

26 October 2010

Ms Kate Spargo
Chairperson
Accounting Professional and Ethical Standards Board Limited
Level 7, 600 Bourke Street
Melbourne VIC 3000
AUSTRALIA

Via email to: sub@apesb.org.au

Dear Ms Spargo,

Exposure Draft 02/10 Proposed Standard: APES 230 Financial Advisory Services (“ED”)

Ernst & Young appreciates the opportunity to comment on the Accounting Professional and Ethical Standard (APES) 230 Financial Advisory Services (the ED).

Ernst & Young has contributed to the submission prepared by the Australian Public Policy Committee (APPC) which includes BDO, CPA Australia, Deloitte, Ernst & Young, Grant Thornton, KPMG, PKF, PricewaterhouseCoopers, the Institute of Chartered Accountants in Australia and the National Institute of Accountants, lodged on Friday 22 October 2010.

The purpose of this letter is to endorse the APPC submission and to emphasise an issue that is of particular concern to Ernst & Young, namely that tax advice provided by Registered Tax Agents, that is now subject to regulation under the Tax Agents Services Act (TASA) 2009, should not fall within the scope of APES 230.

Taxation advice provided by Registered Tax Agents

The proposed definition of **Financial Advice** in the ED covers advice in respect of a client’s financial affairs specifically related to wealth management, retirement planning, succession planning, estate planning, personal risk management and related advice. It includes:

- advice, **including related taxation advice** [emphasis added], on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence;
- advice and dealing in financial products as defined in section 766C of the *Corporations Act 2001*;
- advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and
- advice that does not require an Australian Financial Services Licence, such as real estate and non-product related advice on financial strategies or structures.

This definition of Financial Advice therefore includes tax advice provided to a client by a Registered Tax Agent, even where the tax agent is only providing tax advice and not also the underlying wealth management advice in relation to the client’s financial affairs.

We note that the tax advice will be subject to both the requirements of the ED and TASA.

In our view this potential double-regulation seems to be in conflict with the government's approach under the TASA, where financial planners were specifically excluded from the operations of the TASA so that there was not dual regulation of financial planners. However, this ED appears to impose a regulatory regime on financial planners which seems to also apply to tax agents and thus imposes a dual regulation on tax agents, that in some situations may be inconsistent and/or conflicting.

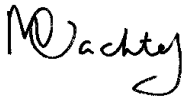
To avoid such double regulation the former Assistant Treasurer Senator Sherry announced that the TASA oversight for financial planners would be deferred pending consideration of the regulatory regime for financial planners.

Our submission

For the similar reason of avoiding double-regulation, we submit that the definition of "Financial Advice" in the ED should be revisited to clarify that it does not apply to tax and accounting services where the member is not otherwise providing financial planning services, and specifically where the services or advice are subject to the requirements of the TASA.

We would be pleased to further discuss those issues with the APESB.

Yours faithfully

A handwritten signature in black ink that reads 'M Wachtel'.

Michael Wachtel
Tax Practice Director (Asia Pacific)
Ernst & Young

A handwritten signature in black ink that reads 'Tony Stolarek'.

Tony Stolarek
Technical Leader National Tax and Tax Policy Services
Ernst & Young