

4 June 2014

Mr Ian R Taylor
Chair
Tax Practitioners Board
747 Collins Street
Docklands VIC 3008

Dear Mr Taylor,

Tax Agents Services Act 2009 ('TASA')

- What is a tax (financial) advice service in Stockbroking?

I would like to thank you and your senior officers for meeting with us today to discuss the matters raised in our letter of 19 May 2014, in which we sought clarification of TASA in the context of stockbroking.

As foreshadowed at the meeting, the purpose of this letter is to set out some of the points from our discussion of common scenarios in stockbroking which may involve taxation, and whether they amount to a tax (financial) advice service.

In doing so, we emphasise that these comments do not represent authoritative statements of TPB's views on the application of TASA or any taxation law. We also note your previous comments, that whether a particular service is a tax (financial) advice service is a **question of fact**, meaning that that each service will need to be considered on a case-by-case basis having regard to the facts and circumstances surrounding the provision of the service¹.

¹ TPB Information Sheet TPB(I) D20/2014 *What is a tax (financial) advice service?* Exposure Draft released 7 March 2014, at paragraph 3

Stockbroking Tax Scenarios

In our letter of 19 May at Part C , we set out six common stockbroking scenarios for consideration which may involve taxation. Those six scenarios, together with notes of our discussion today, are set out below:

Scenario (see Part C page 5 of letter of 19 May)	Comment
<p>1. Dividend Imputation: <i>General information about dividend imputation and franking credits, for example how credits are calculated with reference to the tax paid by the company paying a dividend, the fact that credits give a tax benefit, and the minimum holding periods which apply for obtaining credits;</i></p>	<p>No tax (financial) advice is given here, <u>provided</u> the information is general, and does not give guidance as to the client's particular tax position.</p>
<p>2. Capital Gains Tax: <i>General information about capital gains tax, for example the fact that CGT on assets held over 12 months is calculated on 50% of the capital gain on disposal, but if held less than 12 months it is 100%. This would be highly relevant in a situation where a client wishes to liquidate holdings, and is considering which particular shares to sell. Without giving personal tax advice, it would be very important for such a client to be told about the 12-month rule, and arguably a serious omission if the client was not;</i></p>	<p>No tax (financial) advice is given here, <u>provided</u> the information is general, and does not give guidance as to the client's particular tax position.</p> <p>Particular care would be required to avoid particular advice as to which shares should be sold based on tax considerations, but the 12-month rule could be discussed with the client as something to consider and if necessary to seek advice from a tax agent.</p>
<p>3. Margin Loans: <i>Advice about a share portfolio that has been financed by a margin loan, provided that the advice does not include the personal tax position of the client;</i></p>	<p>No tax (financial) advice is given here, <u>provided</u> the information is general, and does not give guidance as to the client's particular tax position.</p>
<p>4. Portfolio Statements: <i>periodic Portfolio statements and summaries (particularly around financial year end), setting out holdings, transactions during the period, capital gains/losses based on market prices, dividends, franking credits and corporate actions, etc;</i></p>	<p>No tax (financial) advice is given here, <u>provided</u> the information is general, and does not give guidance as to the client's particular tax position.</p> <p>While it would be possible to set out purchase and sale prices based on the actual market prices transacted, and the resulting profit or loss based</p>

	<p>on those prices, care would be needed in reporting the resulting capital gain and whether the 12 month discount applied, etc. In other words, you could not report the assessable capital gain (or deductible loss) for tax purposes, only the profit or loss on the transactions based on the actual transaction figures. It would be up to the client's tax adviser to provide the assessable capital gain (or deductible loss) in preparing the client's tax return.</p>
<p>5. Corporate Actions: <i>information about the different tax effects of corporate actions. For example, in 2011 BHP Billiton conducted a \$6bn share buy-back. The buy-back structured so that most of the price paid to shareholders (i.e. \$40.57 out of \$40.85 per share) was paid as a fully franked dividend. This was a matter of public record, and advisers ought to be able to explain such transactions to clients so that they understand them, without the need for formal tax qualifications or registration;</i></p>	<p>No tax (financial) advice is given here, <u>provided</u> the information is general, and does not give guidance as to the client's particular tax position.</p>
<p>6. Options Traders – Tax Category: <i>for tax purposes clients who deal in Options need to know whether their trading is to be taken on the income account or capital account. While the client in this case would be referred to their tax adviser, information on this is also given in Product Disclosure Statements for options, to which the adviser can refer.</i></p>	<p>Advice on the treatment of income for the Client - whether income or capital account - <u>would</u> be tax (financial) advice.</p> <p>However, <u>provided</u> the information is general, and does not give guidance as to the client's particular tax position, it would <u>not</u> be tax (financial) advice. For example, giving a retail client a Product Disclosure Statement for Options as required by the <i>Corporations Act</i>, which contains general information on significant tax matters relevant to the product, would <u>not</u> be tax (financial) advice.</p>

Registration

For those firms who are subject to TASA, we note your comments about the TPB's expectations regarding registration of advisers and organisational competence.

In summary,

- during the initial (notification) phase (1 July 2014 – 1 January 2016)
 - the AFS Licensee and any Authorised Representatives will be required to register with TPB if they are providing a tax (financial) advice service
 - Employed advisers will not be required to register
 - those AFSLs and Authorised Representatives that need to register but have not yet registered must use the statement under reg 13(2) of the *Tax Agents Services Regulations* that the adviser is not a registered tax agent under TASA and that the client should request advice from a registered tax agent.
- those AFSLs and Authorised Representatives which have registered will then be required to renew their registration after 3 years
- upon renewal after 3 years (1 July 2017 onwards) registered AFSLs and Authorised Representatives will need to comply with TPB requirements as to 'sufficient number' of experienced and qualified tax advisers, together with Code of Conduct and Insurance requirements.

We also note that **Conditional Registration** may be possible for services involving a particular aspect of tax advice, for example advice on margin lending.

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We are grateful for the feedback on our queries, for the assistance of our Members. As we move into a new regime, naturally questions will arise about the practical impact of the new measures. We trust that our discussions may lead to a smoother transition for stockbrokers to the new regime for those who are subject to TASA, and greater knowledge for those who are not. In particular, we hope that these discussions assist members to ensure that they are not unintentionally caught by the new regime when they do not offer tax services.

Thank-you once again for your consideration of these matters and for making time available with your senior officers to meet and discuss them with us, which is much appreciated. Should you have any inquiries or wish to discuss any matter, please contact me, or Doug Clark, Policy Executive dclark@stockbrokers.org.au.

Yours sincerely,



David W Horsfield
Managing Director/CEO