FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

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Dr Richard Grant
Acting Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services .
Parliament House
Canberra ACT 2600

By Email: corporations.joint@aph.gov.au

11th June 2013

Dear Dr Grant,

RE: A regulatory framework for tax (financial) advice services (previously Tax Laws Amendment (2013 Measures No. 2) Bill 2013, Schedules 3 and 4)

The Financial Planning Association of Australia (FPA)[1] welcomes the opportunity to contribute to the Parliamentary Joint Committee Inquiry into a regulatory framework for tax (financial) advice services and specifically to schedules 3 and 4 of the Tax Laws Amendment (2013 Measures No. 2) Bill 2013.

In this submission we address our position in respect to financial planners and the tax agent service act regime, highlight our concerns with the consultation process and provide specific feedback to support the terms of reference for this inquiry.

Our immediate concerns relate to the last minute and very limited consultation undertaken at the 'eleventh hour' on this Bill in order to rush it through Parliament before the existing deferral period for financial planners ends on 30 June 2013. The result is a Bill that demonstrates a fundamental misunderstanding of the financial planning profession, is unworkable, and presents significant flow on implications for both industry and consumers.

Considering that this measure is intended to impact every one of our 8,500 practitioner members and potentially over 50,000 industry wide, there is a real need to take a more considered and consultative approach to these measures.

Please note that the FPA has raised these concerns repeatedly with the Assistant Treasurer, Treasury, ASIC, the Tax Practitioners Board (TPB), the Independents and the Opposition.

In developing the following positions and recommendations, the FPA consulted with its practitioner members, which includes practitioners who have their own License, as well as those working for large, medium and small licensees, which includes employed practitioners.

The FPA would welcome the opportunity to discuss this further. If you have any questions, please contact me on or .

Yours faithfully

Dante De Gori
General Manager Policy and Conduct

1 The Financial Planning Association of Australia (FPA) is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at $630 billion.

Tax Agent Services Regime

Tax Agent Services Act

A regulatory framework for tax (financial) advice services
(Previously Tax Laws Amendment (2013 Measures No. 2) Bill 2013, Schedules 3 & 4)

FPA submission to:
The Parliamentary Joint Committee (PJC) on Corporations and Financial Services

11 June 2013

FINANCIAL PLANNING ASSOCIATION *of* AUSTRALIA

Tax Agent Services Regime

PJC INQUIRY: REGULATORY FRAMEWORK FOR TAX (FINANCIAL) ADVICE SERVICES | DATE: 11.06.2013

Contents

FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

Tax Agent Services Regime

PJC INQUIRY: REGULATORY FRAMEWORK FOR TAX (FINANCIAL) ADVICE SERVICES | DATE: 11.06.2013

1. Introduction

The FPA's submission responds to the Terms of Reference of the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the creation of a regulatory framework for tax (financial) advice services based on Schedules 3 and 4 of Tax Laws Amendment (2013 Measures No. 2) Bill 2013, with particular reference to:

1. The application (ie definition) of the regime to ensure that the regime is applied to the appropriate persons;

2. Steps that can be taken to minimise regulatory duplication on industry participants;

3. The interplay of the Tax Agent Services Regime with the Future of Financial Advice reforms, in particular the 'best interests' duty;

4. Ensuring that new advice providers are not prohibited from employment in the future; and

5. What further transitional relief may be required?

The FPA also provides necessary information and recommendations in relation to the Tax Agent Services regime and the existing regulation of financial planners.

2. Appropriate regulation and regulatory uncertainty

The FPA has previously submitted its views on the effect of the Tax Agent Services regime (TAS regime) on the financial planning industry. We stated that taxation implications of financial strategies and financial products are an essential part of providing financial advice and this is borne out by ASIC's guide RG146 Licensing: *Training of financial product advisers,* which gives details of the taxation knowledge necessary for the provision of financial product advice. Providing advice regarding the tax implications of financial products and strategies is a regulatory requirement with which AFSL holders are required to comply. Further in RG175 Licensing: *Financial product advisers – conduct and disclosure*, ASIC states that normally a client's tax position is a relevant personal circumstance that should be considered where the advice relates to a financial product with an investment component.

When the Tax Agent Services Bill was released in 2008, the then Assistant Treasurer, the Hon Chris Bowen MP, stated that the normal activities of financial planners were not intended to be caught within the regime. This was borne out by the Explanatory Memorandum (EM) which states that that certain advice on the tax implications of financial products or financial transactions, or advice relating to ascertaining tax liabilities for the purpose of calculating a future income stream, should not be considered a tax agent service, particularly as financial planners do not represent client interests in dealings with the Australian Taxation Office (ATO). The EM also gives examples of the type of financial advice that is **not intended** to be captured by the TASA regime.

