

Proposed registration requirements for registered tax (financial) advisers

Discussion Paper
June 2013

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ISBN 978-0-642-74913-0

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INTRODUCTION

The *Tax Agent Services Act 2009* (TASA 2009) provides for a range of matters to be prescribed in the *Tax Agent Services Regulations 2009* (the Regulations). This includes paragraph 20-5(1)(b) of the TASA 2009 which provides the Regulations may prescribe a range of eligibility requirements that an individual must satisfy to be registered as a tax agent or BAS agent.

This paper follows consultation that occurred between 8 February 2013 and 8 March 2013 on the 'Creating a regulatory framework for tax advice (financial product) services' document.

Specifically, this paper outlines the proposed qualification and experience requirements an individual would need to meet to be registered as a tax (financial) adviser as envisaged in the amendments contained in Schedule 3 to the first reading of Tax Laws Amendment (2013 Measures No. 2) Bill 2013. This Bill was introduced into the House of Representatives on 29 May 2013.

Any changes to the Regulations would be contingent on the abovementioned amendments receiving Royal Assent.

In developing these education and experience requirements, the Government has taken into account the submissions received from the earlier consultation. The proposed education and experience requirements also:

- take account of the existing obligations imposed by the *Corporations Act 2001* (Corporations Act) on financial services licensees and their representatives as administered by the Australian Securities and Investments Commission (ASIC); and
- are tailored to the types of tax agent services that registered tax (financial) advisers may provide.

As such, the key design principles of these proposed requirements are the individual should:

- be either a financial services licensee or a representative of a licensee; and
- have an appropriate breadth of tax knowledge, although not necessarily to the same depth as a tax agent, given the different focus of the advice.

THE REQUIREMENT TO BE A FINANCIAL SERVICES LICENSEE OR REPRESENTATIVE

As noted in the earlier consultation paper, an overarching registration requirement would be that the individual needs to be either a financial services licensee as defined in Chapter 7 of the Corporations Act or a representative of a financial services licensee as defined in paragraph 910A(a) of the Corporations Act.

However, to provide flexibility in situations when an individual may change employers, for example, and become a representative of another financial services licensee, it would only be necessary for the individual to meet this requirement at some point in the preceding 30 day period (that is, the individual has 30 days to become a representative of a financial services licensee).

This provides a balance between allowing individuals to change employers without having to reregister with the TPB and thus maintaining the integrity of the new regime (which recognises registered tax (financial) advisers will already be subject to regulation under the Corporations Act).

EXISTING OBLIGATIONS UNDER THE CORPORATIONS ACT

Under the Corporations Act financial services licensees are required to be competent (paragraphs 912A(1)(e)-(f) of the Corporations Act), and ensure the competency of their representatives. ASIC has set out what it considers competency to be in its regulatory guidance. ASIC Regulatory Guide 105 Licensing: Organisational competence contains the organisational competency requirements. ASIC requires ‘responsible managers’ (those responsible for supervising representatives) to satisfy one of the five skills and knowledge requirements options, outlined below in Table 1. These requirements are similar to the registration requirements in section 20-5 of the TASA 2009. This section of the TASA requires that a partnership or company has a sufficient number of individuals that are registered tax (financial) advisers in order for the partnership or company to be registered.

Table 1: Organisational competence requirements for financial services licensees, as detailed in ASIC’s RG 105 Licensing: Organisational competence.

| OPTION | OPTION 1 | OPTION 2 | OPTION 3 | OPTION 4 | OPTION 5 |
|---|---|---|--|---|---|
| KNOWLEDGE COMPONENT (QUALIFICATIONS, TRAINING ETC) | Meet widely adopted and relevant industry standard or relevant standard set by APRA | Be individually assessed by an authorised assessor as having relevant knowledge equivalent to a diploma | Hold a university degree in a relevant discipline and complete a relevant short industry course | Hold a relevant industry- or product-specific qualification equivalent to a diploma or higher | If not relying on Options 1–4, you need to provide a written submission that satisfies us that your responsible manager has appropriate knowledge and skills for their role. Your submission must cover all of the information in RG 105.66 |
| SKILLS COMPONENT (EXPERIENCE) | 3 years relevant experience over past 5 years | 5 years relevant experience over past 8 years | 3 years relevant experience over past 5 years | 3 years relevant experience over past 5 years | |

EDUCATIONAL AND EXPERIENCE REQUIREMENTS

These proposed educational and experience requirements have been developed with four different options to recognise that individuals are able to demonstrate their competencies in different ways. The options include relevant tertiary qualifications, a diploma, work experience and membership of a professional association. The options are designed to balance competence gained from education

and competence gained from experience. This is consistent with the approach used for registered tax agents. The proposed requirements are also designed to be broadly compatible with the requirements set by ASIC, with some differences to recognise that tax (financial) advisers will provide tax agent services. As such these individuals will need to have a breadth of knowledge, consisting of two main competencies:

- (a) an understanding of the taxation laws; and
- (b) an understanding of commercial law.

