

AIST & ISN Submission

Creating a regulatory framework for tax advice (financial product) services



**Industry
Super
Network**



About ISN

Industry Super Network (ISN) is an umbrella organisation for the industry super movement.

ISN manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings and incomes of their members through improving the super system and enhancing the value of industry super to members, the value of the generic industry super category and the brand of network participants and expanding the market share of network participants.

About AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and its education program encompasses the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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Executive summary

This measure outlines the framework by which financial advisers will be registered with the Tax Practitioners Board (TPB).

AIST and ISN are highly interested in the certainty provided by the solution that has been outlined in this exposure draft (ED). In this context, we can confirm that we broadly support greater scrutiny being applied to tax advice provided as part of a financial advice service; however we have strong recommendations regarding minor aspects of its implementation. In brief, we would like to see the following issues addressed:

- We consider that the terms ‘Tax advice (financial product) service’ and ‘Registered tax (financial product) adviser’ to be cumbersome and recommend their replacement;
- Clearer information should be included in the explanatory memorandum to the ED about who is responsible for tax advice that is provided as part of financial product advice;
- We believe that the expectations for initial and ongoing eligibility criteria for registration with the TPB are disproportionate to the reduced set of privileges that advisers will gain compared to ordinary registered tax agents;
- Whilst it is reasonable to expect that any onerous registration requirements required at initial registration would not be required at renewal, this information should be contained within the explanatory memorandum (EM) to the ED. As an example, we have specifically recommended in this submission that the requirement to be an AFS licensee or a representative be a requirement at initial registration, only;
- Similarly, a solution must be provided to ensure that advisers who register with the TPB during the Notification period and who change AFS licensees during the Transitional period are not disadvantaged. Our recommended solution is to treat moves between licensees as file changes rather than renewals; and
- An exemption should be provided to advisers who represent registered firms at registration with regards to professional indemnity insurance requirements, as the firm they represent will have already provided this information.

Comments

Introduction

AIST¹ and ISN² have been involved in consultation on this measure since we commented on an Options Paper issued by Treasury in November 2010. AIST and ISN embrace the greater scrutiny being applied to this aspect of financial advice and we welcome the opportunity to provide input on this ED.

Tax advice (financial product) service

In drafts of consultation papers issued throughout the consultation process, the world of financial planners was broken down into three types of advisers – those who do not provide a tax advice service, those who provide tax advice as part of their financial advice service, and advisers who are also registered tax agents. The first type identified would be outside the scope of this ED.

Our comments on this measure relate to the new service defined by this ED of ‘tax advice (financial product) service’, which we have referred to as the new service throughout this submission. We welcome the new service. We offer the following comments as recommendations to improve this licensing regime.

Terminology

AIST and ISN have minor concerns about the terminology that is to be introduced with this measure. It is apparent that the primary intention is to introduce terminology that creates a class of tax adviser that is distinct from the existing categories which are regulated by the TPB, as well as the new service. Our comments relate to the following terms:

- Tax advice (financial product) service; and
- Registered tax (financial product) adviser.

In short, we believe that the terms introduced by this measure are unwieldy. Whilst we understand that there needs to be terms introduced that differentiate advisers from registered tax and BAS agents, as well as the services that they provide, it is our opinion that different and easier terms could be used.

¹ AIST (2010) *Response to options paper – Regulation of Tax Agent Services provided by Financial Planners*. [pdf] Melbourne: Australian Institute of Superannuation Trustees. <http://is.gd/S7cRCp> [Accessed: 8 March 2013].

² ISN (2010) *Regulation of Tax Agent Services Provided by Financial Planners*. [pdf] Melbourne: Industry Super Network. <http://is.gd/38z5zY> [Accessed: 8 March 2013].

Our recommendation is that these terms should be changed to something simpler, or that there are shorter or more user-friendly terms created as alternatives.

Registration

Who must be registered and responsibility

We note that the registration requirements are twofold. Firstly, there is the requirement for individual advisers who will be responsible for the tax advice and secondly, the requirement for the entity whom the adviser represents to be registered.

We consider that a requirement for a registered tax (financial product) adviser or registered tax agent to be responsible for any tax advice being provided is a sensible outcome. It means that a flexible solution can be found, where a financial adviser who works for a firm may not be a registered tax (financial product) adviser or registered tax agent but who is providing tax advice as part of financial product advice. In this situation, another person at the firm, suitably registered, must be responsible for the tax advice that is to be provided.

However, we also note that the entity for whom an adviser works would also need to be licensed. Although the EM is silent on this, we believe that a very relevant question is, who is it who is responsible for the advice that is being provided? Consider the following examples:

Example 1

Jill is a financial adviser and a representative of an AFS licensee and registered tax (financial product) adviser, X Financial Services Pty Ltd. Jill has only recently started providing tax advice as part of the service that she provides, however is authorised to provide personal financial product advice.

Jill is not yet eligible to provide tax advice services, as even though she satisfies all other requirements and has the necessary educational qualifications, she has not yet satisfied the necessary minimum period of experience required for registration with the Board.

Jill's colleague Pam is a registered tax (financial product) adviser however, and as part of her role will supervise Jill for the purpose of any taxation advice contained within Jill's Statements of Advice (SOAs), leaving Jill responsible for the remaining financial product advice.