Clarification was provided in the EM to the Tax Agent Services Bill, and we refer specifically to paragraph 2.36 and subsequent examples 2.7 to 2.10 which provides clear interpretation of how the Tax Agent Services Act is to apply to advice provided by a financial services licensee under the Corporations Act 2001.

In addition to the EM, the Second Reading Speech on the Tax Agent Services Bill made by the Assistant Treasurer further states that:

> *"the definition of 'tax agent service' in the Bill and the relevant paragraphs in the explanatory memorandum clarify the intention that financial services licensees can provide tax advice that is incidental to financial services, provided that the service would not be relied upon in satisfying a tax obligation or claiming an entitlement under taxation laws".*

The 'normal' role of financial planners routinely deals with taxation matters which are considered to be incidental or tax advice within the context of financial planning advice, and would not be relied upon in satisfying a tax obligation or claiming an entitlement under taxation laws, as stated above. Some examples will highlight the nature of the financial planning advice:

- How much concessional contributions an individual can make to a superannuation fund each year without incurring taxation penalties;
- How much non-concessional contributions can be made to superannuation without incurring taxation penalties;
- What is the impact of the different tax treatment of life insurance sought inside versus outside a superannuation fund;
- Should investment monies be placed with a superannuation fund, managed trust or life insurance bond and the tax advantages of each;
- Should an individual salary sacrifice contributions to a superannuation fund;
- Should a transition to retirement pension strategy be adopted;
- What are the tax consequences of withdrawing monies from the superannuation environment now versus later.

This is not intended to be an exhaustive list (refer to ***Attachment 1*** for further examples provided by the FPA to Treasury on a number of occasions) but shows how common it is for financial planners to have to advise on taxation obligations and entitlements both direct and indirect, but very much only within the context of financial planning advice.

Unlike the Accountants limited licensing proposal under the Corporations Act and the provision of an Australian Financial Services License, financial planners do not have a choice as to whether they want to be subject to the Tax Agent Services Regime. This is a fundamental difference between the two regimes. Accountants are able to choose if they wish to provide financial advice, in addition to being Accountants and therefore need to become licensed and regulated as a financial advice provider to offer this service. However a financial planner is not choosing to be a tax agent or to provide tax agent services or additional services such as preparing and completing tax returns. The government and the Tax Practitioners Board (TPB) have deemed that financial planners are, by definition, providing a tax agent service.

The FPA raises this issue because we cannot stress enough the severity and seriousness of this regime and the impact this will have on the financial advice sector. The FPA is requesting that the implementation and transition of this measure be handled with complete consideration of all issues and practicalities, not doing this can literally result in an individual or entity being forced to cease operating in any capacity. This will be to the detriment of both the industry and the clients they serve.

To designate a special category of advice that falls outside the Australian Financial Services Licensing (AFSL) regime, such as tax (financial) advice service as proposed in this Bill, will and is already creating uncertainty within the regulatory process.

An example of this is complaints handling by the respective EDR schemes such as the Financial Ombudsman Service (FOS). FOS is approved by ASIC as having the processes and expertise to deal with all matters related to financial product advice and dealing services. At present, FOS deals with all financial advice complaints in a holistic manner and they have the expertise to deal with tax advice matters within the context of financial advice. FOS will not deal with a complaint where that complaint is being heard in another forum and therefore if a tax (financial) advice service complaint is being dealt with by the TPB, FOS may hesitate to continue to deal with these matters to the disadvantage of the complainant. We therefore submit that as the requirement for a greater level of tax expertise in the regulator appears to be implied by the new designation this will have the effect of undermining the existing regulatory regime, which currently provides an appropriate method of recourse to consumers.

The following diagram (fig 1.1) provides a snapshot of the regulatory oversight that the financial planning sector is already subject to and demonstrates that there has been no consideration of the duplication and costs that the Tax Agent Services Act regime will have on the sector and consumers.

