

11 July 2013

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

By email: taxagentservices@treasury.gov.au

Dear Mr Antioch

Proposed registration requirements for registered tax (financial) advisers

CPA Australia and the Institute of Chartered Accountants Australia (the Institute) welcome the opportunity to comment on the *Proposed registration requirements for registered tax (financial) advisers Discussion Paper* (the Discussion paper), released 14 June 2013.

CPA Australia and the Institute represent over 200,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government, not-for-profits and academia throughout Australia and internationally. Increasingly, members of the accounting profession are becoming more widely involved in financial services and related advisory and service roles.

We strongly support the pathways proposed in the discussion paper to register as a tax (financial) adviser. Each pathway achieves an appropriate balance between academic qualifications and relevant experience, while providing the flexibility for individuals to demonstrate their competence in different ways. We also support the Board's preliminary view that each 'Board-approved course' in Australian taxation law or commercial law should be made up of one semester-length subject (100-130 hours duration).

The key element of this framework is to ensure that the individual has an appropriate breadth of knowledge based on two main competencies; an understanding of the taxation laws and an understanding of commercial law. The proposed framework ensures this can be achieved.

Further, the four proposed pathways are consistent with the approach adopted for registered tax agents, that is the highest the academic qualification is complemented by the lowest experience requirements, and the lowest academic qualification is complemented by the highest experience requirement.

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The proposed pathways also are similar to the existing obligations for responsible managers of an Australian Financial Services (AFS) licence and the registration requirements in section 20-5 of the *Tax Agents Services Act 2009*).

Our detailed comments in this submission are outlined in the attachment to this letter.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller (CPA Australia) at keddie.waller@cpaustralia.com.au or Hugh Elvy (the Institute) at hugh.elvy@charteredaccountants.com.au.

Yours sincerely



Paul Drum
Head – External Positioning
CPA Australia



Yasser El-Ansary
General Manager, Leadership & Quality
Institute of Chartered Accountants
Australia

Proposed registration requirements for registered tax (financial) advisers

Discussion Paper

1. Appropriate supervisory arrangements to provide services competently

As stated in the discussion paper, there are existing similarities between the 'organisational competence' requirements for a responsible manager of an AFS licence set by ASIC and the 'organisational qualifications and experience' requirements that apply under the Tax Agent Services Act 2009 (TASA). This is consistent with the observations we made in our [supplementary submission](#) to the Parliamentary Joint Committee on 14 June 2013 regarding responsible managers.

This similarity is an important element, as the individuals who will be required to register with the Tax Practitioners Board (the Board) to support their employer's registration are likely to be at a level similar to a responsible manager (or other senior technical manager level). Further, it ensures that not every licensed financial planner will be required to register with the Board. Rather, the company would instead need to ensure it has a sufficient number of registered individual tax (financial) advisers to provide the tax (financial) advice to a competent standard, and to carry out supervisory arrangements.

2. Educational and experience requirements

2.1 The four TASR pathways – both Australian tax and Commercial law

CPA Australia and the Institute support the four proposed pathways for an individual to register as a tax (financial) adviser. The pathways are appropriate for the registration of licensed financial planners in the TASA regulatory regime following the three year transition period.

Fundamental to the framework is that each pathway requires both a:

- 'Board-approved course in Australian taxation law' for tax (financial) advisers, and
- 'Board-approved course in commercial law' for tax (financial) advisers'.

We believe the requirement to complete a Board approved course in commercial law is vitally important, given the Board has previously determined that an understanding of commercial law is necessary to understand the application of taxation law. It will also ensure a consistent regulatory framework for the provision of all tax advice provided to consumers that will 'enhance the consumer protections and to promote the provision of quality financial advice services' (Para 4.18 of the EM).

While we believe it is vital a licensed financial planner complete a Board approved course for tax (financial) advisers in Australian taxation law and commercial law to qualify for registration, we consider it is appropriate to not also require the completion of a course in basic accounting principles. This reflects the fact a tax (financial) adviser will not be permitted to prepare or lodge returns or statements in the nature of returns.

