

14 June 2013

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

By email: corporations.joint@aph.gov.au

Dear Dr Grant

Supplementary submission on a regulatory framework for tax (financial) advice services (previously Tax Laws Amendment (2013 Measures No. 2) Bill 2013, Schedules 3 and 4)

This supplementary submission from CPA Australia and the Institute of Chartered Accountants Australia should be read in conjunction with our preliminary submission and the evidence we provided at the Committee hearing on this framework.

Summary of recommendations

The accounting profession fully supports the creation of a regulatory framework for tax (financial) advice services, as proposed in Schedules 3 and 4.

We therefore recommend that Schedules 3 and 4 be reintroduced into Parliament (with one minor amendment suggested below) at the earliest opportunity to allow its passage through Parliament by the end of June 2013.

The minor amendment suggested is to allow for an effective 'transitional' approach in relation to the required form of the disclaimer. With this minor amendment, we believe that the commencement date of this important regulatory regime should remain 1 July 2013.

While we believe the transition provisions are appropriate, should the Committee recommend a delay to the commencement date we recommend that Schedules 3 and 4 still be reintroduced into Parliament to allow its passage through Parliament by the end of June 2013. We also recommend that the Committee consider:

- a commencement date of 1 March 2014, as this will align with the commencement date of the Tax Agent Services Act 2009, being 1 March 2010; and
- reduce the "notification period" to 1 March 2014 to 31 December 2014, a 10-month notification period is more than adequate given that BAS agents had a six month notification period and tax agents had three months.

Representatives of the Australian Accounting Profession



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Key facts and reasoning

Our primary recommendation above that Schedules 3 and 4 should be reintroduced to Parliament, with one minor amendment, is based on the following key facts and reasoning:

1. Schedules 3 and 4 provide for a fair, balanced, and workable transition to the Tax Agent Services (TAS) regime for the financial service industry:

(i) There is a built-in 18 month deferral

Financial planning organisations have sought a further 12 month deferral. Sub-item 48(4) exceeds this by providing for an 18 month deferral for financial planners. Financial planners will therefore be able to choose to remain unregistered for the first 18 months as long as they continue to accompany their services with a disclaimer in the same terms (with minor changes) as that required to access the current exemption.

This means that the minimum action required of financial planners in preparation for the commencement date is to update their disclaimer in their 2013/14 engagement letters with clients, or include the statement as part of the actual advice provided to a client. Given that the words for the disclaimer are provided in the proposed regulations, we believe that this should be achievable from 1 July 2013.

Given the concerns raised by the financial services industry that the time frame available to comply with the revised disclaimer is too limited, we believe that the bill could be amended to address this by adding the following to sub-item 48(4):

“A statement will be taken to meet the requirements of paragraph (b) if:

- the statement meets the requirements of sub-regulation 13(2); and
- the statement is made before 1 October 2013.”

This amendment would provide the industry with a further three months to update their disclaimer to comply with sub-item 48(4).

(ii) Those who want to obtain the status of a registered tax (financial) adviser can choose to register

There are extensive transitional provisions in Schedule 3 to accommodate those financial planners that are ready to register with the Tax Practitioners Board (the Board) under the proposed regime and gain their status as a registered tax (financial) adviser.

The transitional arrangements consist of two phases (before moving to the third phase of ‘full implementation’), namely:

- Notification period – 1 July 2013 to 31 December 2014; and
- Transitional period – 1 January 2015 to 30 June 2016.

Before considering the transitional rules, however, there are three simple but very important points to note about how the registration obligations work under the TAS regime generally, namely:

1. An entity is only *required* to register if they are receiving a fee or other reward for providing the tax (financial) advice services.
2. This means that there is no need for an employee to register, unless their employer needs them to become registered to be one of the “sufficient number of individual registered tax agents” that is required to support the ‘business’ registration.
3. ‘Businesses’ only need to show they have a “sufficient number” of registered individuals under the standard registration rules. This requirement does not apply during the three year transitional period.

Number of expected registrants

For these reasons, during the notification period (the first transition phase), the rules only permit 'businesses' to notify and register, that is a licensee or an authorised representative. Employees, directors and other representatives are not permitted to register during the first 18 months as there is no need for them to register.

The Explanatory Memorandum (EM) explains that this limitation on who can initially register is to streamline and simplify the process. Individual employees, directors or other representatives will only need to register to support their employer's 'business' registration at the time their employer needs to renew their registration under the standard registration rules, which will only apply in full from 1 July 2016.

The earliest point in time at which an employee, director or other representative will be able to register is 1 January 2015, being the start of the 'transitional period'.

Applying this reasoning, we therefore expect that the number of entities registering during the notification period, out of the entire financial services industry, will be a relatively small number.

For example, the four big banks will only need one registration for each of their respective AFS licensee subsidiary companies that are carrying on their different financial services business. Therefore, each of these banks may only need 4 or 5 'business' registrations for their entire group's financial planning businesses during the first 18 months. To reinforce the above point, none of the banks individual employees, directors or other representatives will be able to register during the first 18 months.