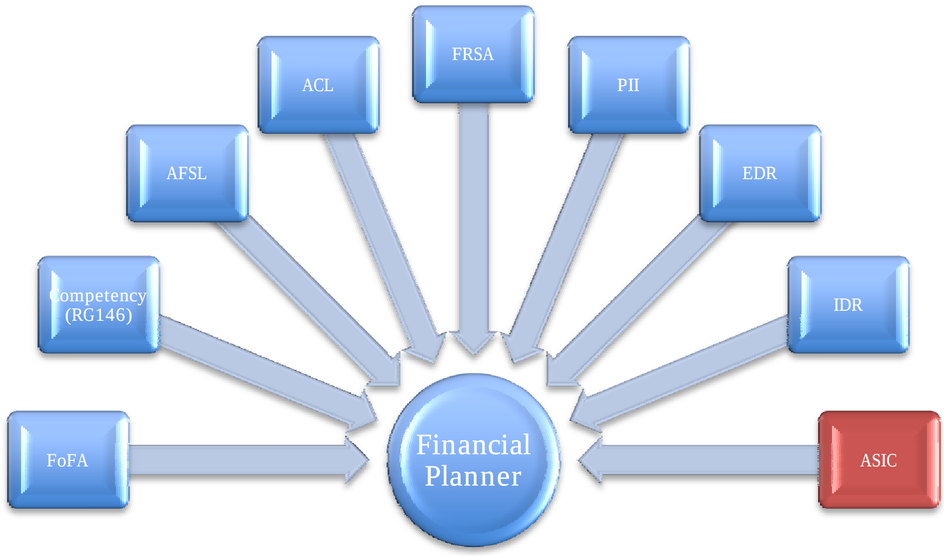

Fig 1.1

The regulatory uncertainty has been exacerbated by the five different Assistant Treasurers in as many years (the Hon Chris Bowen MP, Senator Nick Sherry, the Hon Bill Shorten MP, Senator Mark Arbib and the Hon David Bradbury MP) and drawn out nature of the consultation process around the application of the tax agent service regime to financial planners, as demonstrated by the following timeline.

<u>Year 2008</u>

- June 2008: Exposure Draft – Tax Agent Services Bill
- Explanatory Memorandum states that that certain advice on the tax implications of financial products or financial transactions, or advice relating to ascertaining tax liabilities for the purpose of calculating a future income stream, should not be considered a tax agent service, particularly as financial planners do not represent client interests in dealings with the Australian Taxation Office (ATO).
- The then Assistant Treasurer, the Hon Chris Bowen MP, stated that the normal activities of financial planners were not intended to be caught within the regime.

<u>Year 2009</u>

- January 2009: Tax Agent Services Bill - Senate Inquiry

<u>Year 2010</u>

- 1 March 2010: Tax Agent Services Regime commences
- 23 April 2010: Assistant Treasury Nick Sherry announces one-year deferral to financial planners from the application of the tax agents' regime
- 9 July 2010: Exposure Draft - Tax Agent Services Amendment Regulations 2010

- 29 November 2010: Regulation of Tax Agent Services provided by Financial Planners - Options Paper

Year 2011

There was no public consultation process in 2011

- 8 February 2011: A Private Industry Round Table meeting
- 7 April 2011: Assistant Treasurer Bill Shorten announces an extension of the deferral arrangement for financial planners until 30 June 2012

Year 2012

There was no public consultation process in 2012

- 30 April 2012: Assistant Treasurer David Bradbury announces another extension of the deferral arrangement for financial planners until 30 June 2013

Year 2013

- 8 February 2013: Exposure Draft Tax Agent Services Act: Creating a regulatory framework for tax advice (financial product) services
- 29 May 2013: Tax Laws Amendment (2013 Measures No. 2) Bill 2013 tabled in Parliament

It was only at the eleventh hour that Treasury was permitted to commence consultation on the draft Bill, resulting in the inappropriate and unworkable legislation that this Bill proposes. The FPA supports and is committed to raising the standards of professionalism and education of financial planners. We support the need for increased standards, qualifications and training, however this must be achieved through legislation and regulations that are appropriate, effective and workable.

The FPA requests that the Committee recommends that Treasury be provided with the appropriate time to consult and work through the issues and concerns with this Bill and the regime in general with all stakeholders, so that a workable solution can be implemented.

Recommendation

The FPA recommends that the commencement of the regulatory framework to bring financial planners into the tax agent services regime should be extended by 6 to 12 months to allow Treasury time to undertake appropriate consultation with stakeholders.

3. Professional Indemnity Insurance (PII)

Another example of regulatory uncertainty relates to the requirement for professional indemnity insurance (PII). We are concerned that PI insurers may target this newly designated category under TASA as additional requirements, even though the giving of tax advice within the context of financial planning is nothing new and there have been no evidence of systemic examples of market failures related to financial planners giving tax advice. We understand this has happened in respect of credit licensing where there was regulatory uncertainty whether existing PI thresholds for AFSL activities also cover credit assistance. Credit is similar to tax advice in this respect – it has always been part of financial advice but having received a new categorization under legislation, separate PI coverage has become an issue and potentially an extra cost as the PI underwriters have uncertainties regarding the risks involved and therefore price in a risk premium for the sake of underwriting certainty.

The tax agent services regime requires that financial planners hold PII approved by the TPB. As previously stated all financial planners are required to operate under an Australian Financial Services License (AFSL), and it is a licensing requirement that the Licensee hold PII cover[2].

Further to the potential increase in costs to existing PII cover, the FPA submits that it is both redundant and inefficient for the TPB to require financial planners to also hold PII cover. This requirement will simply add to the cost burden of operating an advice business.

