



22 October 2014

Mr Ian Taylor
Chair
Tax Practitioners Board
PO Box 126
Hurstville BC NSW 1481

Email: tpbsubmissions@tpb.gov.au

Dear Mr Taylor

Re. Exposure Draft tax (financial) adviser information sheets

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to the Tax Practitioners Board (TPB) in relation to the following Exposure Draft Information Sheets for tax (financial) advisers:

- TPB(I) D23/2014 – Fee or other reward
- TPB(I) D24/2014 – Sufficient number requirement for partnership and company registered tax (financial) advisers

The FPA welcomes and acknowledges the TPB's efforts to assist financial planners to understand their obligations under the Tax Agent Services Act (TASA) through the development and release of these Information Sheets.

The FPA provides the attached feedback in response to the draft Information Sheets. While the issues we raise are more communication issues not policy issues, the FPA believes providing further clarification and explanation as to how these TASA requirements apply using Corporations Act language would make the Information Sheets clearer and more user friendly for tax (financial) advisers, particularly for smaller licensees and corporate authorised representatives.

The FPA would welcome the opportunity to discuss the TPB's proposed Information Sheets further. If you have any questions, please contact me on 02 9220 4500 or dante.degori@fpa.asn.au.

Yours sincerely

Dante De Gori
General Manager Policy and Conduct
Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) represents more than 10,000 members and affiliates of whom 8,500 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- We banned commissions and conflicted remuneration on investments and superannuation for our members in 2009 – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Professor Dimity Kingsford Smith, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are a Recognised Tax Agent Association of the Tax Practitioners Board



1. Fee or other reward for tax (financial) advisers

Clarification and explanation of commencement dates

Item 4 of the draft Information Sheet states that “from 1 January 2016, unregistered entities that provide a tax (financial) advice service for a fee or other reward will contravene a civil penalty provision in the Tax Agent Services Act 2009 (TASA).”

The FPA notes that s50-5(2A) provides for a contravention of the TASA by unregistered entities. However, the FPA has been unable to find a provision in the TASA or TASR that explicitly states that from 1 January 2016 unregistered entities that provide a tax (financial) advice service for a fee or other reward will contravene a civil penalty provision in the Tax Agent Services Act 2009 (TASA). Rather, the legislation states that the completion of the transition arrangements for the full commencement of the TASA regime to financial advice providers continues until the completion of the *transitional period* which ends on 30 June 2017 (as per s48).

However, the FPA notes that s49(4) of the TASA states that tax (financial) advice services may be provided by unregistered entities during the *notification period* if such advice is accompanied by the legislated disclaimer. The FPA also notes that s49 implies that:

1. From the commencement of the *notification period* on 1 July 2014, tax (financial) advice services cannot be provided by unregistered entities without the accompanying disclaimer, and
2. the disclaimer can only be used during the notification period which ends on 31 December 2015, and
3. therefore it could be assumed that tax (financial) advice services can only legally be provided by unregistered entities until the end of the notification period or 31 December 2015, and
4. as the disclaimer is therefore not allowed to be used during the *transitional period*, and up until the commencement of the full regime on 1 July 2017, unregistered entities cannot provide a tax (financial) advice service without contravening the TASA.

The FPA is concerned that the implied reference to the 1 January 2016 commencement of the full TASA regime for financial advice providers may cause confusion in the absence of an explanation of this date. This is particularly important given the ongoing publicity given to the full 3 year transition for financial advice providers to comply with the regime by 1 July 2017.

The FPA recommends the TPB include in the Information Sheet a clear explanation as to why, if the legal transition arrangements apply until 30 June 2017, entities will “contravene a civil penalty in the TASA” if from 1 January 2016 they provide a tax (financial) advice service and they are unregistered.



2. Sufficient number requirement for partnership and company registered tax (financial) advisers

The FPA acknowledges and supports the principles based approach the TPB has taken to the sufficient number and supervision requirements under the TASA. The FPA also welcomes the TPB's acknowledgement of and alignment to the existing structures financial advice providers have put in place to meet ASIC's supervision requirements under the Corporations Act.

Who can register as a company / partner?

