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General Manager
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Dear Sir

Tax Agent Services Regulation 2009

The Taxation Institute of Australia (**Taxation Institute**) welcomes the opportunity to provide comments on the Tax Agent Services Regulation 2009 and exposure draft explanatory statement released on 2 August 2009.

The Taxation Institute's submission addresses three key concerns before dealing with a range of other issues that require clarification. In relation to the three key concerns the Taxation Institute notes that it has received correspondence from several members who are concerned at the position adopted in the draft and the possible detrimental affect on their businesses. Given that this is the first time that specialists are being recognised, it is essential that they do not feel disadvantaged on transition to the new regime.

There are some further issues regarding the requirements for Recognised Professional Associations (RPAs) and Recognised BAS agent associations that the Taxation Institute will seek an opportunity to discuss with you and if appropriate seek agreement to make a further submission. The Taxation Institute will contact your office.

Three Key Concerns

1. Eligibility – Qualifications for registration as tax agent

A major concern arises from the qualification requirements (set out in Schedule 2, Part 1, Division 1, items 101 – 105) for registration as a tax agent. Item 103 is too restrictive in imposing on an applicant not only the completion of a law degree, but a requirement that the applicant be admitted as a legal practitioner. A post graduate practicing certificate requirement is not imposed on applicants with an accounting degree. As a result, many senior tax professionals will not satisfy these requirements and will be unable to seek registration as a tax agent. This includes both partners and employees of accounting firms who have academic legal (or business) qualifications rather than accounting qualifications and legal academics with solid tax experience and knowledge. For example an individual with a Bachelor of Arts or Management or with a Master of Taxation Laws may not qualify.

Although accounting may be relevant, particularly for those focussed on compliance work, ability to legally analyse legislation and authorities is equally as important for a tax practitioner. Hence, a law degree should have the same status as an accounting degree. The issue here is a relevant academic qualification and this needs to be sufficiently flexible to recognise both accounting and law degrees and a range of other degrees that may be relevant in the future, including a degree in tax or possibly business.

Therefore, at a bare minimum, it is submitted that item 103 should be deleted and that a new paragraph (a)(iii) should be added to item 101 as follows:

- (a)(iii) the individual has been awarded a degree or a post-graduate award from an Australian tertiary institution in the discipline of law.

However, further amendments will be necessary to deal with other academic qualifications.

2. Recognised Professional Associations – Education requirements:

The second area of concern is related to the first. Schedule 1, Part 1, Item 109 requires that to be a RPA each voting member of the organisation comply with at least one of the following requirements:

- the member has been awarded a degree or a post-graduate award from an Australian tertiary institution or equivalent institution in the discipline of accountancy;
- the member has been awarded a diploma or higher award from a registered training organisation or an equivalent institution in the discipline of accountancy;
- the member is admitted as an Australian legal practitioner;
- the member was registered as a tax agent, or as a nominee, for the purposes of Part VIIA of the *Income Tax Assessment Act 1936* (ITAA 36) and a member of an RPA within the meaning of section 251LA of the ITAA 36.

It is submitted for the same reasons as above, that these education requirements are too narrow. They are also drafted on the basis that an accounting degree is sufficient but a law degree insufficient by adding the further requirement of admission as legal practitioner.

As mentioned above, there are many senior tax professionals who will not satisfy these requirements. For example, many people working in accounting firm practice as tax specialists with legal qualifications rather than accounting qualifications. These people will not be able to be members of an RPA unless they are admitted as an Australian legal practitioner (which they usually are not).

It is submitted that paragraph (c) should be amended as follows.

- (c) the member has been awarded a degree or a post-graduate award from (i) an Australian tertiary institution; or (ii) an equivalent institution in the discipline of law.

Also, further amendments will be necessary to deal with other academic qualifications and experience.

3. Eligibility for registration as tax agent – Membership of an RPA

The third area of concern relates to the qualification requirement in Item 105 of Schedule 2. The explanatory statement (at pages 8 and 9) states that where an applicant is a member of an RPA that is “subject to an additional ‘layer’ of professional oversight and support, such membership also provides an avenue to registration. However, the RPA registration requirements (Schedule 1, Part 1, Item 109) do not permit such persons to be members.

Therefore, Schedule 1, Part 1, Item 109 must be amended to add a para (e) which allows persons with 8 years of relevant experience to be voting members of RPAs.

