



FPA Level 4, 75 Castlereagh Street Sydney NSW 2000 | www.fpa.asn.au | Date: 09.07.2014

9 July 2014

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

Email: taxagentservices@treasury.gov.au

Dear Sir

RE: Exposure Draft – Tax Agent Services Regulations 2009

The Financial Planning Association of Australia (FPA)¹ welcomes the opportunity to provide feedback to Treasury in relation to the exposure draft regulations which prescribe a tailored set of ongoing registration requirements for tax (financial) advisers and criteria for recognised associations.

While the FPA is concerned about the timing of the release of the draft regulations, we welcome the additional certainty they provide for the profession. The FPA would like to provide feedback on the following areas:

1. Reinforcement of the exemption from the application fee for those notifying the TPB during the notification phase of the transition arrangements
2. The definition of relevant discipline
3. The now limited time available for the education sector and financial planners to meet the education requirements
4. The addition of a recognised tax (financial) adviser association category

Though the FPA still questions the relevance of a Commercial Law course requirement, we welcome the changes to the registration options to permit members of a TPB recognised professional association to meet the eligibility requirements for registration provided they have six years full time or equivalent relevant experience out of the previous eight years.

In developing the following positions and recommendations, the FPA consulted with its practitioner members, including practitioners who have their own AFS license, as well as those working for large, medium and small licensees, which includes employed practitioners.

The FPA would welcome the opportunity to discuss the TAS Regulations further. If you have any questions, please contact me on 02 9220 4505 or dante.degori@fpa.asn.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dante De Gori'.

Dante De Gori
General Manager Policy and Conduct

¹ The Financial Planning Association of Australia (FPA) is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at \$630 billion.



Exposure Draft: Tax Agent Services

FPA SUBMISSION TO THE TREASURY | DATE: 09.07.2014

Exposure Draft Tax Agent Services Amendment (Tax (Financial) Advisers) Regulation 2014

FPA submission to:
The Treasury

9 July 2014



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1. Exemption of application fee during notification phase

Item 15 of the Exposure Draft details the application fee payable by financial planners and licensee registering with the TPB. However, during the notification period (1 July 2014 to 31 December 2015) an AFS licensee or authorised representative seeking registration with the TPB is not required to pay an application fee.

The FPA notes that the following provisions in the Act and relevant Explanatory Memorandum give legal grounding for the fee exemption during the notification phase:

- item 49 of the *Tax Laws Amendment (2013 Measures No. 3) Act 2013* (Amendment Act) prescribes the criteria an entity must meet to be eligible to register under the notification period and there is no reference to an application fee being payable.
- paragraph 1.156 of the explanatory memorandum to the *Tax Laws Amendment (2013 Measures No. 3) Bill 2013* states that 'These entities will not be required to pay an application fee'.

Further, item 49 of the Amendment Act is not contingent upon any provisions under TASR.

However, the FPA is concerned that the absence of any reference to the application fee in the Amendment Act does not directly mean the application fee is exempt, especially when item 15 of the Exposure Draft Regulations specifically states the value of the application fee payable, with no reference to the fee exemption during to the notification phase.

It is further mentioned in the draft Regulations Explanatory Statement as follows, again with no reference to the exemption during the notification phase:

Application fees

Item [15] brings tax (financial) advisers in line with tax agents and BAS agents, by making a fee payable on the lodgement of an application for registration. The application fee is the same, whether the applicant is already registered with the Board or seeking registration for the first time.

The registration application fees for a tax (financial) adviser who carries on a business as a tax (financial) adviser is \$400 and a tax (financial) adviser who does not carry on a business as a tax (financial) adviser is \$200.

To remove doubt and ensure legal certainty, the draft Regulations and the accompanying Explanatory Statement should refer to the application fee exemption that applies during the notification phase.

Recommendation:

The FPA recommends Treasury state in item 15 of the draft Regulations and the Application Fee section of the Explanatory Statement to the Regulations, that "under item 49 of the Amendment Act and paragraph 1.156 of the Explanatory Memorandum to the Act, those entities notifying the TPB during the notification phase will not be required to pay the application fee".



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2. Definition of relevant discipline

Item 305 of the Exposure Draft defines relevant discipline as follows:

relevant discipline includes a discipline related to finance, tax, accountancy, or law.

