



THE TAX INSTITUTE

THE MARK OF EXPERTISE

11 May 2015

Mr Jongsok Oh
Senior Adviser
Financial Services Unit
Financial System and Services Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ProfessionalStandards@treasury.gov.au

Dear Mr Oh,

Lifting the Professional, Ethical and Education Standards in the Financial Services Industry

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the Lifting the Professional, Ethical and Education Standards in the Financial Services Industry Consultation Paper (**Consultation Paper**).

Summary

The Tax Institute strongly advocates for the education and experience requirements applying to financial advisers, including those applying to advisers providing tax advice, to be sufficiently high. Ensuring the right framework of sufficiently high professional, ethical and educational standards is put in place for the financial services industry is ultimately beneficial for consumers of services from a financial services professional who is also a registered tax (financial) adviser.

Discussion

The Tax Institute is Australia's leading professional association and educator in tax, with more than 15,000 members. We set the benchmark for the most up-to-date tax professional development events and education programs in the country. This means our members are best placed to have the highest level of expertise in the field. Our growing

membership base includes tax professionals from commerce and industry, academia, government and public practice throughout Australia.

Refer to the Appendix for further information.

In light of the above, our response to the Consultation Paper is limited to issues concerning the protection of the current high standards of the tax profession and the potential for the diminution of these standards via interaction with the proposed regulatory model for the financial services industry and the regulation that applies to tax (financial) advisers.

Consumer Protection

1. Tax Agent Services regime

The central purpose for the introduction of a national system regulating the provision of tax agent services by the national Tax Practitioners Board (**Board**) was to address the failings of the previous system in providing protection to consumers of tax agent services¹.

One of the key objectives of the regime 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 foundational education skills and experience to perform the function for which they are registered.

The regime aims to ensure that professional tax advisers with the appropriate levels of qualifications and experience will satisfy minimum professional and ethical standards.

Tax is a complex and ever-changing area of law. A professional delivering tax advice is required to engage with highly nuanced and multi-dimensional issues. It is the belief of The Tax Institute that this cannot be achieved without sustained, high quality, rigorous postgraduate education coupled with a minimum of experience. Therefore, persons wishing to register with the Board to be able to provide tax advice should be required to have 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.

2. Financial services industry

Historically, the financial services industry has been plagued with problems stemming from advisers who lack adequate education and experience. The Australian Securities and Investments Commission (**ASIC**) has commented that “many advisers are not

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

² Ibid

adequately trained or competent to deliver financial advice to investors”³. This has contributed to a lack of integrity in the industry and substantial misconduct.

Among other things, this has contributed to the failure of a fully-fledged financial advice profession. This is further compounded by the failure of the education sector to fully regulate the providers of financial services education and professional development.

Hence, one of the key recommendations of the Senate Economics References Committee (**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.⁴

3. Link between financial services industry and tax profession

Effective 1 July 2014, financial advisers who wish to provide tax advice to clients in the course of providing financial advice services are required to register with the Board (as a tax (financial) adviser) in order to be permitted to provide certain tax advice services (termed ‘tax (financial) advice services’).

Therefore, there is a direct connection between the regulatory regime that applies to tax professionals and the one that will apply to financial advisers for an adviser whose services cross into both professions.

The protection of consumers of services provided by an adviser who is both a financial adviser and tax (financial) adviser is best served by ensuring that the providers of those services have the appropriate skills and experience to perform *all* the functions for which they are registered.

4. Regulation of the financial services industry

The Consultation Paper aims to develop a framework to increase the professional, ethical and educational standards that applies to the financial services industry. Our concern is to ensure that members of the financial services industry that wish to register as tax (financial) advisers, and thus join the tax profession, will be able to meet high levels of ethical and professional standards, encouraged by meeting an appropriately high level of education and experience in the industry from which they receive their main education and training.

