30 May 2014

NICHOLAS BLACKHOUSE
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Blackhouse

Tax Agent Services Act (TASA) regime: Tax (financial) advice services

Thank you for the opportunity to participate in the recent round table discussion held on 21 May by Treasury. The Financial Services Council has a number of significant concerns regarding the impact of the imminent commencement of the TASA regime on the financial services industry and wish to take this opportunity to communicate these concerns.

The Financial Services Council represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than $2.2 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council ("FSC") promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

As the representative body of Advice Licensees –our members are responsible for more than 80% of financial advisers/planners in Australia (including accounting professionals licensed today to provide advice).

The FSC understands that the objective of TASA is to bring all tax advice providers under the auspice of the national regime to "ensure the consistent regulation of all forms of tax advice irrespective of whether it is provided by a tax agent, BAS agent or entity in the financial services industry"[1].

In context, the tax advice provided by financial advisers is most frequently (general) information in nature (for example, the difference in tax treatment between investing inside or outside super, or stating that your super earnings pay 15%), and generally much simpler in nature than tax advice provided by a tax agent.

[1] Draft Tax Laws Amendment (2013 Measures no. #) Bill 2013: Tax agent services, page 3.

The FSC is supportive of the regime on the basis that an increase in advice provider competency is a public good and will enhance the quality and value an advice provider delivers to their client.

We note that the TASA regime is a competency and registration regime[2]. The aim of the regime is to ensure that all tax advice providers are registered and have the requisite education and experience to provide that advice. The Tax Board will investigate conduct that may contravene the Act[3] – that is ensuring tax advisers are registered and that they comply with the Tax Board code of professional conduct. However, neither the Act nor the EM provide that the Tax Board will monitor or review the quality or appropriateness of the tax advice provided by tax agents to Australians. The Corporations Act regulated by ASIC regulates all Australian Financial Services Licensees (AFSLs) and their representatives' conduct in addition to the quality of the advice they provide Australians.

Whilst we are supportive of TASA, we seek to ensure that any and all legislative regimes which mandatorily aim to increase competency levels are implemented in a manner which is balanced such that it delivers a public good and also permits providers to continue and/or enter the market to provide accessible and affordable quality financial advice. We also seek to ensure the following is considered in the design of the regime and its application:

- Allow the industry due process and consultation to ensure the regime is best able to meet its policy objectives and in this regard ensures balance between consumer protection and that advice remains accessible and affordable for all Australians.

- Enable the industry the capacity to amend business practices (yet again) and comply with the change in regulatory regimes in an efficient and rationale manner. TASA is due to commence on 1 July 2014. It is inconceivable that on the commencement of significant reforms (FoFA and MySuper), the industry needs to again amend business models and practices to comply with another significant reform package.

- Whilst coverage was announced to include the industry in 2010, the first details of the regime were only made public for the industry to consider in February 2013. Regulations and details of the competency requirements central to the regime are yet to be finalised. We submit that the TASA regime start date should follow the finalisation of **all** TASA requirements, at which point the three year transition period should begin. Any alternative, such as completion of the regime during the transition period will have significant consumer service and business model disruption which all add up to significant cost and could actually result in the industry being unable to 'register' by the end of the transition period – which means that advice services will be impeded, affecting the livelihoods and businesses of many advice providers. We also understand that there are still some issues with implementation of the original regime due to a similar scenario where competency requirements had to be phased in and whereby some Registered Tax Agents must now complete additional training requirements. We also understand that the availability of courses has been a problem in the roll out of the broader regime. We would suggest that Treasury learn from that implementation and avoid similar issues in regard to the implementation of the regime across the financial advice industry.

[2] Paragraph 3.88 of the Explanatory Memorandum accompanying the Bill.
[3] Ob Cit Paragraph 3.89.