Easy to satisfy 'notification' and relaxed 'transitional' rules

The requirements for an entity to obtain their 'business' registration under the 'notification' rules are simple. The entity only needs to notify the Board that they are providing tax (financial) advice services. They will then be taken to be registered for a period of up to 3 years and 7 months, depending upon how early they notify. For example, entities that notify between July to December 2013 will only see their registration expire on 31 January 2017.

The requirements for an entity, including as an employee, director or other representative to obtain either an individual or a business registration under the 'transitional rules' are also simple compared with the standard registration requirements. The only requirement is that the entity has "sufficient experience" to provide the tax (financial) services to a competent standard.

The Board has interpreted a similar phrase, in the case of tax agents as 2 years full time experience, and in the case of BAS agents as 700 hours in the past two years, so this gives an indication of how the phrase "sufficient experience" can be expected to be interpreted by the Board.

No academic requirements whatsoever will need to be met in order to register until July 2016 at the earliest, and in most cases, many years later. We have provided a worked example (**attached**) to demonstrate the time line involved, including who needs to register and when, as well as the time by which academic requirements will need to have been completed.

(iii) "Sufficient number of registered individuals" – Organisational qualifications and experience

In terms of the number of individual employees, directors or other representatives that can be expected to register in the 'transitional phase' and thereafter to support their employer's 'business registration', we make the following observations:

- Under the TASA, the "sufficient number of registered individuals" requirement – known as the 'Organisational qualifications and experience' requirement - has a high degree of correlation and synergy with the Corporations Act and ASIC's requirements to demonstrate 'organisational competence' for a licensee.
- Entities applying for registration as a tax (financial) adviser must be able to satisfy the Board that they have a "sufficient number of registered individuals" to provide tax (financial) advice services to a competent standard and to carry out supervisory arrangements.

- Under the registration rules, the Board must take into account the requirements of paragraphs 912A(1)(d) to (f) of the Corporations Act 2001 in determining whether a “sufficient number of registered individuals” is met. This will ensure that the entity is not subject to undue additional regulation under the TASA because the Board’s sufficient number will need to take into account arrangements that the entity already has in place for meeting its obligations under the Corporations Act. [3.71 of the EM and Example 3.10]
- The ‘organisational competence’ requirements of the Corporations Act 2001 (s912A(1)(e)) are that the AFS licence applicants must be able to demonstrate to ASIC that they have nominated enough “Responsible Managers” to maintain the competence to provide the financial services covered by the AFS licence. They must also ensure they have adequate resources to carry out supervisory arrangements (s912A(1)(d)) and that representatives are adequately trained and competent (s912A(1)(f)).

On this basis, we envisage that employees, directors and other representatives who have to register will be at that similar “responsible manager” or other senior technical manager level, rather than the branch level authorised representative and junior financial planners.

Therefore, we believe that the compliance cost estimates provided by the financial services industry (which seems to be based on all or a very large number of financial planners having to register) is based on incorrect assumptions. We recommend that the Committee work with the Treasury, ASIC and the Board to determine a more accurate calculation of the compliance costs the regime will impose on the industry.

Additional comments

Clarification of the definition and application

We believed (as did many in the financial services industry), that the original definition was too narrow in its application. Upon further consultation, a broader principle based definition has been formulated that as stated in our original submission, we support.

It should be noted that subregulation 13(1) of the TASR 2009 specifies particular services that are not tax agent services for the purposes of TASA 2009, for example custodial services and depository services. This provides the flexibility to potentially carve out other services that the industry may have concerns over.

Steps that can be taken to minimise regulatory duplication

There are numerous aspects of the TAS regulatory regime in relation to tax (financial) advisers that are aimed at minimising regulatory duplication between the Board and ASIC. Specifically:

- The co-regulatory model itself was the approach adopted, after much consultation and consideration, for the very reason that it “should minimise time financial planners need to spend applying to regulators for licensing, registration, or renewal”. [4.59 of the EM]
- Streamlining aspects include:
 - Information sharing powers – the Board will have the power to share information with ASIC e.g. contact details, and the Board must notify ASIC of any decisions it makes regarding registration, termination of registration, and outcome of investigations (findings and decisions).
 - Similarly, ASIC has the power to share information with the Board – subsection 127(4) of the ASIC Act 2001.
- Complementary aspects of the co-regulatory model with ASIC include:
 - For the first time, financial planners will be subject to additional explicit requirements that apply to providers of tax services, such as the specific tax-related conduct obligations and the educational standards set by the TAS Regulations. [4.59 of the EM] For example, the ‘reasonable care’ obligations, and the obligation to advise the client of rights and obligations materially related to the tax agent services provided.

