

New rules relating to financial advisers providing tax services apply from 1 July 2014 under the *Tax Agent Services Act 2009 (Cth)*. All financial advisers need to be aware of the practical consequences. This article is a short summary of important points. We will be discussing the operation of these new rules in more detail at our forum to be held on 15 July 2014.

What is a tax (financial) advice service?

A "tax (financial) advice service" consists of five key elements:

1. a tax agent service (excluding representations to the Commissioner of Taxation);
2. provided by an Australian financial services (AFS) licensee or representative of an AFS licensee;
3. provided in the course of advice usually given by an AFS licensee or representative;
4. related to ascertaining or advising about liabilities, obligations or entitlements that arise, or could arise, under a taxation law; and
5. reasonably expected to be relied upon by the client for tax purposes.

In practical terms, if you are providing personal advice which incorporates advice relating to taxation, there is a good chance that you are providing a tax (financial) advice service. "General advice" as defined in section 766B of the Corporations Act 2001 will not be a tax agent service (and therefore also not a tax (financial) advice service) as it does not take into consideration a client's specific circumstances and thereby is not reasonable to expect an entity to rely on it.

If an AFS licensee or authorised representative wishes to continue providing tax (financial) advice services from 1 July 2014, they will have to be registered as a tax (financial) adviser or provide a suitable disclaimer. There are 4 options.

Option 1: Do nothing

From 1 July 2014, AFS licensees and authorised representatives who do not "notify" the TPB (and as a result are not registered with the TPB) will need to include a **disclaimer** when providing tax (financial) advice services for a fee or other reward. The disclaimer needs to state:

- that you are not a registered tax (financial) adviser; and
- if the client intends to rely on the advice they should request advice from a registered tax (financial) adviser or a registered tax agent.

AFS licensees should amend their Statement of Advice templates to ensure that it includes this disclaimer if it is relevant to them or their representatives. The disclaimer can be removed from the Statement of Advice once the AFS licensee or authorised representative is a registered tax (financial) adviser. Client service agreements (and possibly FSGs) will also probably need to be amended to clarify the advice which is to be provided.

The disclaimer will only be effective until 31 December 2015. After this date, entities that are not registered and continue to provide tax (financial) advice services for a fee or other reward may be liable for civil penalties.

Option 1 could be a poor choice for financial advisers who are in a competitive market – other advisers may notify and then argue that they are providing a better value proposition for the client. However, if you do not have the skills to provide accurate tax advice, then it may be preferable not to be providing this advice.

Option 2: Notify the Tax Practitioners Board (TPB)

From 1 July 2014 until 31 December 2015, AFS licensees and authorised representatives, as defined under sections 916A and 916B(3) of the *Corporations Act 2001*, who provide tax (financial) advice services will be able to notify the TPB to become registered as a tax (financial) adviser. Note that advisers who are not appointed as “authorised representatives” (e.g. employees and directors of AFS licensees) cannot notify under this option.

AFS licensees will need to review their professional indemnity insurance policies to ensure that the policies include cover for providing tax advice.

In addition to the matters referred to above, where an AFS licensee or authorised representative chooses to “notify” the TPB (as set out above), they become a registered tax (financial) adviser. This means that the AFS licensee or authorised representative must meet the following obligations from that date:

- comply with the fit and proper person requirements;
- adhere to the tax agents’ Code of Professional Conduct;
- maintain PI insurance that meets the TPB’s requirements; and
- advise the TPB of any changes in details (as prescribed by the TPB from time to time) or circumstances.

There can be advantages from notifying early, because the time period for satisfying the qualification requirements is longer. This is because the dates are structured as shown in the table below. (The dates seem counter-intuitive, however, it appears to have been structured in this way to encourage early notification.)

Notification date	Registration date
1/7/2014 – 31/12/2014	31 January 2018
1/1/2015 – 30/6/2015	31 October 2017
1/7/2015 – 31/12/2015	31 July 2017

Option 3: Transitional option

From 1 January 2016 to 30 June 2017, all AFS licensees and representatives, as defined under section 910A of the *Corporations Act 2001*, will be able to apply to register as tax (financial) adviser if they meet at least the transitional requirements.

Representatives are defined as:

- an authorised representative;
- employees or directors of the AFS licensee;
- employees or directors of a related body corporate of the AFS licensee; or
- any other person acting on behalf of the AFS licensee.

Transitional requirements include:

1. meeting experience requirements for registration;
2. providing evidence of meeting the fit and proper requirements for registration; and
3. complying with the TPB's Code of Professional Conduct (e.g. professional indemnity insurance for the provision of tax advice).

Option 4: Standard option

From 1 January 2016, standard registration commences. Anyone who wants to be registered as a tax (financial) adviser is required to meet the standard eligibility requirements.

Some of the eligibility requirements for the standard option are still being determined. At this stage, the eligibility requirements include:

1. meeting experience requirements for registration;
2. providing evidence of meeting the fit and proper requirements for registration;
3. complying with the TPB's Code of Professional Conduct (e.g. professional indemnity insurance for the provision of tax advice); and
4. meeting education requirements for registration.

Tips:

Consider if you provide tax (financial) advice services. If you do and you are an AFS licensee or an "authorised representative" it may be sensible to register with the TPB prior to 31 December 2015. If you are an authorised representative, speak to your AFS licensee. They may assist you with the registration process.

Prior to registering with the TPB, ensure that your professional indemnity insurance does not exclude the provision of tax advice, and update your contractual documents and arrangements with your clients to reflect the updated and upgraded scope of the services that you will be providing your clients – i.e. tax (financial advice) services.

Finally, if you do not wish to register, ensure that your Statement of Advice and client service agreement include disclaimers as noted in Option 1 above and cease providing tax (financial) advice service post 31 December 2015.

FURTHER INFORMATION

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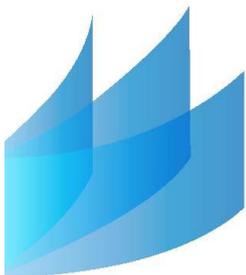
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