



THE TAX INSTITUTE

THE MARK OF EXPERTISE

9 July 2014

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

By email: taxagentservices@treasury.gov.au

Dear Gerry,

Registration requirements for tax (financial) advisers

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Tax Agent Services Amendment (Tax (Financial) Adviser) Regulation 2014 (Draft Regulations)* and associated Explanatory Statement.

Summary

Our submission addresses our deep concerns with aspects of the Draft Regulations setting out the education and experience requirements for tax (financial) advisers.

The Draft Regulations fail to create an adequate framework that includes appropriately stringent tax and commercial law education requirements for tax (financial) advisers. This outcome is of grave concern, as it risks undermining the fundamental principle of the Tax Agent Services regime (**TASR**), which is to protect consumers of tax advice.

We recommend that Option 4 of the Draft Regulations should be changed to require tax (financial) advisers to complete both a course in Australian tax law and commercial law and meet an 'eight out of ten years' experience test.

Consumer Protection

Tax Agent Services regime

Regarding the proposed framework, we stress that the central purpose for the introduction of a national system regulating the provision of tax agent services was to address the failings of the previous system in providing protection to consumers of tax agent services¹.

One of the key objectives of TASR was (and still is) to enhance the protection of consumers of tax agent services². This is best served by ensuring that the providers of those tax agent services have the appropriate skills and experience to perform the function for which they are registered. For tax (financial) advisers, that function is the provision of tax (financial) advice services.

TASR aims to ensure that professional tax advisers have the appropriate levels of qualifications and experience to enable them to satisfy minimum professional and ethical standards.

Tax is a complex and ever-changing discipline. Therefore, the new framework should require of persons wishing to register as tax (financial) advisers a high standard of both recently attained education and experience. Otherwise consumers will be at risk of receiving tax advice and services provided by inadequately qualified service providers or by those with out-of-date skills.

Financial planning industry

Historically, the financial planning industry has been plagued with problems stemming from advisers who lack adequate education and experience. This has contributed to a lack of integrity in the industry and substantial misconduct.

Hence, one of the key recommendations of the Senate Economics References Committee Report entitled '*Performance of the Australian Securities and Investments Commission*' tabled on 26 June 2014 (especially Chapter 24) is the imposition of minimum education, experience and continuing professional development requirements to apply to the industry at large.³

Given the Committee's comments and recommendations relate to the provision of *financial advice* (that is, advice given *within* the relevant professional field for a financial adviser), it is even more important to ensure that the Draft Regulations establish a

¹ See Chapter 6 of the Explanatory Memorandum to the *Tax Agent Services Act 2009* (Cth)

² Ibid

³ Refer to the Senate Economics References Committee Report: '*Performance of the Australian Securities and Investments Commission*' released on 26 June 2014.

framework that applies appropriately rigorous education and experience requirements for financial advisers providing *tax advice* (that is, advice that is *beyond* their relevant professional field).

Concerns with the proposed framework

The Draft Regulations amend the *Tax Agent Services Regulations 2009* (Cth) (**TAS Regulations**) and introduce the proposed framework. The framework sets out the education and experience requirements which an applicant must have to become registered as a tax (financial) adviser with the Tax Practitioners Board (**Board**) under the *Tax Agent Services Act 2009* (Cth). Registration may be obtained through one of the four pathways proposed.

Once registered, a tax (financial) adviser will be permitted to give tax advice covering any tax matter (provided in the course of providing financial advice) excluding the lodgement of tax returns and making other representations to the Commissioner.

The Tax Institute has grave concerns with Option 4 of the proposed framework, which will result in the:

- introduction of another recognised association category – a “recognised tax (financial) adviser association” (**RTFAA**);
- removal of the requirement for registrants under this option to undertake a Board approved course in each of Australian tax law and commercial law; and
- requirement to have only six years full-time experience out of the prior eight years.

Membership of a recognised professional association

The Explanatory Statement to the Draft Regulations states:

Professional associations have an important supervisory function, which is in addition to the regulatory function by the Board. The requirements to become a recognised tax (financial) adviser association [RTFAA] are consistent with the high standards required to become a recognised tax agent or BAS agent association, but are tailored to reflect the different circumstances for financial planners.

Accordingly, applicants who are voting members are subject to this additional layer of supervision, and are not required to complete a Board approved course in Australian taxation law or commercial law. This aspect is equivalent to the position of tax agents who are seeking registration on the basis of voting membership in a recognised tax agent association.

The Explanatory Statement appears to be incorrect in claiming (above) that Option 4 of the proposed framework is ‘equivalent to the position of tax agents who are seeking registration on the basis of voting membership in a recognised tax agent association’.

The effect of Option 4 is to allow a *financial adviser* (with *six* years full-time experience out of the prior *eight* years) who joins a recognised *financial adviser* professional

association (RTFAA) to give Board-approved tax advice (in the form of tax (financial) advice).

This is not equivalent to the current situation for a tax agent.

A tax agent (who has **eight** years full-time experience out of the prior **ten** years) who joins a recognised **tax adviser** professional association (that is, a Recognised Tax Agent Association - **RTAA**) is able to give Board-approved tax advice.

Therefore, Option 4 allows a financial adviser to give advice (in the form of tax (financial) advice) in a professional field (tax) that is *not germane to their professional association*. However, as described above, for tax agents, the current law allows them to give advice (in the form of tax advice) in the professional field (tax) that their professional association is intimately involved in and responsible for.

For financial advisers, it is unlikely that their professional association 'subject[s them] to [an] additional layer of supervision⁴' in the field of tax in the way that a *tax* professional association does. This is because the association is a *financial adviser* professional association rather than a *tax* professional association.

As a result, we are extremely concerned that the education standards and experience requirements in the proposed framework for financial advisers are too weak. Option 4 does not require either a course in Australian tax law or commercial law and applies a lesser 'six out of eight years' experience test.

As stated above, a tax (financial) adviser will be able to provide tax advice covering any tax matter (provided in the course of providing financial advice) excluding the lodgement of tax returns and making other representations to the Commissioner.

Therefore, Option 4 must be amended to require tax (financial) advisers to complete both a course in Australian tax law and commercial law and meet an 'eight out of ten years' experience test. A failure to impose these requirements will serve to undermine the fundamental principle behind TASR, which is consumer protection.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Flynn', followed by a long horizontal flourish.

Michael Flynn
President

⁴ Refer to the last paragraph on page 4 of the Explanatory Statement