- Enhanced education standards increase at an appropriate pace to allow participants to attend and complete requisite training within appropriate transition frameworks. For example, requiring the successful completion of a degree (tertiary education) which does not yet exist (as a course) to comply with competency requirements which are not yet finalised - all within the three year transition - is not achievable, particularly given this regime is only part of the competency regime an advice provider must comply with. In this respect, we also request that Treasury give consideration to the existing (and proposed) competency requirements for financial advisers as regulated by ASIC in designing the regime. It will be important that consideration is given to the practical implications of having two competency regimes and that the impact of this is reduced by ensuring that financial advisers can complete the requirements in a streamline manner.

- That this new regime does not impede the ability of existing and new advice providers to meet new legislative minimum requirements within a reasonable timeframe.

- That the regime does not impede the ability of new financial advisers (or older workers and women returning to the work force post some time out) to enter the industry by ensuring that the experience and supervision models can be practically implemented across both employed and self-employed models of advice.

We note that consumer protection is already afforded to Australians not under TASA but under the Corporations Act, including the mandatory Future of Financial Advice (FoFA) measures. FoFA requires licensed advice providers to demonstrate the advice they provide is in the client's best interest and that they have the expertise to do so (or otherwise turn the client away).

Balancing consumer protection with an efficient and viable future profession

It is important to ensure that any new legal and regulatory regime obligations do not impose unreasonable regulatory burden or unnecessary compliance costs on the financial services industry and advice profession. Without clarity around the scope and application of the new TASA laws, the whole industry faces new and additional costs.

Registration and maintaining compliance is only part of the compliance cost: substantial sources of compliance cost include changing all regulated disclosure documents and other disclosures, changing internal compliance systems, policies and procedures. Unless the supervision framework adopts a consistent approach with the ASIC regime, it could fundamentally, and adversely, impact on the cost of the provision of financial advice and other consumer disclosure material, especially in regional areas.

These additional costs will increase the cost of advice and decrease access to information and advice for Australian consumers and businesses, and therefore compromise the Federal Government's and the industry's efforts to promote the affordability and accessibility of financial advice. It is also important to ensure that any new legal and regulatory requirements do not create legal uncertainty.
There are several aspects that potentially could cause legal problems and administrative complexity for Australian financial services (AFS) licensees.

First, the definition of a tax (financial) advice service should not be ambiguous. The definition should be clarified in the law and subsequent guidance. Importantly we are still awaiting regulations and related consultation that was announced by the previous government with respect to the definition.

Second, the training requirements applicable to a tax (financial) adviser should be integrated within the existing training and competency framework for financial advisers. It is important that one aligned training and competency framework is set for financial advisers to ensure that the financial advice profession has a consistent and comprehensive training and competency framework. Specifically, we consider that the TPB must work with the Treasury and the Australian Securities and Investments Commission (ASIC) to ensure that relevant legislation and subsequent regulatory guidance is developed to address these legal, technical and practical matters and to enable a financial adviser to meet their training requirements under both the ASIC/FSR and TPB/TASA regimes, as part of any broader changes with the professional standards framework for financial advisers. Notwithstanding these significant concerns, within the context of continuing education (a subset of the competency framework) we are pleased steps the TPB has taken to create a pragmatic approach to continuance education within Exposure Draft Explanatory Paper D5/2014, albeit we note that transitional arrangements still need to be considered.

Specifically, we have reservations about the Board approved courses required of a tax (financial) adviser. As previously submitted, there is no inherent rationale for the need for a separate Commercial law course at degree level. We recommend that Treasury consider the material already submitted by the FSC on this matter and note that elements of a commercial law subject such that adviser gain awareness is more than sufficient for this class of tax agent. It is our view that if a financial adviser requires degree level training of a commercial law subject beyond awareness training, we contend that that type of financial adviser/planner would be more appropriately registered as a full tax agent. We consider that the education/experience requirements stipulated for a tax (financial) adviser should not be set so high as to ensure the few who provide sophisticated tax advice are competent. We assert that the tax (financial) adviser category should be designed for the majority of category and that it should be appropriate for financial advisers/planners who provide more sophisticated tax advice to register as full tax agents.