Just as tax professionals are required to meet a high level of professional and ethical standards, so too should financial advisers wishing to advise on tax. Our preference is to see the ethical and professional standards lifted for financial advisers so that all such

³ Refer to paragraph 24.4 of the Senate Economics References Committee Report entitled *‘Performance of the Australian Securities and Investments Commission’*, June 2014

⁴ Refer to the Senate Economics References Committee Report: *‘Performance of the Australian Securities and Investments Commission’* released on 26 June 2014.

advisers are used to meeting high ethical and professional standards by the time they choose to join the tax profession. This will ensure that overall standards are lifted and kept high in both professions which is ultimately beneficial for consumers of services from a financial services professional who is also a registered tax (financial) adviser.

Given the Senate Committee's comments and recommendations that relate to the provision of *financial advice* (that is, advice given *within* the relevant professional field for a financial adviser), it is vitally important to ensure that any framework established applies appropriately rigorous education and experience requirements for financial advisers. This is of particular concern to us as the regulations will apply to financial advisers who also provide *tax advice* (that is, advice that is *beyond* their relevant core professional field).

In this regard, The Tax Institute continues to strongly advocate for the education and experience requirements applying to financial advisers, including those applying to advisers providing tax advice, to be sufficiently high.

5. Education in the financial services industry

We have previously echoed the widely-held concerns about the lack of rigour traditionally associated with the delivery of courses by registered training organisations (**RTO**) (eg lack of integrity in the assessment, lack of robust educational practices)) who deliver the training required under *Regulatory Guide 146: Licensing: Training of Financial Product Advisers* (**RG 146**). This deficiency has been highlighted by ASIC's current scrutiny of the delivery of RG 146.

RTOs are not required to determine experience or meet duration levels before issuing qualifications. This is at odds with the minimum qualification and experience levels required to register as a tax agent or tax (financial) adviser under the TASR.

Since the advent of the *Tax Agent Services Act 2009* (Cth), The Tax Institute has focused on delivering training and education that delivers the skillsets that the profession needs. To this end we have also implemented a Course in Tax (Financial) Advising at a AQF8 level which aggregates two 13 week subjects: Tax Law for Tax Financial Advising and Commercial Law for Tax for Financial Advising as an entry point to adequate professional skills and ethical practice and to encourage the further study of tax law through more specialised subjects within the Graduate Diploma of Applied Tax Law.

Although it is possible to be registered as a registered tax agent without taking such courses, our experience is that such courses or similar qualifications plus other training and experience are the norm among registered tax agents. Tax (financial) advisers likewise need not have passed such courses to become registered, and we submit that it would be desirable to establish a framework for financial advisers in which appropriate levels of qualification and professional training become the norm, in order to ensure that the basis of registration as a tax (financial) adviser is suitably rigorous.

We strongly emphasise to Treasury the concerns we have if the education standards that apply to financial advisers are not lifted in accordance with the proposed PJC model particularly given the changes to the assessment and professional development framework⁵ do not seem to have been implemented and will not likely be implemented in the near future.

Q3.1 in the Consultation Paper

How would the PJC Model interact with existing regulatory regimes for specific types of advisers, for example stockbrokers and tax advisers?

The 'PJC Model', the regulatory model proposed by the Parliamentary Joint Committee on Corporations and Financial Services, recommends education and training standards set at the Australian Qualification Level (**AQF**) 7, Bachelor degree level. It also requires a financial adviser to undertake a 'structured professional year'.

Under the regulatory model that applies to tax (financial) advisers, there are four pathways to registration that contain education and/or experience requirements. Further details of these options can be found on the Board's website⁶.

In all four pathways to registration, the registrant must hold an Australian Financial Services Licence (**AFSL**) or be a representative of one.

In addition to this, it would be expected that a financial adviser registering as a tax (financial) adviser has also met the requirements to give financial product advice as currently required by RG 146 issued by ASIC.

