



## THE TAX INSTITUTE

THE MARK OF EXPERTISE

---

8 August 2016

Mr Ian Taylor  
Chair  
Tax Practitioners Board  
GPO Box 1620  
SYDNEY NSW 2001

By email: [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au)

Dear Ian,

### **Declaring certain services as tax (financial) advice services**

The Tax Institute welcomes the opportunity to make a submission to the Tax Practitioners Board (**Board**) in relation to the *Declaring certain services as tax (financial) advice services* discussion paper (**Discussion Paper**).

The Discussion Paper contemplates five additional services that registered tax (financial) advisers will be permitted to provide as follows:

- a) a service relating to applying for a tax file number (TFN) on behalf of a client;
- b) a service relating to applying for an Australian Business Number (ABN) on behalf of a client;
- c) a service relating to interacting with the Australian Taxation Office (ATO) regarding the tax treatment of a client's excess concessional and non-concessional contributions and liability to pay a charge on income tax paid for excess contributions tax;
- d) a service relating to representing a client in their dealings with the ATO in relation to determining dependency for *Superannuation Industry (Supervision) Act 1993* purposes; and
- e) a service relating to representing a client in their dealings with the ATO in relation to the contribution reserving strategy (a strategy which, in broad terms, enables self-managed superannuation fund members to claim a larger tax deduction while disregarding the annual concessional contributions cap).

It is intended that these services will be included in a legislative instrument.

## **Services (a) and (b)**

The Tax Institute is of the view that tax (financial) advisers should be permitted to provide the services detailed at (a) and (b) above.

## **Services (c), (d) and (e)**

The Tax Institute queries the appropriateness of permitting tax (financial) advisers to provide the services described in items (c), (d) and (e) above. We are particularly concerned in relation to the tax (financial) advisers that have or will register with the Board under the 'Membership of Professional Association' pathway set out at Item 304 in Part 3 Division 1 of Schedule 2 to the *Tax Agent Services Regulations 2009* (Cth) (**Regulations**).

This pathway does not require the tax (financial) adviser to have successfully completed a course in Australian taxation law that is approved by the Board. Completion of such a course would go some way to ensuring the tax (financial) adviser has some technical knowledge of the taxation of superannuation as this is a topic area that is required to be covered in a relevant taxation course<sup>1</sup>.

In our view, a tax (financial) adviser who is registered under Item 304 is unlikely to have the requisite skills to provide the services outlined in items (c), (d) and (e).

Subject to our comments below, we also query the extent to which the majority of tax (financial) advisers who are registered under Items 301, 302 and 303 of the Regulations will have the requisite skills to provide these services. A tax (financial) adviser will only have been required to complete one taxation course that covers a breadth of topic areas which may not provide sufficient detail on the taxation of superannuation to qualify a tax (financial) adviser to provide these services to a competent standard.

### *Service at Item (c)*

It would be useful to know what specifically the Board means when referring to a tax (financial) adviser 'interacting with the Australian Taxation Office (ATO)' in this context.

The law relating to excess concessional and non-concessional contributions and the liability to excess contributions tax is complex and the consequences of making mistakes are severe for taxpayers. Also, the description of the service in this item is very broad and in our view should remain the domain of registered tax agents to provide only.

---

<sup>1</sup> See paragraph 12 in Proposed Guideline TPB(PG) 04/2014 Course in Australian taxation law that is approved by the Board for tax (financial) advisers

### *Service at Item (d)*

The description of the service in this item is unclear. Is the Board referring to a determination of who is a dependant or has an 'interdependency relationship' with the superannuation fund member under the *Superannuation Industry (Supervision) Act 1993* (Cth)? If the Board is referring to this determination, then this should be clarified in the description of the service to be provided.

As this is largely a factual determination, this service could be included. However, if the Board is referring to another type of service, we will need to reconsider our view.

We also query what the Board means by 'representing a client in their dealings with the ATO'. Does this include in the context of a dispute?

### *Service at Item (e)*

Our understanding is that a contribution reserving strategy involves a strategy to bring forward a tax deduction for concessional contributions made into a superannuation fund. Implied in the description of the service at Item (e) is that the service provided by a tax (financial) adviser is limited to self-managed superannuation funds. Is this limitation intended by the Board?

If so, we suggest the following wording better reflects the service to be provided (suggested amendments in red below):

a service relating to representing a client in their dealings with the ATO in relation to the contribution reserving strategy (a strategy which, in broad terms, enables [self-managed]<sup>2</sup> superannuation fund members to **make a contribution in the current year of income of an amount that forms part of the member's claim a larger tax deduction while disregarding the annual concessional contributions cap in the following income year**).

We also query what the Board means by 'representing a client in their dealings with the ATO'. Does this include in the context of a dispute? In our view, it is unlikely a tax (financial) adviser will have the requisite knowledge and skills to competently handle this kind of dispute.

Subject to our overall concerns about tax (financial) advisers having the requisite skills, as the consequences of mistakes associated with the provision of this service are not that high, this service could also be included in the legislative instrument.

### **Other**

At the Board's Financial Adviser Forum meeting held on 13 July 2016, mention was made of a proposal to permit a tax (financial) adviser to become involved with private binding rulings. In our view, private binding rulings should remain the domain of registered tax agents and other appropriately qualified tax professionals.

---

<sup>2</sup> Include the restriction to self-managed superannuation funds if that is the Board's intended policy.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'A. Athanasiou', with a horizontal line extending to the right.

**Arthur Athanasiou**  
President