Third, the supervision requirements applicable to a tax (financial) adviser should be consistent with the compliance, supervision and quality assurance framework implemented by AFS licensees for the purposes of meeting their Corporations Act obligations. Specifically, we consider that the legislation should be amended to adopt the licensee driven supervision model implemented in 2002 pursuant to the FSR regime, which would enable licensees and financial advisers to meet their supervision requirements under both the FSR and TASA regimes. The consequence of the significant difference which currently exists between these regimes is that a financial adviser/planner may be prohibited from providing advice in their client's best interest because they may not be able to provide tax advice. Despite representations on this ambiguity over the last 3 years – this matter remains unresolved.

Fourth, it is not clear to us how the 'significant' number requirement works for licensees whose employees and/or representatives provide financial product advice (be it to a consumer or via the issue of 'information' which is caught within the definition of a tax (financial) advice service)? To resolve this uncertainty some licensees will seek to register every representative/employee and ensure that everyone is trained to the appropriate level to meet the re-registration deadlines. As a consequence more cost and time out training may be incurred than reasonable required.

Please find following further details on our key concerns mentioned above ahead of Treasury's issue of an Exposure Draft of the competency obligations. We would welcome the opportunity to speak further

with respect to our views. If you have any questions regarding this letter, please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

CECILIA STORNIOLO
SENIOR POLICY MANAGER

What we need and when: Summary

The industry needs a delay to the commencement of the regime (that is, commencement on 1 July 2015) and change of transition periods to cater of delay of 1 year so that the following four matters can be finalised to enable a pragmatic and orderly commencement:

a) Legislative amendment

The industry requires the understanding reached with the Government prior to the enactment of TASA as to how a tax (financial) agent service ought to be defined to be reflected in legislation by way of amendment to the current provisions. This is essential in order to provide the industry with certainty regarding what is and is not a tax (financial) agent service.

b) Registration Requirements regulation

The formal education and relevant work experience competency framework (requirements) is not yet provided for in legislation. Draft regulations were issued just prior to caretaker. The FSC is not supportive of the framework proposed in that draft. The FSC notes that the regulations determining competency for this regime should not be determined without consideration of the competency framework as a whole, having regard to the competency requirements imposed on licensees and their representatives under the Corporations Act. This is critical for an orderly, cost effective, educations/experience pathway for advice providers as opposed to other participants in the industry who happen to fall within the same legal definitions today.

c) Registration processes and other administration

The TPB needs the legislative regime to be finalised before it can complete its processes, systems, document and issue guidance to the industry.

d) Sufficient number/Supervisions to be consistent with AFSL obligations

As noted in this paper, the proposed regime is not congruent with the regime established under the Corporations Act to enable a financial adviser/planner to work today. The clash of the two regimes may impede the provision of the very services intended to be available to consumers.

e) Amendments to the ASIC RG175

Importantly, there is a significant overlay between FoFA and TASA. There is a real risk that the industry will be unable to employ new advisers from 2017 (the date the transition arrangements cease) depending on how the registration/competency process is finalised and how ASIC interprets tax competency in Regulatory Guide 175 (the regulatory guide dealing with the Corporations Act "best interest duty").

TASA was created with an accounting profession mindset/framework (i.e. commerce/accounting graduates commence work supervised by a partner/tax agent). The accountant competency pathway is very different to that of a financial planner.

A financial planner is able to work alone once they are licensed and have completed their RG146 training requirements. Under the TASA competency requirements, an adviser will have to be licensed, complete RG146 training, complete TASA required tax training and obtain sufficient relevant experience to

become a registered tax (financial) agent. They will not be able to work independently as a financial planner/registered tax (financial) agent until they obtain their TPB registration.

Alternatively, and whilst the adviser is obtaining their relevant experience, the adviser may work under the supervision of a registered (tax) agent. However, the nature of this "supervision" is not clear and may result in negative impacts to the future employability of new advisers.

Specifically, the FSC seeks ASIC's guidance on the interplay between the best interest duty safe harbour and TASA (specifically advice provided by an unregistered person working under a supervisor).