As part of this arrangement, Jill agrees to provide SOAs to Pam for approval prior to presenting to clients. The supervision arrangement should form eligible experience of tax advice (financial product) service for Jill.

Example 2

FirstNational Super is a not-for-profit superannuation fund, AFS licensee and registered tax (financial product) adviser that has commenced operating an online advice service. A member of FirstNational Super can go to their website, and after keying in answers to some questions on their personal financial situation and objectives, they can receive

personal financial product advice on a limited range of queries. Several hundred statements of advice are generated every month using this facility.

FirstNational Super employs a registered tax (financial product) adviser, Bill, who is responsible for any tax advice contained in these SOAs, whereas FirstNational Super is responsible, under their AFS licence, for the financial product advice provided in the SOAs.

Bill does not see any SOAs provided to FirstNational Super members until after they have been provided.

It is difficult to see, in the first instance, why it is necessary for X Financial Services to be registered, whereas in the second instance, why Bill is taking responsibility for several hundred potential instances of tax advice. We recommend that further discussion of who is responsible for any tax advice be made more explicit in the EM.

The role of ordinary registered tax agents

We note at paragraph 1.28 of the EM, that there is a requirement that the new service may only be provided as part of a financial product advice service. Although registered tax agents are mentioned in the paragraph, we note that the new service is considered to be a subset of the existing tax agent services and are unsure of why they would have a requirement to be providing a financial product advice service in order to provide tax advice in that context.

This is a point that is further acknowledged at paragraph 1.32 of the EM. Being a registered tax agent appears to meet all requirements of providing the new service, in addition to allowing the adviser to additionally represent clients in their dealings with the Commissioner for Taxation.

Registered tax (financial product) advisers will enjoy a smaller range of privileges to registered tax agents. However, paragraph 1.38 of the EM states that the same obligations will apply, including compliance with the TPB's Code of Professional Conduct, minimum education, ongoing education, experience and/or membership of specific professional associations. Whilst we welcome and applaud the stringency of ensuring a reputable service is provided, the fact is that registered tax (financial product) advisers will still be held to the same initial and ongoing eligibility criteria as registered tax agents, with the exception of a slightly reduced registration fee. This appears to be disproportionate.

We have commented further on this in a subsequent section.

Notification and transitional periods

We support the use of a notification phase and a transitional phase to ease into the long-term framework. During consultation on this measure, we highlighted the practical issues associated with ensuring that persons who provide financial product advice are able to continue with business as usual.

During prior consultation on this measure, we noted several issues that do not, as yet, appear to have been addressed. We have raised the issue later in this submission about the lack of clarity regarding advisers who change licensees during the Transitional period.

Long-term requirements/future state

Renewal requirements

The measure is silent on whether from 1 July 2016, the long term registration requirements also apply at renewal. Whilst it is reasonable to conclude that any onerous evidence requirements for initial registration would not ordinarily be reproduced at renewal, this should be addressed in the EM.

General eligibility requirements and the future state

We mentioned above that it is likely that registered tax (financial product) advisers will be still be held to the same initial and ongoing eligibility criteria as registered tax agents, with the exception of slightly reduced registration fees, as well as slightly different experience requirements. Given this, we believe that this may drive a significant portion of advisers to seek registration as ordinary registered tax agents, rather than as registered tax (financial product) advisers.

We note that there will, in fact, be additional requirements for registered tax (financial product) advisers in the schedule that outlines proposed changes to the regulations, which creates additional bureaucracy as well as additional incentives to become an ordinary registered tax agent.

We highlight this in passing, as it appears to be an unintended outcome.

Schedule 2

We are concerned with proposed amendments to the *Tax Agent Services Act 2009* requirement for individuals to maintain their own professional indemnity insurance as a condition of registration. We believe that individual advisers should be exempt from this requirement, as the TPB should already hold these details from the organisation that they represent, given the need for that organisation to also be licensed.

Financial advisers have not needed to source details of the cover that they have in place in the past and this would appear to be unnecessary red tape.

Proposed amendments to regulations

We welcome the schedule attached for consultation dealing with proposed amendments to regulations that have not yet been drafted and encourage the Treasury to consider utilising this as normal practice for all draft legislation.

Specific requirements

We note at paragraph 6 (as discussed above) that there will be a requirement for registered individuals to be either a financial services licensee, or a representative of a financial services licensee.

Given that ordinary licensed tax agents are not subject to a requirement to hold an AFSL or be a representative of an AFS licensee, we believe that this may drive a significant portion of advisers to seek registration as ordinary registered tax agents, given the inconvenience of notifying the Board every time they change licensees.

We recommend that this condition be required at initial registration, only.

Provision should be made for advisers who move between licensees to prevent the requirement for re-registration during the Transitional period. It would be unnecessarily bureaucratic to consider a move between licensees to be a renewal and we recommend that it be made explicit that such moves merely be seen as a file change on an existing registration.

Should such a move be seen as a renewal, the outcome is that advisers who would otherwise have been considered eligible at initial registration may suddenly be needing to conform to the education and experience requirements, which they may not yet have met. We recommended earlier in this document that further information regarding renewals of advisers who nominate during the Transitional period should be explained more thoroughly in the EM.