Unlike tax agents, tax (financial) advisers would not need to undertake a Board-approved course in basic accounting principles, as tax (financial) advisers will not be able to lodge tax returns.

Consistent with the current Tax Agent Services regime, the specific competencies would be set by the Tax Practitioners Board (the Board).

The Board has explained its current process for assessing educational requirements for tax agents in TPB Information Sheet TPB(I) 06/2011. The information sheet outlines the Board's approach of identifying a number of subjects or units which have been successfully completed by an applicant for registration which, taken together, will satisfy the requirements of a Board-approved course (referred to as the 'mix and match' approach). Details on Board-approved courses are contained in the relevant proposed guidelines for Australian taxation law (TPB(PG) 03/2010) and commercial law (TPB (PG) 02/2010). Further details on what the Board considers a Board-approved course in Australian taxation law for tax (financial) advisers is provided in TPB (PG) D04/2013.

The topic areas that the Board considers as being in the area of commercial law are:

1. introductory or foundation units commonly described as 'Australian legal systems and processes';
2. the fundamental legal concepts of business organisational structures (such as sole traders, partnerships, corporations, trusts, agencies, joint ventures and incorporated associations) and the underlying regulation of those structures;
3. the law of torts (in particular, negligence and negligent misstatement);
4. introduction to the fundamental law of real and personal property transactions;
5. non-tax legal aspects of superannuation;
6. contracts;
7. the law relating to remedies for breach of contract;
8. corporations law;
9. competition and consumer law;
10. finance law;
11. law relating to electronic commerce;

12. insurance law;
13. intellectual property;
14. bankruptcy and insolvency law; and
15. other subject areas approved by the Board.

In addition, the individual would need to have 12 months experience, as this represents the minimum practical experience necessary to provide tax agent services.

These requirements are outlined below, and are summarised in Table 2 of the attachment.

TERTIARY QUALIFICATIONS (OPTION 1 PER TABLE 2, PAGE 7 OF THIS DOCUMENT)

If an individual wishes to register with the Board under this option, the individual would be required to have:

- (a) successfully completed a degree in a relevant discipline, which could include a finance-related discipline such as commerce, finance, economics, business or equivalent, or a tax-related discipline such as law; and
- (b) successfully completed a Board-approved course in Australian taxation law (this course may have been included in their primary qualification, and therefore an individual may not need to do further study to satisfy this requirement); and
- (c) successfully completed a Board-approved course in commercial law (this course may have been included in their primary qualification, and therefore an individual may not need to do further study to satisfy this requirement); and
- (d) been engaged in the equivalent of 12 months full time relevant experience in the preceding five years.

The tertiary education requirement is similar to the requirement for tax agents, who can be registered on the basis of tertiary qualifications in accountancy, law or other discipline (items 201, 202 and 204, schedule 2 of the Regulations).

These tertiary qualifications are designed to be consistent with ASIC's option 3 as outlined in Table 1 on page 2 of this document.

For example, a financial adviser who has completed a commerce degree may have as part of that degree completed a course that equates to a Board-approved course in Australian taxation law. In that case, the individual would not need to undertake further study to satisfy the Board-approved course in Australian taxation law requirement.

DIPLOMA OR HIGHER AWARD (OPTION 2 PER TABLE 2 ON PAGE 7 OF THIS DOCUMENT)

This option requires a person to have:

- (a) successfully completed a diploma from a registered training organisation or equivalent institution in a relevant discipline (one such relevant diploma could be a diploma in financial planning); and
- (b) successfully completed a Board-approved course in Australian taxation law (this course may have been included in their primary qualification, and therefore an individual may not need to do further study to satisfy this requirement); and
- (c) successfully completed a Board-approved course in commercial law (this course may have been included in their primary qualification, and therefore an individual may not need to do further study to satisfy this requirement); and
- (d) -been engaged in the equivalent of 18 months full time relevant experience in the preceding five years.
 - This is less than the requirement for tax agents, reflecting the fact that tax (financial) advisers do not need the same depth of experience as tax agents.

WORK EXPERIENCE (OPTION 3 PER TABLE 2 ON PAGE 7 OF THIS DOCUMENT)

This option requires a person to have:

- (a) -successfully completed a Board-approved course in Australian taxation law; and
- (b) successfully completed a Board-approved course in commercial law; and
- (c) been engaged in the equivalent of three years of full-time relevant experience over five years.

-The Board would also consider experience an individual has gained before their registration as a tax (financial) adviser.

Tax (financial) advisers would have lesser work experience requirements than tax agents, to take account of the fact that tax (financial) advisers can only provide tax agent services in the course of providing advice of a kind that is usually provided by a financial services licensee, and cannot represent a taxpayer to the Commissioner of Taxation.