We seek ASIC's review and amendment of RG175.298-305 (paragraphs 298 and 301 in particular) to capture the TASA concept of working under appropriate "supervision". For example - amending paragraph 298 in RG175 to add:

> "With regards to tax (financial) advice services, an individual advice provider need not be registered with the Tax Board to demonstrate expertise but may provide advice under the supervision of a tax (financial) advice services entity who is registered with the Tax Board".

Similarly, amending paragraph 301 to read:

> "(d) an individual advice providers need not have expertise in the provision of tax (financial) advice services as demonstrated by registration with the Tax Board provided the individual advice provider is working supervised by a registered tax (financial) advice services entity."

Key concerns: What is a tax (financial) advice service?

Definition

Section 90-15 of the *Tax Agent Services Act 2009* defines a tax (financial) advice service as provided by a financial services licensee or a representative of a financial services licensee in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee to the extent that:

(a) the service relates to:
(i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a *taxation law; or
(ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; and

(b) the service is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
(i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
(ii) to claim entitlements that arise, or could arise, under a taxation law.

A tax (financial) advice service is not a tax advice service.

Application of the definition

It is necessary to clarify the application of the TASA regime so that it does not inadvertently capture financial services provided by AFS licensees not intended to be caught, and in particular, the provision of "factual tax information".

It is important to reiterate that terminology embedded in TASA can be misinterpreted by the F=financial services industry as it is accustomed to the language and terminology used in the Corporations Act. We nevertheless welcome recent efforts on the part of the TPB in providing guidance to the sector clarifying when TASA applies as documented in the Exposure Draft Information Sheet (TPB(I) D20/2014) "What is a tax (financial) advice service?"

To support passage of the TASA amendment through Parliament in 2013, the Coalition negotiated amendments with the then Assistant Treasurer David Bradbury. In essence the agreement included exempting certain services from the definition of a tax (financial) agent service including for example, payment summaries and accompanying information issued by insurers and pension funds. We understand that the then Assistant Treasurer, Minister Bradbury, wrote to the Hon Senator Cormann to confirm the details of the agreement.

We contend that the definition of what is a tax (financial) adviser requires amendment in the law, as agreed.

What is not a tax (financial) advice service

We contend that the regime remains legislatively incomplete.

It is our understanding that at least the following services are intended to be expressly exempted from the definition of a tax (financial) advice service by regulation/legislation by the Government.

- Tax advice provided by a superannuation/pension fund - pursuant to the issue of a payment summary (including advice provided showing where to report the tax information to enable the member to complete their tax return and general advice the member may rely on for entitlement and financial decisions);
- General advice provided by a superannuation fund's representative pursuant to 'intra-fund advice' provisions;
- Advice provided by an insurer - pursuant to payments of income protection/salary continuance insurance payments and corresponding issue of payment summary and advice therein;
- Advice provided by managed investment schemes - tax information provision of periodic statements and pursuant to buying and selling of registered interests which give rise to CGT and (general) advice provided therein by the responsible entity to their investor client; and
- Any other advice identified by the Government in consultation with relevant stakeholders, which we note has not yet occurred.

We note the TASA states that a legislative instrument will be used to exempt items from the definition of tax (financial) services. Given the TPB is explicitly named as being able to include items but not exempt them from the definition, clarity as to the TPB's powers in this respect would be helpful.

Recommendation 1: What is not a tax (financial) advice service?
That the definition of a tax (financial) advice service should not extend to the activities or functions beyond "financial planners" providing personal advice to their retail clients and, therefore, it should not capture other activities or functions across the banking and financial services industry.

We consider that the TASA regime should recognise three distinct categories of advice and establish requirements accordingly, including:

- Factual tax information – this is information which is generally available, factual and incidental to the service provided by the Financial Services Industry including fund managers, insurers, super funds, banks and banking groups and their staff and authorised representatives as part of the provision of factual information, general advice or personal advice under the Corporations Act.
- Tax (financial) advice service – this is advice provided by an AFSL or their authorised representatives (a financial adviser), in the course of providing a financial service (personal advice) which relates to the client's personal circumstances and involves the application and interpretation of tax laws as relevant to those personal circumstances.
- Tax agent service – this is tax advice provided by a registered tax agent.