Other concerns where additional clarity is required

Recognition of Recognised BAS agent associations - 3 year transition period for member qualifications: Paragraph 5 of Regulation 4 provides for the Board to recognise a BAS agent association notwithstanding the association does not require its members to hold specified qualifications. It is understood that the qualification requirement has been relaxed for a 3 year period as BAS agents transition to the new regime.

Whilst it is agreed that a 3 year transition arrangement is reasonable, it is recommended that there be a requirement that associations relying on paragraph 5 for registration undertake the necessary steps to ensure that the association complies with item 209 of Part 2 of Schedule 1 within the 3 year period.

Recognition of Recognised BAS agent associations - Geographical exception for member numbers: Paragraph 6 of Regulation 4 gives the Board a discretion to register an entity that does not have the member numbers stipulated in item 202 of Part 2 of Schedule 1 if the Board is satisfied that the membership of the organisation is located wholly or substantially in a particular geographical area of Australia and is reasonably proportionate to the population of the particular geographic area.

It is unclear from the provision and the exposure draft explanatory statement as to when a membership *will be reasonably proportionate to the population of the particular geographic area*. For example, is this to be determined by reference to the number of registered BAS agents in the area, the number of recognised BAS agent associations in the area or the general population of the area?

It is recommended that the test be by reference to the number of registered BAS agents in the area and that this be identified in the explanatory statement.

Recognition of Recognised BAS agent associations - Termination of recognition: Paragraph 9 of Regulation 4 provides for termination of registration when the requirements of Part 2 of Schedule 1 are not complied with.

A difficulty with termination will be the impact on members. It is submitted that it would be appropriate for the regulations to empower the Board to identify alternate member organisations for members to approach for membership and transitional arrangements for members affected by terminations.

Recognition of Recognised BAS agent associations - Review of decisions: Paragraph 10 of Regulation 4 provides for the Administrative Appeals Tribunal to review a decision to terminate.

There needs to be clarity as to the status of an association affected by a termination decision during the review period, in particular the status of its members relying on the BAS membership for recognition.

Recognition of RPAs - Geographical exception for member numbers: Paragraph 7 of Regulation 5 gives the Board a discretion to register an entity that does not have the member numbers stipulated in item 202 of Part 2 of Schedule 1 if the Board is satisfied that the membership of the organisation is located wholly or substantially in a particular geographical area of Australia; and is reasonably proportionate to the population of the particular geographic area.

As discussed above in relation to BAS agent associations, it is unclear from the provision and the exposure draft explanatory statement as to when a membership *will be reasonably proportionate to the population of the particular geographic area*. For example, is this to be determined by

reference to the number of registered tax agents in the area, the number of recognised RPAs in the area or the general population of the area?

It is recommended that the test be by reference to the number of registered tax agents in the area and that this be identified in the exposure draft explanatory statement.

Recognition of RPAs - Termination of recognition: Paragraph 9 of Regulation 5 provides for termination of registration when the requirements of Part 2 of Schedule 1 are not complied with.

As with BAS agent associations, a difficulty with termination will be the impact on members. It is submitted that it would be appropriate for the regulations to empower the Board to identify alternate member organisations for members to approach for membership and transitional arrangements for members affected by terminations.

Recognition of RPAs - Review of decision: Paragraph 10 of Regulation 5 provides for the Administrative Appeals Tribunal to review a decision to terminate. Again, there needs to be clarity as to the status of an association affected by a termination decision during the review period, particular for members of the RPA relying on the membership exception.

Eligibility for registration as tax agent – Education requirements: It is unclear as to what is meant by a *course in commercial law* in Schedule 2, Division 1, Item 101(b), 102(b) and 104(a)(ii). The Taxation Institute anticipates that the Board will clarify the types of courses that will be acceptable. However, it is submitted that there should be some indication as to the length of the course identified. Under the current regime it is necessary to complete 3 law subjects or 2 tax subjects (ie they can be included in another qualifying degree). A course in commercial law does not seem to equate with this requirement. Is it expected that practitioners complete a second 2 -3 year course to be eligible for registration? If so, this seems excessive.

Eligibility for registration as tax agent - Work experience: The regulations do not assist specialists in understanding their registration requirements. Essentially they are at the discretion of the Board in relation to qualifications and experience. It is submitted that examples in the exposure draft explanatory statement should include situations relevant to specialists who are required to register under the new regime.

The Taxation Institute is looking forward to meeting to further discuss these issues. If you require any further information or assistance in respect of our submission, please contact Joan Roberts on 03 9611 0178 or the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis, on 02 8223 0011.

Yours sincerely



Joan Roberts
President