The FPA acknowledges the need for the TPB to be consistent in its use of terminology across all its policy documents, including those for BAS agents, tax agents and tax (financial) advisers. However, the FPA believe the Information Sheet would be more understandable for its intended audience of tax (financial) advisers if there was a clearer link and explanation to the Corporation Act language financial planners understand and live by.

For example, the Information Sheet refers to the terms 'partnership' and 'company', which imply certain business structures. However, the Corporations Act licenses advice providers under the structures of licensees, corporate authorised representatives (CARs), authorised representatives, and representatives. Under the Trade Practices Act, licensees, corporate authorised representatives (CARs), and authorised representatives, may all be eligible to register as a business/company.

The FPA recommends the TPB include an explanatory paragraph in the introduction of the Information Sheet as to who, in Corporations Act language, can register with the TPB as a company or partner – that is licensees, corporate authorised representatives, authorised representatives who hold an CAN for example.

Who is responsible for meeting the sufficient number requirements?

Item 16 of the Information Sheet acknowledges the different business models and structures in the financial advice profession compared to those used by BAS and tax agents. Item 17 goes further to explain that the TPB "is of the view that partnerships and companies are best placed to assess how many registered individual tax (financial) advisers their business requires to ensure that tax (financial) advice services are provided competently and to ensure there are supervisory arrangements in place".

However, as stated above, the Corporations Act licensing structure includes several entities that may be eligible to register with the TPB as a company, including licensees, corporate authorised representatives (CARs), and authorised representatives.

The FPA understands that it is ultimately a matter for these registered entities to determine who in their business structure is responsible for ensuring compliance with the sufficient number requirements, however it would be beneficial for tax (financial) advisers to understand the TPB's expectations of who the responsible entity should be using Corporations Act language.



For example, does the TPB have a requirement that the licensee be ultimately responsible for ensuring the sufficient number requirements are met throughout its advice businesses; or does the TPB believe it is also appropriate for the CAR to hold responsibility for its own sufficient number obligations and set its own supervision models as it is also registered with the TPB as a company?

The FPA recommends expanding item 17 to relate it back to the licensing structure of the Corporations Act and specifically state the TPB's view on who under the financial advice licensing regime would be the appropriate registered entity(s) responsible for ensuring compliance with the sufficient number and supervision requirements. This would provide greater clarity for tax (financial) advisers.

Date of application of the sufficient number test

The FPA notes that items 1 and 4 of the Information Sheet states that the sufficient number requirement applies to entities seeking to register or reregister as a company from 1 January 2016.

The FPA is concerned that there are various key dates relating to the commencement of different requirements under the TASA regime for financial advice providers. For example:

- The three year transition arrangements including the *notification period* of 1 July 2014 to 31 December 2015, and the *transitional period* of 1 January 2016 to 30 June 2017
- Extended expiry dates under s49(1) of the TASA for entities who register by 31 December 2014:

Period of registration as a registered tax (financial) adviser		
	Column 1	Column 2
Item	If an entity notifies the Board during ...	then, the entity's registration expires on ...
1	July, August, September, October, November or December 2014	31 January 2018
2	January, February, March, April, May or June 2015	31 October 2017
3	July, August, September, October, November or December 2015	31 July 2017

- The Professional Indemnity Implementation dates

The FPA notes that the exemption from the sufficient number requirement only applies during the notification period, which closes on 31 December 2015. However, in the case of an entity that 'notifies' the TPB before 31 December 2014, it has until 31 December 2018 to re-register and the sufficient number requirements will not apply until 1 January 2019 or such time as it reregisters.

Further, the FPA is concerned that the lack of explanation and clarity around why the sufficient number requirements apply from 1 January 2016 when the transition period ends on 30 June 2017, may cause confusion for tax (financial) advice providers, particularly smaller licensees.

There are so many different dates and requirements that a simple explanation would address any confusion and questions that may arise from the application of the sufficient number requirements from 1 January 2016.



The FPA recommends the TPB:

- *Clearly explain why the sufficient number requirements apply from 1 January 2016 when the transition period ends on 30 June 2017, and*
- *provide further clarity around the dates by which the obligation must be met - which will differ depending on when an entity initially notifies the TPB as per s49 of the TASA.*