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Mr John Hawkins
Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Mr Hawkins

Inquiry into the Tax Agent Services Bill 2008

The Taxation Institute of Australia ('Taxation Institute') is pleased to have been provided with an opportunity to put forward its comments to the Senate Economics Committee in relation to the Committee's inquiry into the *Tax Agent Services Bill 2008* ('*TAS Bill 2008*').

The Taxation Institute supports the introduction of the *TAS Bill 2008* for a properly regulated tax profession and protection for the consumer. Subject to some issues of detail as indicated below, we support the general overhaul of the regulatory framework as set out in the *TAS Bill 2008* and acknowledge it as being a necessary response to the significant changes that have occurred in the way that tax professionals operate within an increasingly complex tax environment.

In the context of our overall support for the proposed regulatory framework, we provide the following comments for the Committee's consideration.

1. Absence of complete legislative package for the Committee's consideration

The Taxation Institute is concerned that the anticipated *Tax Agent Services (Consequential and Transitional Provisions) Bill* ('*TAS(CTP) Bill*') was not introduced into the Parliament at the same time as the *TAS Bill 2008*. Amongst other details, the *TAS(CTP) Bill* should set out the crucial details of the anticipated safe harbours for taxpayers from tax shortfall administrative penalties where they have engaged a registered tax agent or BAS service provider, as well as crucial details about how we are going to transition into the new regime. Neither have we seen the release of the proposed final *Tax Agent Services Regulation* ('*TAS Regs*'). Both these Bills and the regulations were released in draft as a package for public comment in May 2008.

As the *TAS Bill 2008*, the *TAS(CTP) Bill* and the *TAS Regs* interact to constitute the complete regulatory framework, we are concerned that the Committee is hampered in its capacity to assess effectively the operation of the *TAS Bill 2008* within the workings of the overall proposed regulatory regime.

For the same reasons the Taxation Institute is unable to comment fully and comprehensively on the *TAS Bill 2008* or to assess whether all potential inconsistencies between the proposed legislation and regulations have been satisfactorily resolved.

For example, subsection 20-5(1) of the *TAS Bill 2008* requires as part of the eligibility for registration as a registered tax agent or BAS agent that an individual must meet certain requirements prescribed by the regulations. At present, there is a possibility that the proposed work experience registration eligibility criterion set out in the May 2008 draft regulations (Schedule 2, Part 1, para 104) is rendered inoperative by the definition of a voting member of a Recognised Professional Association in the same draft regulations (Schedule 1, Part 1, para 109). Therefore, without seeing the proposed final regulations, it is difficult to determine whether the registration provisions in subsection 25-5(1) of the *TAS Bill 2008* will operate as intended.

2. Other issues

We also draw the Committee's attention to some issues in the *TAS Bill 2008* that would benefit from further clarification and resolution. This list of issues is not intended to be exhaustive but rather indicative of the types of issues in and associated with the *TAS Bill 2008* that can be resolved to ensure the clear operation of the proposed regulatory regime:

- the need for clarification in the Code of Professional Conduct as to when a tax agent can rely on information provided by a client and when the tax agent needs to seek confirmation of that information (subsection 30-10(9));
- consideration should be given to allowing the Tax Practitioners Board ('Board') to have a discretion to permit a deceased practitioner's registration under the regulatory regime to continue to be conducted under the control of another registered tax agent pending the sale of the deceased practitioner's business (sections 40-5, 40-10 and 40-15);
- clarity could be provided regarding the use of structures involving partnerships of trusts by ensuring that the notes within *TAS Bill 2008* in relation to the use of trusts confirm that trusts maybe used for partnerships of trusts as well as of individuals or companies; and
- whilst the *TAS Bill 2008* now allows the Board to impose conditions on registration that can result in individuals with extensive experience in a specialised area of taxation law to be eligible for registration provided all of the other registration requirements are satisfied (subsections 20-25(5)-(7)), it would be helpful if the Explanatory Memorandum to the *TAS Bill 2008* could further illustrate the scope of this facility. For instance, paragraph 2.69 indicates that specialist registration might extend to GST. Other examples would assist in clarifying its scope, e.g., its impact on Research and Development specialists.

The Taxation Institute is happy to make its representatives available to appear before the Committee. In the interim, if you would like to discuss any of the issues raised in our submission or require further assistance or information, please contact the Joan Roberts on 03 9611 0178 or the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis, on 02 8223 0011.

Yours sincerely



Joan Roberts
President