



**AUSTRALIAN BANKERS'  
ASSOCIATION INC.**

**Jade Clarke**  
Associate Director

**AUSTRALIAN BANKERS' ASSOCIATION INC.**  
Level 3, 56 Pitt Street, Sydney NSW 2000  
p. +61 (0)2 8298 0404 f. +61 (0)2 8298 0402

[www.bankers.asn.au](http://www.bankers.asn.au)

11 March 2013

General Manager  
Revenue Group Law Design Practice  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By Email: [taxagentservices@treasury.gov.au](mailto:taxagentservices@treasury.gov.au)

Dear Mr Reid,

## **Tax Agent Services Act (TASA): Tax Laws Amendment (2013 Measures No.#) Bill 2013: Tax agent services**

The Australian Bankers' Association welcomes the opportunity to provide comments on the proposed legislation and draft regulations to amend the Tax Agent Services Act/Tax Act.

The ABA's high level comments focus on commencement and scope of the proposed amendments. However, the ABA supports the Financial Services Council's submission more broadly.

### **1. Commencement**

We note that TASA will apply to financial advisers from 1 July 2013 and support the FSCs call for an extended exemption for a further six to twelve months.

### **2. Scope**

The ABA recognises that the Government is intending to apply the Bill to all financial advice providers who provide tax advice to ensure the consistent application of the legislative framework to all forms of tax advice. However, it is important that the proposed amendments create a different category of tax adviser under the legislation to reflect the fact that financial advisers generally provide much simpler advice than tax agents (as advice is typically general information).

The duplication of regulatory frameworks, including required competencies and registration, for financial advice activities by ASIC (including under the Future of Financial Advice reforms) and TASA is also an issue that requires due consideration. As the FSC notes, this may increase complexity and red tape thereby resulting in higher costs of advice for consumers.

Relevant experience requirements<sup>1</sup> will also impact financial advisers in rural or remote locations, thereby impacting the availability of financial advice in these locations. The ABA recommends that the Government undertake further public consultations on the monitoring and enforcement provisions to ensure that consumers are not impacted negatively.

---

<sup>1</sup> Relevant experience requirements will require (according to the regulations) that an applicant for registration have worked "under the supervision and control of a tax (financial product) adviser"

## 2.1. Tax advice service

The ABA is concerned that the current drafting of a “tax advice (financial product) service” in proposed section 90-15 has unintended consequences as paragraph (b) currently captures general information.

While the Explanatory Memorandum seems to suggest that tax related information given in the context of giving advice is not a tax agent service for the purposes of the Act<sup>2</sup>, this intent is not reflected in the drafting of the Bill, due to the use of the word “reliance” i.e. linking the provision of information with reliance on the part of the recipient.

In a financial advice context, publicly available information may be provided that is incidental to the advice, for example, information may be given about how different entities are taxed (in a small business context) or how superannuation contributions and streams are taxed (for example, in a self-managed super fund context).

General tax information may also be provided by bank staff during the discussion of bank products such as a mortgage offset account. A mortgage offset account links a separate savings account to a borrower’s home loan. The interest that accrues on the savings account is applied to (offset against) the interest owing on the mortgage. General information that may be provided to a customer in this instance includes the ability for the customer to pay off their mortgage sooner and a tax benefit (as the savings account is not generating interest income). Under the current drafting, bank staff providing this type of general information would be required to become registered tax officers. The ABA submits this is contrary to the intent of the legislation.

The ABA recommends that any persons who provide generally available (factual) tax information should be expressly exempted from section 90-15. General tax information may also be provided in a publicly available brochure even though this information is not provided as part of advice for a particular person or entity and should also be exempted. The carve out should apply regardless of whether the information can reasonably be expected to be relied upon.

The carve out should also extend to information provided by computer programs and calculators, in line with the objectives of the Future of Financial Advice reforms i.e. where a licensee provides tax advice through a financial calculator they are not required to hold a licence with the Tax Practitioners Board. This approach is reflected in ASIC Class Order 05/1122 *Relief for providers of generic calculators* and should be adopted for the purposes of TASA.

If there are any questions on the comments raised in this submission, please contact Jade Clarke – Associate Director on (02) 8298 0404 or [jclarke@bankers.asn.au](mailto:jclarke@bankers.asn.au)

Yours sincerely,



---

**Jade Clarke**

---

<sup>2</sup> Paragraph 1.25, Explanatory Memorandum.