Support services to the delivery of a tax (financial) advice service

In the delivery of a tax (financial) advice service by an AFSL or their representative to the end client, the AFSL or representative may rely on other services.

These services may involve personal advice to the extent that they address the specific circumstances of an individual, but are provided to the AFSL or representative – not the end client. The AFSL or representative may use these input as a basis for the advice they ultimately provide to the end client.

The AFSL or representative may then include this "advice" in the advice they ultimately provide to the end client.

Examples of such services may include:

- Work carried out by a paraplanner (either in-house or external), where the paraplanner will prepare a Statement of Advice (or other advice document) that an adviser will ultimately sign-off and provide to the client.
- Discussions with a technical services function. Many financial institutions offer a technical service (or help desk) function where advisers can call and discuss strategy options for a client. This service helps the adviser to ensure that they are correctly applying the law in developing an appropriate strategy for the end client. This discussion may cover taxation related issues, such as the deductibility of superannuation contributions or the availability of small business CGT relief. The adviser may then use the output of these discussions in developing the ultimate advice to be provided to the end client.

Services such as the above may be provided:

- by an institution free of charge to advisers (for example where they are provided in-house to the institution's own advisers);
    - for a discrete fee;
    - as a part of a bundled licensing fee (for example as part of an annual fee payable by an authorised representative to an AFSL); or
    - provided free of charge, with the cost to deliver being funded through an overall administration fee (e.g. where the service is provided by a platform operator).
- By a standalone separate paraplanning company.

As the adviser is ultimately responsible for the provision of the advice to the end client, it should be made clear that the provision of these types of services as listed above should not be included within the definition of a tax (financial) advice service, and that the individuals providing such services should not be required to register under TASA.

Recommendation 2: Support services are not a tax (financial) advice service
We submit that the provision of these support services such as para planning services be exempted from the definition of a tax (financial) advice service, and that the individuals providing such services should not be required to register under TASA.

OTHER CRITICAL MATTERS: Supervisory models - Sufficient number issues

The objective of TASA is to bring all tax advice providers under the auspice of the national regime to "ensure the consistent regulation of all forms of tax advice irrespective of whether it is provided by a tax agent, BAS agent or entity in the financial services industry"[4] and "ensure consumer protection through adequate supervision to provide competent services"[5]. The regime aims to ensure that all tax advice providers therefore are registered and have the requisite education and experience to provide that advice.

TASA affords the industry the capacity to operate under a supervisory model rather than register every single financial advice provider. This is generally a welcome concept. Unfortunately, it does not recognise the difference in approach for AFSLs who may appoint 'authorised representatives' to provide specified financial services on their behalf. This approach aligns with the "nominee model" that operated prior to the introduction of the Tax Agents Services Regime (TASR).

We acknowledge the need for robust monitoring and supervision processes for new and existing advisers and for ongoing training and development of advisers' competencies and knowledge.

However, we note that monitoring and supervision practices in the financial advice/planning industry are potentially distinct from those employed in the accountancy industry. Without knowledge of the TPB's proposed requirements for the advice industry we raise the following matters to your attention for consideration – and note that these are important matters that need to be publically consulted to ensure that there is not a decline in the supply of financial advice providers in the market and particularly, that rural and remote locations are not left without these crucial services.

We remain uncertain how the industry is to supervise its new entrants and advisers wishing to up-skill. This uncertainty may create a supply side issue in the availability of advice providers. We submit the following recommendations provide a pragmatic solution to these obligations to ensure that tax advice providers do meet appropriate competency levels for the benefit of consumers in a manner which does not put advice out of the reach of Australians.

Further, as the advice industry re-assesses their advice model in light of the Future of Financial Advice (FoFA), TASA and MySuper reform changes, which include the potential to provide scalable advice, the reality is that the supervisory and monitoring processes will need to be tailored to meet the need of the advice business and its target client. We submit that the AFSL is best placed to tailor the supervision and monitoring model and as such enables scalable advice and facilitate greater access to advice (by keeping costs in check) rather than duplication or variations of supervision models for different regulatory regimes regulating the same activity (competency).

