

22 March 2013

Ms Leslie McDonald  
Senior Advisor/Governance and Capability Unit Manager  
Tax Systems Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [redacted for public access]

Dear Leslie,

**Re: Joint AIST and ISN submission: Creating a regulatory framework for tax advice (financial product) services**

Thank you for your request for further information regarding our joint submission on the draft legislation relating to creating the new tax advice (financial product) service framework. We have addressed the points that you raised and provided further commentary. Due to the tight timeframe in responding, we regret that this information may, in parts, only address AIST's position on these issues and not necessarily ISN's.

**Who will be responsible for tax advice provided?**

In your request you referred to the issue that we highlighted where the explanatory memorandum was not clear on who would be responsible for the advice provided.

By way of background, we remind you of financial services reforms which culminated in the *Financial Services Reform Act 2001* ("the FSR Act"), where the new Australian financial services (AFS) licensing regime was introduced. Previously, financial advisers generally worked for entities that had dealer/broker licences, and the advisers themselves were registered as "authorised representatives" with ASIC.

The FSR model has resulted in a more efficient layering of responsibilities, and has ensured that consumers are able to easily determine who is responsible for each part of an advice service. In all instances, currently, it is the AFS licensee who has responsibility for the advice that is provided.

In our submission, we drew your attention to two situations, where personal financial product advice was provided by an individual adviser after a detailed fact find, and by a web-based application that generated an automated statement of advice. In both instances, the licensee would be responsible for the financial product advice that was provided. Further, in both instances, consumers would have been made aware that the entity responsible for the advice is

the licensee and in both instances, the consumer protection measures required to be made available to customers are required to be provided by the licensee.

The adviser is still expected to be trained to a specific level, and to render the services they provide appropriately. In addition, the regulator has powers to take action against specific advisers. Notwithstanding, it is the licensee who bears the responsibility in the first instance and this is the message that disclosure documents and consumer protection messages provide to customers.

In our submission, we pointed to the issue that the explanatory memorandum to the exposure draft provides little or no information to enable us to ascertain who is responsible for the advice that is being provided. This is confusing enough for risk, compliance, legal or advice professionals, but more importantly, this is completely unacceptable for mum and dad investors, who simply must know at the commencement of dealings with an adviser, exactly who is responsible for the advice, that is being provided.

We recommend that a simple statement along the lines of, 'XXX will be responsible for the tax advice provided,' be included in the explanatory memorandum to make this clear to all.

#### **Duplication of required information at renewal**

We also discussed the issue whereby the explanatory material is silent on whether registered tax (financial product) advisers will be required to reproduce information that was previously requested at registration or at a prior renewal. There are a number of issues here.

The main one relates to an adviser who may have registered during the notification period. There are reduced eligibility criteria to enable initial notification, and the transition period across to the future state appears to be a period structured only to satisfy ordinary experience requirements which all registered tax agents/advisers will be subject to, after the transitional period ends.

There appears to be very little additional incentive provided to advisers who register during the notification period. An adviser who registers during the notification period will need to renew in the future, and appears to need to provide exactly the same amount of information at that point as one who registers for the first time after the end of the transitional period, making the notification and transitional periods meaningless. It is the view of AIST, (but not necessarily of ISN), that if this is to be the case, we will have no choice but to recommend to our members that advisers seek registration as ordinary tax agents in preference to registered tax (financial product) advisers.

Complicating the previous point is the requirement for registered tax (financial product) advisers to be a representative of an AFS licensee, or hold an AFS licence themselves. This point actually

has two different implications, at renewal, and at all other times. We will address the renewal situation initially, and look at the 'live' AFS licensing requirements later.

In the context of an adviser being required to provide details of minimum initial education, ongoing education, experience and/or membership of specific professional associations as well as AFS licensee information, it is clear that referring to a renewal of an adviser's registration as a 'renewal' is grossly misleading. The correct terminology would be 're-registration' and in requiring re-registration of advisers periodically, this presents an unacceptable level of additional red-tape to the TPB. For example, it is unclear what end is served by the requirement to be a representative of an AFS licensee upon re-registration: The exposure draft makes it clear that if the service is not being provided as part of a financial product advice service – which may only be provided by AFS licensees and their representatives – then it cannot be a tax agent (financial product) service.

We make the specific recommendation that advisers who notify the Board during the notification period are grandfathered from additional requirements at future re-registrations. Further, allowance needs to be made for advisers who change licensees during the transitional period to avoid the scenario where these advisers can never meet minimum experience requirements.

#### **The 'live' AFS licensing requirements**

The requirement that registered tax (financial product) advisers hold either an AFS licence, or be the representative of a licensee is unenforceable, but also excessive red tape.

We propose an alternative, with good reasoning. As outlined above, a tax advice (financial product) service will only be provided as part of a financial product advice service. It is therefore unimportant that registered tax (financial product) advisers provide details of their AFS licence information to the Board at any time other than initial registration, and at the time a breach occurs. These are the points that we propose this information to be collected.

However, we also noted the need for the organisation that advisers represent to be registered in our submission. In our submission, we noted the requirement for details of professional indemnity insurance to be provided to the Board and recommended that AFS licence information could, if absolutely required, be collected at this point.

We also wish to draw your attention more closely to the additional bureaucracy itself. With respect to both renewals, and ongoing AFS licence requirements, the TPB will be required to ask for evidence of the above, and presumably, will need to verify it. This will require significant processing man-hours. We understand that the TPB may be resourced to address re-registration of ordinary registered tax agents and registered BAS agents, however the AFS licensee information is a special requirement which will be unique to registered tax (financial product)

advisers. We wish to express doubts regarding the TPB's capacity to enforce AFS licensing requirements.

If you have any further questions regarding this submission, please contact myself on 03 8677 3835 or at [rwebb@aist.asn.au](mailto:rwebb@aist.asn.au).

Yours sincerely,

Richard Webb  
**Policy & Regulatory Analyst**