Further, the draft Explanatory Statement states:

- A relevant tertiary qualification will be one which could include a finance related discipline, such as commerce, finance, economics, accounting, business or equivalent, or a tax related discipline, or a discipline such as law (under Tertiary qualification section); and
- A discipline which is relevant to financial planning includes ones such as finance, tax, accountancy or law, as well as other disciplines which may be relevant (under relevant discipline section).

The FPA acknowledges that definitions included in the Regulations Amendments will apply to all relevant sections of the Tax Agent Services Regulations 2009. However, we are concerned about the limited nature of the proposed definition of relevant experience (item 305) as it does not include disciplines of study related to the education needed to become a financial planning professional.

While the above statement included in the Explanatory Statement is more closely aligned to disciplines of study relevant to financial planner education, it still falls short as it does not include the discipline of financial planning itself.

The nature of education is that new disciplines of study often emerge, and others change names or focus, particularly as legislative requirements and the economic environment change. The FPA also suggest greater flexibility be incorporated in the definition of *relevant discipline* to cater for potential changes in disciplines of study.

Recommendation:

The FPA recommends the definition of *relevant discipline* in item 305 of the draft Regulations be amended to include disciplines relevant to financial planning education, and to incorporate greater flexibility. For example:

relevant discipline includes **but is not limited** to a discipline related to finance, **financial planning, commerce, economics, business**, tax, accountancy, or law.



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3. Time to meet the education requirements

The FPA agree that competency standards should be increased both for tax advice given by financial planners and for financial product advice generally. A key tenet of the FPA's drive towards achieving the highest standards of professionalism is the requirement for higher levels of education for planners.

However, we note with concern that the Regulations containing the tax agent services regime's education requirements for financial planners are still in draft form, with the TPB waiting on the final Regulations in order to then progress its development of the detailed course requirements. While we understand that these education requirements will not apply to financial planners until 1 July 2017 at the earliest, we are concerned that this leaves less than 3 years for education providers to develop appropriate course, have them approved by the education regulator and the TPB, and financial planners to undertake and complete the training. And this timeframe will continue to reduce by the day until these requirements are finalised in sufficient detail.

Because of this significant delay in finalising the education requirements, it is highly likely that those financial planners who do the right thing and notify with the TPB during the notification phase, will be forced to 'squash in' TPB's CPD requirements and the tax and commercial law course requirements within a very short timeframe in the lead up to re-registration, while still servicing clients. It is also a risk that some appropriate and relevant courses for financial planners, particularly bridging courses may not even be available in time.

It is also a risk that undergraduate courses may not have time to incorporate the TASA education requirements resulting in graduates unfairly being forced to undertake additional study in order to practice.

Recommendation:

The FPA recommends the Government extend the exemption period of the education requirements to allow time for these requirements to be finalised by Treasury and the TPB, and for education providers to develop necessary programs and gain approval from the education regulator and the TPB.



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4. Course combinations

The Explanatory Statement to the draft Regulations state that the tax law and commercial course requirement can be done as part of completing relevant tertiary qualifications.

The FPA seek clarity on whether the same condition applies to those undertaking training at a diploma level.

The draft Regulations currently refer to the tax and commercial law course requirements separately. Neither the draft Regulations or the Explanatory Statement refer to the ability for these requirements to be met through a combined course. There is concern that this may result in the TPB applying separate recognition criteria preventing bundled courses being approved. Such courses have the potential to reduce costs to the industry.

Recommendation:

The FPA recommends the Explanatory Statement explicitly state that the Australian Tax Law and Commercial law education requirements can be completed:

- as part of relevant diploma qualifications, and
- through a single 'bundled' course covering both the tax and commercial law requirements.



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5. Recognised tax (financial) adviser association category

The FPA questions the policy intent of creating a new recognised association category for tax (financial) advisers. Most existing professional associations whose members are financial planners have already successfully met the requirements for the TPB to recognise these organisations as recognised tax agent associations.

The FPA is concerned that the integrity of the recognised professional association status may be diminished should the Regulations water down the eligibility criteria to accommodate certain associations rather than encouraging associations to raise their standards to meet existing eligibility criteria.

The FPA notes that there is a category for BAS agent associations, however, BAS Agents provide a very different service to tax agents, whereas the tax (financial) advice service provided by financial planners is “a subset of a tax agent service”, as stated on page one of the draft Explanatory Statement.

Recommendation:

The FPA recommends the draft Regulations be amended to remove the tax (financial) advice association category for TPB recognition.