However, we acknowledge someone can register as a tax (financial) adviser (as is also the case for tax agents) on the basis of membership of a recognised professional association and sufficient practical experience. Given that the concept of a tax (financial) adviser is fairly new, there is not the same history behind such membership and experience as is generally the case among tax agents' professional associations. (We do not of course assert that tax agents' training and qualifications are beyond improvement.) Our concern is to ensure that the quality of recognised professional associations for tax (financial) advisers and the practical experience in tax (financial) advice services which enables registration to provide tax (financial) advice services is as of high a quality as is generally prevalent for qualification for registration as a tax agent.

⁵ Refer to ASIC Consultation Paper 153 "Licensing: Assessment and professional development framework for financial advisers" proposing a "National certification exam for new and existing advisers. See [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/cp153.pdf/\\$file/cp153.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/cp153.pdf/$file/cp153.pdf)

⁶ See

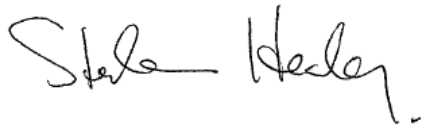
http://www.tpb.gov.au/TPB/Qualifications_and_experience/Qualifications_experience_for_tax_financial_advisers/TPB/Qualifications_and_experience/0595_Qualifications_experience_for_tax_financial_advisers.aspx?hkey=e6d7dd24-74c8-4bf9-b63b-c41c128aaf13 and refer to the link entitled "Summary of qualifications and experience requirements for registration (including renewal) as a tax (financial) adviser under the standard option".

Therefore, our concern is to ensure that a financial adviser wanting to register as a tax (financial) adviser has been required to meet appropriate professional and ethical standards in the financial services industry, prior to registering with the Board to provide tax (financial) advice services. An absence of appropriate professional standards in the financial services industry will have a flow-on effect for the tax profession insofar as financial advisers register with the Board and will be able to ascertain and advise to the same levels of advice as a registered tax agent.

In this regard, we strongly recommend that the regulatory regime put in place to govern the financial services industry require a sufficiently high level of education and experience as contained in the PJC model to ensure appropriately high professional and ethical standards are required to be met by members of the financial services industry. Ultimately this will ensure that consumers are able to obtain these services from an appropriately qualified financial services adviser (and tax (financial) adviser where the same person is also qualified to provide tax advice services).

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 'Stephen Healey', with a stylized flourish at the end.

Stephen Healey

President

Appendix

About The Tax Institute

The Tax Institute is Australia's leading professional association and educator in tax, with more than 15,000 members. We set the benchmark for the most up-to-date tax professional development events and education programs in the country. Meaning our members are best placed to have the highest level of expertise in the field.

Our growing membership base includes tax professionals from commerce and industry, academia, government and public practice throughout Australia.

Since 2010 we were registered as a Recognised Tax Agent Association, a TPB approved education provider and have been offering our support to the protection of consumers and the tax profession that serves them by educating the profession with a Course in Australian Taxation Law and a Course in Commercial Law.

In 2012, we introduced the internationally recognised Chartered Tax Adviser (CTA) designation to ensure our members have the credentials to demonstrate their tax expertise to employers and clients.

In 2014, we became accredited as a higher education provider and introduced the Graduate Diploma of Applied Tax Law, which has been designed to meet the changing needs of the tax profession.

Our reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the numerous specialist, practical and accurate tax publications – all of which ensure that the latest information is available at their fingertips.

Established in 1943, the purpose of The Tax Institute was to provide education and information products and services to the tax profession as well as support improvements in the tax law and its administration. That core purpose remains.

Today we lead the tax profession with a strong and authoritative voice in supporting a fair and equitable tax system in Australia, whilst at the same time providing a full suite of education and information products that keep today's tax professional up-to-date and build the capacity of the next generation of tax professionals.

www.taxinstitute.com.au www.twitter.com/taxinstituteoz www.taxinstitute.blogspot.com