

7 June 2013

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia  
Email: economics.sen@aph.gov.au

Dear Sir/Madam

**Submission to Senate Economic Legislation Committee - Tax Laws  
Amendment (2013 Measures No. 2) Bill 2013**

Fluid Financial Planning welcomes the opportunity to provide a submission to the **Senate Economics Legislation Committee on the abovementioned Bill.**

Fluid Financial Planning is a financial planning business that is not owned by any major bank or financial institution. We established the business in this manner about two years ago to ensure we could clearly demonstrate we operate in our clients best interests so that our advice could not be influenced or seen to be influenced by the financial institutions we deal with. The main financial adviser for the business is Peter Small. Peter has worked as a financial adviser for around 11 years, working for one of the major banks initially, then worked within an accounting practice as a financial adviser, moving on to run the daily operations of Switzer Financial Services for four years until starting Fluid Financial Planning. Peter was employed as a commercial accountant for around 10 years before deciding to move into financial advice in 2002.

We are making comments on **Schedule 3 “Creating a regulatory framework for tax (financial) advice services and other Amendments”** and **Schedule 4 “Regulation impact statement — Creating a regulatory framework for tax (financial) advice services and other amendments”**.

Being a small business that is directly affected by this legislation we are concerned about the consequences of these amendments.

We ask that the committee make recommendations to clarify and give certainty to financial advisers that are already working in the industry that they will be not be forced out of work due to these amendments.

We can see where we could work within this legislation if ASIC was to be the regulator and the Australian Financial Services Licence (AFSL) regime is amended to cover tax advice. We support this method as this would ensure we have a consistent approach to our regulation and compliance and we believe that our

professional indemnity insurers would be able to handle this method of implementation as opposed to any other method. Our professional indemnity costs are already substantial and as a result we ask that the committee take into account the specialist requirements of financial advisers professional indemnity needs when considering this legislation.

If financial advisers are to be co-regulated (as proposed) we are concerned that schedule 3 allows (see paragraph 3.57) the Tax Practitioners Board (TPB) ongoing flexibility to arbitrarily decide on its own what constitutes a tax (financial) advice service. We think this is providing the TPB with too much power and not providing our daily business operations with enough commercial certainty. If this legislation is to move forward the definition has to be locked down and agreed in order to provide our industry with enough certainty to know where we stand as far as compliance obligations. Ultimately we are concerned the definition of tax (financial) advice service is not clear and that it could be changed by the TPB at any time.

Schedule 3 and 4 do not clearly detail what work experience will be required for a financial adviser to become a member of the TPB. We are concerned that bill appears to leave the work experience requirements up to the TPB to decide. We request that the final option that is implemented contain a clear and firm wording that the Tax Practitioners Board (TPB) will be required to provide financial advisers with credit for the work experience they have undertaken to date with a registered adviser.

To do this we ask that it be clearly stated in the legislation that all advisers and financial planning business be given recognition for their current levels of education and experience and be granted automatic registration with the TPB and then detail the work and education requirements the new entrants to the industry have to meet once the transition period is over.

We are very concerned that schedule 4 (particularly see 4.35) mentions as an option the requirement to have worked for a registered tax agent. This would involve in most cases working for a totally different employer and having followed a totally different career path. We cannot see how a financial adviser could all of sudden work for a registered tax agent in order to comply with such a requirement. Our concern is that any such experience requirement would see a large number of advisers become unemployed and businesses potentially fail as we cannot provide financial advice to our clients.

We support the wording in the first part of paragraph 4.36 which suggests a financial adviser could be exempt from undertaking additional education requirements if they are a member of a recognised association and we agree this would seem logical as such an adviser would already have to abide by a code of conduct, and meet minimum education and work experience levels including ongoing professional development.

We also refer to paragraph 4.37 and suggest that the legislation cannot progress further until the TPB can provide the framework of the continuing professional education (CPE) expectations for financial planners who

provide tax advice so that the industry can be given time to make comment on what the TPB proposes and come to an acceptable outcome for all the financial advisers who will be directly affected.

The overall goal of this legislation is supported by the financial planning industry but as there are very key areas that are not clear this is making those who actually work as financial advisers concerned about their ability to comply with this legislation.

As the abovementioned issues are yet to be clarified we ask that more time be given for the passage of the legislation to ensure it is drafted in a way that does not have unintended consequences of placing financial advisers out of work or substantially increasing the cost of compliance or professional indemnity insurance rather than improving the integrity of the tax system.

If you would like me to clarify this submission or require further information from me please do not hesitate to contact me on 02 99224448. We would be happy to discuss our concerns with the Committee in detail.

Peter Small  
Director/Representative  
Fluid Financial Planning Pty Ltd