- Also, the Board will have broad powers to impose relevant and constructive and protective sanctions on tax (financial) advisers, e.g. that a course be undertaken, or to place a limit on the scope of services that can be provided, or to require supervision. Registered financial planners will also be accountable to the Board for their broader conduct under the taxation laws, e.g. if involved in promoting tax exploitation schemes or convicted of a serious taxation offence or fraud [s20-45 of the Act]
- The professional indemnity (PI) insurance requirements set by the Board for financial planners will ensure their PI insurance extends to covering them for the tax advice they provide. [4.61 of the EM] The Board has advised that it will consult with key stakeholders in developing the PI insurance requirements for tax (financial) advisers. [3.115 of the EM] PI insurance will be a new registration requirement.
- The Continuing Professional Education (CPE) requirements to be set by the Board for financial planners will complement the CPE regime outlined by ASIC. [4.37 of the EM] CPE requirements will be a new registration (renewal) requirement.

We understand a significant issue that has been raised is the associated compliance and financial costs resulting from the introduction of this regime. A figure of \$1 billion has been stated, although we are unaware of the details or how this cost has been calculated. However, we understand additional costs may be incurred to complete further training during the transition.

To provide flexibility and to address concerns about the potential costs to amend current disclaimers and warnings, we recommend that the bill be amended (as stated previously in 1 (i)) by adding the following to sub-item 48(4):

“A statement will be taken to meet the requirements of paragraph (b) if:

- the statement meets the requirements of sub-regulation 13(2); and
- the statement is made before 1 October 2013.”

This minor amendment would provide the industry with a further three months to amend their disclaimer to reflect the minor wording change required under sub-item 48(4) during the notification period.

Attached to this supplementary submission is a timeline outlining how the proposed regime could impact a financial planning business.

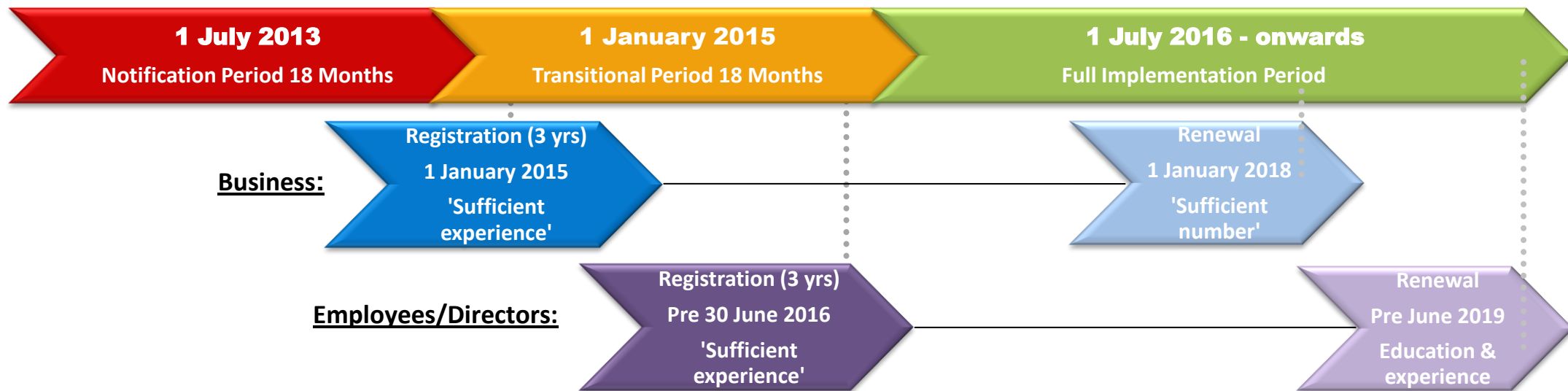
If you would like us to provide any further information, please do not hesitate to contact either: Paul Drum (CPA Australia) on _____ or via email: _____ ; or Yasser El-Ansary (the Institute) on _____ or via email: _____

Yours sincerely

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Example Timeline: Financial Planning Co.



NOTIFICATION PERIOD: 1 July 2013 – 31 December 2014

Financial Planning Co. (Business): Can remain unregistered for first 18 months. Company continues to operate using its disclaimer (minor changes to the disclaimer required). No further action required.

Individuals (Employees/Directors): No action required or possible.

TRANSITIONAL PERIOD: 1 January 2015 – 30 June 2016

Financial Planning Co. (Business): On 1 January 2015, Company needs to register under transitional rules. 'Sufficient experience' requirement only. No need for Company to demonstrate a 'sufficient number of registered individuals' (3 years registration).

Individuals (Employees/Directors): Individuals do not need to register yet, but would take advantage of the relaxed 'transitional' rules and register for Company by 30 June 2016. 'Sufficient experience' is the only requirement. No academic requirements (3 years registration).

FULL IMPLEMENTATION PERIOD: 1 July 2016 – onwards

Financial Planning Co. (Business): After 1 July 2016, Company must demonstrate that it has a 'sufficient number of registered individuals'. 'Sufficient number' of individuals would need to be registered by 1 January 2018 when Company has to renew (see above transitional rules).

Individuals (Employees/Directors): Individuals would need to meet standard academic and 'relevant experience' requirements (plus CPE requirements) by 1 January 2019 when they renew their registrations.