Board-approved course in commercial law

Previously the Board has stated 'taxation law is an overlay of the existing legal system and a fundamental understanding of the components of common law, equity and statute that comprise commercial law is a crucial requirement in enabling a tax agent to provide tax advice at the requisite level required by the Code of Professional Conduct' (TPB (PG) 02/2010). It is therefore appropriate that a financial planner complete a Board approved course in commercial law to ensure they understand complex arrangements and provide investment and divestment advice appropriate for a wide range of entities, including sole traders, partnerships, companies, trusts and SMSFs.

We note that the discussion paper lists 15 topics that the Board considers as being in the area of commercial law, and these are consistent with the Board's current views in TPB (PG) 02/2010 in relation to tax agents. CPA Australia and the Institute believe the content to be covered and to what depth should be a decision for the Board, but should include the following the core areas previously identified by the Board:

- a) Australian legal systems and processes
- b) contracts
- c) the law of entities and business structures
- d) property law; and
- e) the tort of negligence.

In the discussion paper at Note 2 in the Attachment, the paper also states that “The Board is also of the preliminary view that a course in commercial law should be, at most, one hundred to one hundred and thirty hours duration, or ‘one subject’. We support the Board’s preliminary view.

We look forward to the Board releasing its guidance on what constitutes ‘a course in commercial law for tax (financial) advisers’ in due course.

Board-approved course in Australian taxation law

As we have consistently maintained during the development of this regulatory framework over a number of years, it is vitally important that tax (financial) advisers have a sound and relevant knowledge of Australian taxation law. Understanding the taxation implications of investment and divestment actions is an integral part of providing appropriate financial planning advice to consumers. This includes understanding complex arrangements and transactions in relation to a wide range of entities, structures and circumstances, and across a broad range of taxes.

We therefore support the Board’s preliminary view that the course should comprise of 100 to 130 hours, being one semester length subject, as stated in Note 1 in the Attachment to the Discussion paper and previously in Exposure draft proposed guideline TPB(PG) D04/2013.

This is appropriate given registered tax agents are required to complete two semester length subjects in Australian taxation law (TPB(PG) 03/2010).

As stated in our submission to the Board on TPB(PG) D04/2013, we believe there are a range of key tax topics and importantly, sub-topics that must be covered in a ‘course in Australian taxation law’. This includes, individuals (e.g. non-commercial loss rules, personal services income, PAYG variation and employee share schemes (ESS)), and other core areas such as CGT and superannuation.

We believe the topics proposed can be tailored into a semester length subject appropriate for financial planners to satisfy the requirement to register as a tax (financial) adviser.

Importantly, the requirement to complete a Board approved course in Australian taxation law will play a pivotal role in meeting the policy objectives of this regulatory reform and will be integral to its integrity and success.

We look forward to engaging further with the Board in its ongoing consultations in relation to the Australian taxation law course requirements for tax (financial) advisers.

2.2 Appropriate complement of ‘relevant experience’

We consider that the four proposed pathways for a licensed financial planner to register as a tax (financial) adviser (being Degree, Diploma, Work Experience and Professional Membership) require the appropriate balance of academic qualifications and ‘relevant experience’. It also establishes a base ‘tax competence’ standard for tax (financial) advisers.

The approach adopted for the four proposed pathways is also consistent with that adopted for tax agents - the highest academic qualification is complemented by the lowest experience requirement and the lowest academic qualification is complemented by the highest experience requirement.

In addition each of the four proposed pathways are appropriate and reasonable when compared to the ‘relevant experience’ set by ASIC to be approved as a responsible manager.

3. Recognised tax (financial) adviser associations

CPA Australia and the Institute notes that the new legislation to introduce the regulatory framework for tax (financial) advisers (Tax Laws Amendment (2013 Measures No. 3) Act 2013) provides for a new type of recognised association, namely a Recognised Tax (Financial) Adviser Association (RTFAA). This is intended to cover associations that are the associations for tax (financial) advisers.

We believe it would be appropriate with the introduction of the special category of registration under the Tax Agent Services regime for financial planners, that accreditation status of financial product adviser associations be converted into the new category of recognised association, i.e. from recognised tax agent association (RTAA) to recognised tax (financial) adviser association (RTFAA).