



12 June 2013

Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members,

Tax Laws Amendment (2013 Measures No. 2) Bill 2013

The Australian Financial Markets Association (**AFMA**) represents the interests of over 130 participants in Australia's wholesale banking and financial markets, including providers of financial advice. AFMA welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services (**the Committee**) in respect of the *Tax Laws Amendment (2013 Measures No. 2) Bill 2013 (the Bill)*.

AFMA notes that Schedules 3 and 4 of the Bill have been excised and referred to the Committee for further consideration. AFMA makes this submission solely in respect of Schedules 3 and 4 of the Bill that was initially introduced into the House of Representatives that are the subject of the Committee's review.

Submission

It is AFMA's submission that the commencement of the measures contained in Schedules 3 and 4 be deferred for a further period of six to twelve months to allow for further consultation with industry and other stakeholders. AFMA is of the view that such further consultation is necessary to ensure that the proposals meet their stated policy objectives while providing industry with the legislative certainty that it requires. We have set out particular concerns below.

At the outset, the Committee needs to be aware that Schedules 3 and 4 are a significant departure from the Exposure Draft upon which industry made submissions, and were first made publicly available only when introduced into the House of Representatives on 29 May 2013. In AFMA's view, this is insufficient time for appropriate consultation.

Definition of "tax (financial) advice service"

AFMA has provided two submissions to Treasury in relation to the proposed amendments that focus on the definition of a "tax (financial) advice service" (formerly a "tax advice (financial product) service" as per the Exposure Draft). Notwithstanding these submissions, AFMA believes that there remains considerable uncertainty as to the

precise ambit of the definition of a “tax (financial) advice service.” This lack of clarity is indeed specifically acknowledged in the Explanatory Memorandum at paragraphs 3.48 and 3.51.

The legislative construction in the Bill allows the TPB to issue guidelines in the form of a legislative instrument as to what is meant by the term “tax (financial) advice service.” Given the fundamental nature of the term “tax (financial) advice service” to the proposed measures, it is AFMA’s view that delegating the definition of the term to the TPB is inappropriate. Legislative design and application should be a matter for Government and the Bill and the Explanatory Memorandum should provide, to the extent possible, necessary clarity for the TPB and industry alike.

This point is even more important when looking at the way in which the term “tax (financial) advice service” is defined, that is, in an identical fashion to the term “tax agent service” in the *Tax Agent Services Act 2009 (TASA Act)* with the exceptions being that a provider of a “tax (financial) advice service” cannot represent a taxpayer in dealings with the Commissioner of Taxation or prepare a tax return. AFMA’s previous submission on the Exposure Draft of the Bill that states:

“the approach adopted in the definition of “tax agent services” in the Explanatory Memorandum to the *Tax Agent Services Act 2009* is difficult to reconcile with the approach being adopted in the current Exposure Draft regarding “tax advice (financial product) services.”

AFMA remains of the view that there are approaches adopted in the TASA Act and the current Bill are inconsistent when, from a legislative drafting perspective, no such inconsistency should arise.

Timing and Transition

As the Committee is aware, under the transitional measures proposed in the Bill, there is a three year transitional period that is broken up into two distinct eighteen month blocks. The first eighteen month period (1 July 2013 – 31 December 2014) of the regime requires existing providers of “tax (financial) advice services” to merely notify the TPB. Further, any notification within the first transitional period is deemed to have occurred on July 1, 2013. There are no proscriptive education or experience criteria that need to be adhered to by existing advisers in the notification period. Accordingly, to the extent that the commencement of the regime was to be deferred by six to twelve months to allow for appropriate consultation with industry, this first transitional period could be truncated to allow for commencement of the full regime (and indeed the second transitional period) as currently anticipated. This would allow for robust consultation to address issues industry believes are outstanding without substantively deferring the commencement of the regime.

AFMA further believes that a delay in the commencement of the TASA regime will allow for the TPB to be adequately resourced and prepared to administer the regime, especially the large number of expected registrations. AFMA is also of the view that splitting the commencement date of TASA from the commencement of full compliance of the *Future of Financial Advice (FOFA)* reforms will allow industry to better deal with the implementation of both regimes.

Requirement for announcement

AFMA notes that the current carve-out for financial advisers that provide tax agent services from the requirements of the TASA Act expires on 1 July 2013. To the extent that the Committee recommends that the commencement of the application of the TASA regime to providers of “tax (financial) advice services” be deferred, as per AFMA’s submission, or if the legislation is not enacted prior to 1 July 2013, it is most important that an announcement be made by the Government extending the existing carve-out for an appropriate period.

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AFMA’s two submissions to Treasury on the Exposure Draft are available on request.

Please contact Rob Colquhoun, Director of Policy (Taxation), on [redacted] should you wish to discuss.

Yours sincerely,

Rob Colquhoun
Director, Policy (Taxation)