A common way of getting such experience could be providing tax (financial) advice services under the supervision and control of a registered tax (financial) adviser or registered tax agent.

Work experience includes tax (financial) adviser experience, as well as tax agent experience. The Board currently states that relevant experience for tax agents includes experience as a registered tax agent, under the supervision and control of a registered tax agent, as a legal practitioner or of another kind approved by the Board.

MEMBERSHIP OF A PROFESSIONAL ORGANISATION (OPTION 4 PER TABLE 2)

This option requires a person to:

- (a) be voting members of an accredited professional association; either a tax agent professional association or a tax (financial) adviser professional association; and

- (b) have successfully completed a Board-approved course in Australian taxation law; and
- (c) have successfully completed a Board-approved course in commercial law; and
- (d) have been engaged in the equivalent of 18 months full time experience in the preceding five years.

Current accredited professional associations include, for example, CPA Australia, the Institute of Chartered Accountants Australia, the Financial Planning Association of Australia, the Tax Institute, as well as other professional organisations. A full list is available on the Board's website.

The individuals would have reduced experience requirements on the basis that membership of a professional organisation would ensure that they have tertiary or other appropriate qualifications to be a tax (financial) adviser.

ATTACHMENT

Table 2: Proposed educational and experience requirements for tax (financial) advisers

| | Tertiary qualifications | Diploma or higher award | Work experience | Membership of a professional association |
|---|---|--|---|--|
| Option | 1 | 2 | 3 | 4 |
| Primary qualification | Degree or post-graduate award (from an Australian tertiary institution) or degree or award that is Board approved (from an equivalent institution) in a relevant discipline | Diploma or higher awarded (from a registered training organisation or equivalent institution) in a discipline that is relevant | Not applicable | Individual is a voting member of a recognised tax (financial) advice association or recognised tax agent association |
| Board approved course in Australian taxation law¹ | Required | Required | Required | Required |
| Board approved course in commercial law² | Required | Required | Required | Required |
| Relevant experience³ | Equivalent of 12 months full-time experience in preceding 5 years | Equivalent of 18 months full-time experience in preceding 5 years | Equivalent of 3 years full-time experience over the preceding 5 years | Equivalent of 18 months full-time experience in preceding 5 years |

Note 1: The Board is of the preliminary view that a course in Australian taxation law should be, at most, one hundred to one hundred and thirty hours duration. This would equate to 'one subject' — that is, one quarter of a semester's full time work load. The Board has provided further advice on what are approved courses in Australian taxation law in TPB(PG) D04/2013.

Note 2: The Board is also of the preliminary view that a course in commercial law should be, at most, one hundred to one hundred and thirty hours duration, or 'one subject'. The Board has provided detail on what it currently considers approved commercial law subjects in TPB (PG) 02/2010. The topic areas are also outlined on page 5 of this document.

Note 3: The Board has indicated it will consider all relevant experience, including experience obtained before the commencement of the amendments to the *Tax Agent Services Act 2009*.

Table 3: Summary of existing qualification and experience requirements for registration as a tax agent

| | Tertiary qualifications in accountancy | Qualifications in another discipline — specialists tertiary | Diploma or higher award | Tertiary qualifications in law | Work experience | Membership of a professional association |
|--|---|--|--|---|--|--|
| Item | 201 | 202 | 203 | 204 | 205 | 206 |
| Primary qualification | Degree or post-graduate award (from an Australian tertiary institution) or degree or award that is Board approved (from an equivalent institution) in a relevant discipline | Degree or post-graduate award (from an Australian tertiary institution) or degree or award that is Board approved (from an equivalent institution) in a relevant discipline other than accountancy | Diploma or higher awarded (from a registered training organisation or equivalent institution) in a the discipline of accountancy | Academic qualifications to be an Australian legal practitioner | Not applicable | Individual is a voting member of a recognised tax (financial) advice association |
| Board approved course in Australian taxation law | Required | May be required — if Board considers it is relevant to the tax agent services to which the application relates | Required | Required | Required | Not required |
| Board approved course in commercial law | Required | May be required — if Board considers it is relevant to the tax agent services to which the application relates | Required | Not required | Required | Not required |
| Board approved course in basic accountancy principles | Not required | May be required — if Board considers it is relevant to the tax agent services to which the application relates | Not required | Required | Required | Not required |
| Relevant experience | Equivalent of 12 months full-time experience in preceding 5 years | Equivalent of 12 months full-time experience in preceding 5 years | Equivalent of 2 years full-time experience in preceding 5 years | Equivalent of 12 months full-time experience in preceding 5 years | Equivalent of 8 years full-time experience in preceding 10 years | Equivalent of 8 full-time experience in preceding 10 years |