require financial advisers registering under the TASA regime to be either an AFSL licensee or AFSL licensee authorised representative. This integration approach would minimise compliance costs for financial advisers and reduce the legislative burden that they will face.

This approach would especially be important for the professional indemnity (PI) insurance requirements for financial advisers becoming part of the TASA regime. Having to seek separate PI insurance to satisfy TASA regime registration requirements would impose a significant cost on advisers who are already required to obtain PI insurance as a condition of holding an AFSL or being an authorised representative.

The draft legislation proposes that financial advisers providing tax advice (financial product) services meet the necessary requirements of the TASA and the TASR. The following table shows where financial advisers have similar obligations under the AFSL regime and FoFA reforms which could satisfy the requirements for providing tax advice (financial product) services.

<b>TASA Regime Requirement</b>	<b>AFSL or FoFA Equivalent</b>
Fit and Proper Person Test	ASIC must be satisfied AFSL holder is of "good fame and character" – Corporations Act s 913B
Tax Practitioners Board (TPB) PI requirements	AFSL holders must have adequate PI – <i>Corporations Regulations 2001</i> reg 7.6.02AAA
Act honestly and with integrity	Do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly - Corporations Act s 912A
Act lawfully and in best interest of clients	Best interest duty – Corporations Act s 961B Ban on conflicted remuneration – Corporations Act sections 963E, 963G
Have in Place adequate arrangements for managing conflicts of interest	Have in place adequate arrangements for the management of conflicts of interest – Corporations Act s 912A
Provide services competently	Maintain the competence to provide financial services – Corporations Act s 912A Ensure that its representatives are adequately trained, and are competent, to provide those financial services – Corporations Act s 912A
Not knowingly obstruct proper administration of the tax laws	Comply with the financial services laws – Corporations Act s 912A



TASA Regime Requirement	AFSL or FoFA Equivalent
Respond to requests and directions from the TPB in a timely and reasonable manner	Direction to provide statement to ASIC – Corporations Act s 912A

These existing obligations could be used for AFSL licensees or authorised representatives providing tax advice rather than having to comply with specific TASA regime obligations. To the extent that separate obligations are required, it is essential that processes are such that compliance can be efficient as possible, with avoidance of unnecessary duplication. We believe that Treasury and the TPB should engage in further consultation with the financial services industry as to how existing obligations under the AFSL regime and Corporations Act for financial advisers can be integrated into the TASA regime for financial advisers.

**TPB code of conduct**

SPAA supports the TPB maintaining the TPB Code of Conduct to ensure that tax agents and BAS agents are bound by an ethical code which guarantees they act in the interest of their clients. However, the TPB Code of Conduct may not be appropriate for regulating the behaviour of financial advisers providing tax advice (financial product) services.

The TPB Code of Conduct has been specifically designed for tax agents and BAS agents with the tax agent services they provide in mind. The Code is the overarching tool that governs the behaviour of tax and BAS agents and accordingly focuses on the tax services activities carried on by those professionals. We believe that instead of making financial advisers comply with requirements designed specifically for tax agents and BAS agents, the existing ethical obligations that financial advisers are subject to should reduce the need for duplicating their obligations under the TPB Code of Conduct.

For instance, financial advisers have a number of obligations under the Corporations Act through the AFSL regime and FoFA reforms which govern their behaviour and ensure they have an ethical approach to advising their clients on financial advice, including tax advice. We believe that to lessen compliance costs and burdens for financial advisers, the existing Corporations Act safeguards on behaviour may be sufficient to regulate the behaviour of financial advisers providing tax advice (financial product) services. This is especially, relevant in the context of the draft amendments which allow information sharing between the TPB and ASIC.

Furthermore, most financial advisers will be bound by a professional association code of conduct. For example, the majority of financial advisers are SPAA, Financial Planning Association or Australian Financial Association members that are bound by codes of conduct which prescribe ethical behaviour and conduct standards for financial advisers. We believe that the TPB recognising that advisers are bound by such a professional code, rather than overlaying the TPB code, can reduce compliance burdens without reducing the professional standards of tax advice (financial product) services. A solution for the TPB may be to not require financial advisers to be bound by the TPB Code of Conduct where the adviser is a member of a recognised tax agent association or recognised tax (financial product) adviser association and are bound by that association’s code of conduct.



### **Competency requirements**

SPAA believes that there should be adequate tax competency requirements for financial advisers providing tax advice (financial product) services. We agree with the broad outlines for competency requirements without knowing the specific requirements to be listed by the TPB and encourage the TPB to integrate its requirements with existing financial adviser licensing requirements as much as possible.

### **AFSL authorised representatives**

SPAA is concerned that the registration model for companies and partnerships in the exposure draft does not reflect the AFSL authorised representative model prevalent in the financial advice industry. The idea of a company or partnership proving to the TPB that they have a “sufficient” number of individuals who are registered as either tax (financial product) advisers or tax agents, and can provide tax advice (financial product) services to a competent standard or supervise to that effect does not fit with the AFSL authorised representative model. Instead, this appears to be more focused to an accounting firm structure where partners supervise and are responsible for advice.

We believe Treasury and the TPB should consult with industry to find a registration model that better suits the AFSL authorised representative business model. This may include a registration model focussing on AFSL licensees who are ultimately responsible for their authorised representatives’ competencies, supervision and standard of advice.