Sufficient number

The major issue that is not addressed in the Exposure Draft Information Sheets and Explanatory Papers is how many representatives need to be registered to meet the "sufficient number" requirement.

[4] Draft Tax Laws Amendment (2013 Measures no. #) Bill 2013: Tax agent services, page 3.

[5] Tax Agent Services Act 2009 (TASA) and related Regulations – a proposed new regulatory framework for financial advisers providing taxation advice, Page 24

Financial advisers that charge or receive a fee must register. This will require most authorised representatives to register as they charge/receive the fee for the advice. The only exception would be sub authorised employees of a CAR where the corporate entity charges/receives the fee. In this scenario the CAR would need to register, plus a "sufficient number" of employees to supervise those non registered employees providing tax (financial) advice services.

For the bank channels, while the AFSL would need to register, it is not clear how many representatives would also need to register to meet the sufficient number requirement.

We note that the TPB is required under the Act to take into consideration an AFSL's obligations under paragraphs 912A (1)(d) to (f) of the Corporation Act when determining the sufficient number of individuals that need to register. These obligations require the licensee to:

- Have adequate resources to provide financial services *and carry out supervisory arrangements*
- Maintain the competence to provide financial services, and
- Ensure that its representatives are adequately trained, and are competent to provide the financial services

Supervision

AFSL models within advice generally fall into two types, representative models and authorised representative models. The Corporations Act 2001 dictates that in a representative model (generally known as an employee model where individuals are employed by the AFSL to provide advice) the AFSL is responsible for the advice provided by those employed individuals. In an authorised representative model (generally evidenced by small business based practices) the individual authorised representative is the provider of the advice to the client and holds responsibility at law for that advice alongside the AFSL.

The Corporations Act prescribes a number of general obligations on an AFSL (s912A), including the requirements to ensure it takes reasonable steps to ensure that its representatives comply with financial services laws, ensure that its representatives are adequately trained, and are competent, to provide those financial services and have available adequate resources to provide the financial services covered by the licensee and to carry our supervisory arrangements (s912A (c),(d),(f)). ASIC have also provided detailed guidance into how an AFSL practically complies with these obligations through their Regulatory Guide RG104. To meet their supervisory requirements, ASIC instructs AFSLs that the level of monitoring and supervision their representatives need will depend on the nature, scale and complexity of their business and that ASIC does not believe that every activity of a Representative needs to be scrutinised (RG104.72-104.73). Financial advice firms have built their operating models taking into account ASIC's guidance to meet their legal requirements under the Corporations Act. AFSLs currently have in place well established supervisory arrangements to meet their requirements under the Corporations Act. Currently these arrangements do not legally require any single individual authorisation to substantiate their supervisory models.

The current requirements under TASA required that where a corporation seeks to register as a tax (financial) adviser, a sufficient number of individually registered tax (financial) advisers are required to support that registration. In the employee representative model, where the corporation holds the financial service AFSL and is legally the provider of the advice, it fits that the corporation would seek registration as a tax (financial) adviser. However the sufficient number concept does not accord with financial advice firms current supervisory operating models and would require significant redesign to

incorporate TASA requirements. This leaves employee representative models with two clear choices being, redesign operating models to meet sufficient number requirements which may result in significant cost or individually register each employee representative as a tax (financial) adviser which is not the current intent of TASA as those individuals are not the provider of the advice under Corporations Law.

As both these options are not desirable for employee representative models we suggest that change is required. This change should preferably sit in legislation or could be accommodated via a specific exemption from the TPB.

Recommendation 1. Legislative change to remove the requirement to have a sufficient number of registered individuals where registering an entity as a tax (financial) adviser. We submit that financial advice firms already have significant legal obligations for supervision under the Corporations Act and the imposition of an additional and different supervision obligation under the sufficient number requirements is not necessary where AFSLs are the provider of advice to clients and will register as a tax (financial) adviser.

Recommendation 2. Specific TPB exemption from the legislative requirement of sufficient number: TPB should release a guidance paper on how to comply with supervisory models and include in guidance papers that the TPB recognises AFSL section 912A obligations and will not enforce the requirement to have a sufficient number of individual registered representatives to support an entity registration as a tax (financial) adviser.

