

9 July 2014

General Manager
Tax System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: taxagentservices@treasury.gov.au

Dear Sir/Madam,

Re: Registration requirements for tax (financial) advisers

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds who manage the superannuation accounts of nearly two-thirds of the Australian workforce.

As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

AIST welcomes the opportunity to respond to the consultation on these draft regulations, *Tax Agent Services Amendment (Tax (Financial) Advisers) Regulation 2014*. As we have pointed out during the various consultation points on this measure, a registered tax (financial) adviser is immediately substitutable with a registered tax agent, where tax agent services are provided as part of financial product advice, and where services that may only be provided by an ordinary registered tax agent are not being provided. Therefore, there needs to be a discernable value proposition in order to make the designation of 'registered tax (financial) adviser' attractive to financial advice professionals.

We have also explained in past submissions that the question of precisely which individuals are to be licensed, as well as how consumers will know who is to be responsible for tax agent services that they receive, have not yet been resolved. Although not included within the scope of these draft regulations, we believe that these questions should receive the highest priority and recommend that consultation on these issues proceed without delay.

We believe that the proposed draft regulations are a step in the right direction. We are happy that certainty is close to being provided with the release of these draft regulations. We welcome the detail that is provided as part of these draft regulations and believe that various superannuation professionals who are affected can now proceed with their work with a clearer picture of how the requirements will look.

However, we note that our previous concerns regarding certain eligibility requirements have either not been addressed, or addressed in a way that may not be effective. This submission will focus primarily on these areas.

AFS licence requirements

Once again we wish to draw attention to the requirement for registrants to be (or have been in the past 90 days) an Australian Financial Services (AFS) Licensee or a representative of an AFS Licensee, in order to obtain registration as a registered tax (financial) adviser. We re-iterate that the Tax Practitioners Board (TPB) or Australian Securities and Investments Commission (ASIC) are presently not equipped to verify from their own records whether a registrant (or potential registrant) is a representative of an AFS licensee, except in certain instances. These instances do not include employees of the licensee, or those employed by related parties.

Furthermore, we point to the fact that there are no similar requirements for ordinary registered tax agents.

We cannot see how value is provided to consumers through this requirement, and argue that processes will need to be implemented at either the TPB or ASIC on an ad-hoc basis to verify AFS licence representatives.

We are also unaware of any other registration or licensing regime which imposes higher compliance requirements in exchange for reduced privileges or responsibilities as is the case for this requirement with respect to registered tax (financial) advisers.

We accept that the proposed 90 day window for changing between AFS licensees is an improvement upon the previously proposed 30 day period. The stated aim of embracing career breaks as indicated in the explanatory statement however, is unlikely to be met. We cite in particular the circumstances where a registered tax (financial) adviser leaves their employer to have children, with the intention to return to work in the same industry afterwards: 90 days is highly unlikely to be long enough for this. As most affected advisers in this situation are women, we believe that this requirement could be discriminatory.

For all the reasons cited above, we recommend the complete removal of the AFS licence requirements as contained in the proposed regulations. AIST will be unable to recommend to our

female members registering as a tax (financial) adviser in preference to registration as a tax agent without this change being made.

Tertiary qualifications and commercial law education requirements

We once again point to the requirement that advisers will be required to complete a relevant tertiary qualification in order to register or re-register when the full requirements of the regime come into effect in three years' time. The problem that we have previously identified is in the worst-case scenario where an adviser must complete a bachelor's degree in a relevant discipline. The Australian Qualifications Framework (AQF) currently recommends that students studying such a degree should allow a minimum of six years to complete such a degree, which raises the real possibility that advisers who wish to register or re-register in three years' time will be unable to do so. We point out that consideration of such advisers has not been included in these draft regulations.

Page | 3

AIST wish to once again raise concerns which we explained in our previous submission¹ on the content of this course with regards to questions of relevance in the proposed knowledge areas.

We point to the fact that the requirements for this subject are yet to be finalised, and note that the next university semester will not commence until 2015. We further point to the need to finalise course content in the interests of developing such a course for current industry participants, knowing that the time needed to develop such a subject is running out.

Advisers deserve to know that by the time that full registration requirements come into effect in three years' time, they will be able to reasonably satisfy all requirements with regards to education, training and relevant experience.

Relevant experience

AIST welcomes the explanation provided in the explanatory statement of what constitutes relevant experience for the purposes of registration. We continue to recommend that better explanation be provided with respect to the notions of what 'supervision' is (as used in the proposed regulations) as this is a new notion to the financial services industry.

Accrediting recognised associations

AIST welcomes the guidance on what is required to be a registered tax (financial) adviser association. As a member-based organisation, AIST may in future seek to become an accredited professional association and welcome guidance from the Board on what is necessary for accreditation as such an entity.

¹ AIST, (2014). *Response to Treasury discussion paper: Registration re requirements for registered tax (financial) advisers*. 1st ed. [pdf] Melbourne: Australian Institute of Superannuation Trustees. Available at: <http://tinyurl.com/mbo3vuf> [Accessed 9 Jul. 2014].

AIST notes that the numbers of professionals required to be registered with the Board will swell to include superannuation professionals and recommends that superannuation professionals are represented on the Board, along with accounting and tax associations.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a light blue horizontal line.

Tom Garcia
Chief Executive Officer