



ASSISTANT TREASURER

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**PRESS
RELEASE**

COVERAGE OF TAX AGENT SERVICES REGIME

Following consultation with the community and industry across Australia, the Assistant Treasurer, Senator Nick Sherry, has today announced further details of the coverage of the new national tax agent services regime.

The regime commenced on March 1 this year and has replaced six existing state-based Tax Agents' Boards with one simple, standard national system for the first time. It is a major piece of red-tape reducing national reform, encompassing tens of thousands of professionals across the country.

Today's announcement relates specifically to the coverage of the regime in relation to "in-house" advisors, custodians and holders of Australian Financial Services licenses (AFSL) providing financial planning services.

'In-house advisors'

The Assistant Treasurer today announced that the exemption provided in March 2010 to those providing advice "in-house" within a tax consolidated group will be extended to cover services provided between other related entities

"In March 2010 I announced that tax agent services provided within a tax consolidated group would not be captured by the tax agent services regime and today, I can announce the extension of this exemption to services provided between other related entities," the Assistant Treasurer said.

"Having examined the submissions from stakeholders on this issue, I consider that extending the proposed exemption beyond consolidated groups is the appropriate way forward."

"While, generally, the tax agent services regime is intended to apply where one entity provides services to another entity for a fee, in some circumstances the close relationship between the two entities is such that the service is in effect an internal transaction."

In addition to services within a tax consolidated group this arrangement will extend to include:

- services provided between entities that are part of the same GST group;
- services provided by an entity in discharging their own formal obligations to another entity, namely trustees and responsible entities of a managed investment scheme;

- services provided between separate legal entities that are carrying on a common economic enterprise and have the same or near same owners, namely wholly owned corporate groups, stapled groups, non-wholly owned groups and listed groups; and
- services provided between dual listed companies and between joint venture partners.

“It was not the Government’s intention in developing this national regime that in-house advisors would be required to register if they are only providing advice within the context of running a common economic enterprise and today’s announcement confirms that approach,” the Assistant Treasurer said.

The technical details of the extension will be the subject of further industry consultation.

Custodians

The Assistant Treasurer has also announced the decision that custodians will not be captured by the tax agent regime.

“After further in-depth consultation with the custodian services sector, it has become clear to me that the services rendered by both Master and Sub-custodians are not intended to be captured by the regime,” the Assistant Treasurer announced.

“I am satisfied that the existing compliance framework for custodians – including, but not limited to, their obligations under the AFSL regime, as well as the impact of the prudential standards set down by the Australian Prudential and Regulatory Authority – provides adequate regulatory oversight of this industry.”

“Their inclusion under the new tax agent services regime would only impose an added compliance burden on an industry that is already regarded as serving the business community to a professional and highly competent standard,” the Assistant Treasurer said.

AFSL holders providing financial planning services

Concerns have also been raised about the coverage of the regime to AFSL holders providing financial planning advice. The Australian Securities and Investment Commission (ASIC) currently regulates all ASFL holders.

“I am of the view that financial planners, in many respects, do offer what amounts to tax advice – this is also the view, as provided to me, of the Tax Practitioners’ Board (TPB) and of ASIC,” said the Assistant Treasurer.

“ASIC also advise that they currently regulate financial planners in respect of all their functions, including tax-related aspects.”

“Of course, we now also have the TPB which is charged specifically with regulating tax advice where it is provided for a fee.”

“In order to end the current uncertainty being experienced by financial planners, and also to allow consultation with other sectors of the tax community, I have determined to provide a one-year deferral to financial planners from the application of the tax agents’ regime.”

An amendment will be made to the *Tax Agent Services Regulations 2009* to confirm this deferral arrangement. During the period of deferral a comprehensive industry consultation

will take place to assess which of two permanent options should be applied to AFSL holders providing financial planning advice.

The Assistant Treasurer indicated these options were:

- to investigate and implement what changes, if any, might be made to the AFSL regime or its enforcement to ensure that it provides a comparable level of regulatory supervision in relation to tax services provided by financial planners in comparison to the level of supervision imposed on the providers of tax services regulated by the TPB; or
- to bring financial planners permanently within the tax agent services regime and therefore be regulated by the TPB, but to do so in a way that minimised any additional compliance burden.

“This consultation provides time to consider whether this outcome is best achieved by requiring financial planners providing tax advice and services within the scope of their AFSL to register under the tax agent services regime or whether the regulatory outcomes we all agree are important are already adequately achieved, or could be achieved, through the AFSL regime itself,” the Assistant Treasurer said.

“I believe it is important, if possible, to avoid dual licensing, supervisory and inspection regimes which add to red tape and cost.”

The final form of the deferral would be subject to consultation with stakeholders, but the Assistant Treasurer stressed that the deferral would only relate to services that were already covered by the AFSL regime.

“This deferral has nothing to do with cases where a financial planner wishes to provide tax services outside the AFSL regime limitations, such as completing tax returns for example. If you’re a planner and you provide these kinds of services there is no doubt you’re under the tax agents’ regime,” the Assistant Treasurer said.

CANBERRA

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