The following suggestion has been made to the TPB for consideration to include in guidance relating to sufficient number and supervision requirements:

For the avoidance of doubt, it is acceptable for sufficient number requirements to be met by individuals registered as tax (financial) advisers where those individuals are employed by or contracted to a related entity of a tax (financial) adviser (eg an AFS licensee), provided their role is to carry out supervisory arrangements under TASA in relation to the related entity.

An example would be where:

- individuals are employed by a company within the same corporate group as several companies that are registered as tax (financial) advisers (such as AFS licensees);
- those individuals are also registered as tax (financial) advisers;
- they conduct compliance and/or advice coaching roles, and provide those services for those AFS licensees within the same corporate group; and
- they carry out supervisory arrangements on those AFS licensees for the purposes of TASA.

The TPB feels that no amendment is necessary because paragraph 2.56 of the Explanatory Memorandum to the Tax Agent Services Bill 2008 (original bill) confirms that the registered individuals that form the sufficient number may include partners, directors, employees, contractors and staff provided under service trust arrangements. However, staff provided under the service trust arrangements are not covered by the scenarios highlighted above. Staff/employees may actually be

employees of a related body corporate rather than the trust itself and therefore an amendment/or at the least clarification is required with this matter.

Experience Requirements to substantiate registration for Authorised Representative models

We are particularly concerned around the prospects for new entrants that wish to enter the financial planning environment as an Authorised Representative and operate a self-employed financial planning model. We acknowledge that Authorised Representatives are the providers of the advice under the Corporations Act. However, in most cases the fee for that advice is paid to the licensee and then a portion is passed on to the adviser. In addition the supervision and monitoring structures for AFSL supervision of Authorised Representatives generally replicate models applied in a Representative structure. However, regardless of these similarities, in meetings with the TPB, members of the Board have indicated that all Authorised Representatives will need to be registered.

What is most concerning, and has the ability to restrict the supply side of advice providers, in all areas, including regional areas, is that in order to meet registration requirements (as currently drafted by Treasury) a minimum level of tax (financial) adviser experience is required. Therefore, should this entry component come into effect as it currently stands, this will restrict Authorised Representatives entering the financial planning market, where they have not previously worked under a supervisory model. That is because they will not be able to get experience in tax (financial) advice until they are registered, but they can not be registered until they get the experience. In contrast, Representatives will be able to gain experience as they will be able to provide tax (financial) advice without the need to be registered. These requirements will therefore impact the growth of this type of the industry by limiting new advisers to only enter the market in employed representative roles. This is likely to have a significant impact for small business owners. It is important to note that, while the AFSL environment does not currently have an experience requirement, there are significant obligations on the AFSL to ensure that their representatives (including Authorised Representatives) are adequately trained and supervised. This will generally not only include a base level requirement to have RG 146 training and ongoing CPD, but also a requirement to undertake orientation training and be subject to pre-vetting of their advice.

The TPB should recognise the AFSL model and structures that currently exist to train and supervise both Representatives and Authorised Representatives in designing and implementing the experience requirements.

Experience Requirements to substantiate registration for Authorised Representative.

Recommendation 1: Should the TPB deem that all Authorised Representatives are required to registered, we require the TPB to provide a specific ongoing exemption for new Authorised Representative entrants, similar to the current one afforded under the transition provisions, that allows an Authorised Representative to meet their experience requirements during the first registration period and on re-registration in 3 years, the Authorised representative, at that point, would need to prove that they met the experience requirements.

Recommendation 2: Otherwise we require the TPB to acknowledge that whilst the Licensee and Authorised Representative may have remuneration arrangements in place that pass through a designated amount of advice fees received by the AFSL, this does not meet the definition of an Authorised Representative receiving a fee or reward and as such they do not need to register and can operate under a supervisory model. Again, our concerns with supervisory models, as detailed in sections above, would remain and would also require addressing for this to be a viable option for Authorised Representatives.