The FPA provides the below extract from a current PI Insurance Policy provider as an example of the outstanding issues not yet resolved and how again the interaction between the tax agent services regime is not compatible with the financial services regime.

From the information provided on the existing PI wording, cover exists for tax advice provided under financial planning activities but is strictly defined.

The Civil Liability Insuring Clause for financial planners notes:

"The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any civil liability of the Insured."

The policy contains a Tax Advice Exclusion, as follows:

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[2] *Section 912B of the Corporations Act requires that licensees have compensation arrangements for loss or damage caused by breaches of their legislative obligations under Chapter 7 of the Act:*

> *"Under these arrangements, licensees must obtain PI insurance that is adequate having regard to the nature of the licensees business and its potential liability for compensation claims, or be approved by ASIC as alternative arrangements. In determining what is adequate insurance, ASIC will take into account what is available in the market."*

> *"The policy shall not cover Loss in connection with any Claim arising out of, based upon or attributable to any actual or alleged representation or advice given by or on behalf of the Insured regarding tax or the tax implications of any investments, including any Loss resulting from a failure to comply with any tax laws, tax regulation or any Australian Tax Office rulings; however, this Exclusion does not apply to general advice on the tax implications of Approved Products, provided that such advice is given contemporaneously with a written qualification that the client should obtain independent advice from a registered tax agent, accountant or lawyer before making any decision based on the tax treatment of an Approved Product."*

This policy condition effectively means that tax advice will only be covered if/when general advice is provided whereas the financial planning sector needs cover also when personal advice is provided.

This extract highlights that this PII policy may not be across the application of TASA to financial planners. The present relief available for the provision of incidental tax advice (with appropriate SOA wording) as mentioned in the policy wording effectively ends from 30 June 2013 whereby advisers will enter a 3 year transition period where on registration with the TPB they will provide registered tax (financial) advice services (as defined) in the capacity of providing personal financial advice (both financial product advice as defined in the Corps Act and product specific strategic advice - which while not defined in the Corps Act is still addressed at common law and at equity).

The Explanatory Memorandum (EM) to the Bill contains wording that is required to be included in SOAs and ROAs that the client should obtain independent advice from a registered tax agent up to the point during the transition period where they have completed any course requirement and comply with the TPB Code of Professional Conduct.

At 3.26 of the EM, it makes it a regulatory requirement, rather than a separately imposed TPB requirement, for registered entities to maintain professional indemnity insurance that meets the TPB's requirements. This requirement means that the industry needs to ensure that tax agent services are covered but also that the policy complies with the TPB's requirements.

The FPA is concerned that there has been no consultation involvement with the providers of professional indemnity insurance cover for financial planners and whether any changes in policy wording; conditions or coverage is needed as a result of this new regime.

Recommendation

The FPA recommends that the TPB recognise the existing PII cover held by an AFS licensee as sufficient to meet their requirements under the registration criteria for tax (financial) advice services.

Further the FPA recommends that the TPB consult with the Insurance Council of Australia (ICA) as soon as possible about how the existing PII cover arrangements can be amended to satisfy obligations under both the Corporations Act and the Tax Agent Services Act.

4. Consumer Protection

The consumer protection objectives of the Tax Agent Services regime include ensuring:

a) Providers of tax advice are appropriately and adequately trained
b) Proper complaints handling and redress is available to consumers
c) Enforceable ethical and professional conduct requirements are imposed on providers
d) Strong regulatory oversight in relation to Australian taxation law

The FPA supports the fundamental principle of ensuring that consumers are protected when receiving any form of personal financial advice, including tax related advice of the kind provided by financial planners, and that there is regulatory certainty and integrity in this regard.

Tax advice in the context of financial advice cannot be separated out of the financial advice provided by financial planners. It is integrated throughout and integral to the advice process and the provision of quality advice to consumers.

The FPA notes the consumer protection concerns raised by the accounting industry. However, there is no substantive evidence to suggest that consumers are not currently sufficiently protected in respect of tax advice provided in the context of financial advice. The primary External Dispute Resolution (EDR) scheme used by the advice profession is the Financial Ombudsman Service (FOS) and there is no evidence in any of their annual reports that there are any complaints let alone any 'tax advice' failings by financial planners. Further, there is definitely no evidence of a current systemic risk to consumers or evidence (or trends) that this will become a greater risk in the future.

The FPA further disputes the notion that consumers are at risk, especially with the introduction of the Future of Financial Advice (FoFA) reforms. The introduction of FoFA means the consumer protection objectives of TASA are well and truly surpassed by the regulation of financial planners under the Corporations Act and the oversight of ASIC. This includes tax advice in the context of financial advice provided by licensed financial planners.

The key consumer protection elements of the FoFA reforms, which will also apply to the tax advice provided by financial planners, include:

- The introduction of a statutory "best interest" duty requiring financial planners to place the interests of their clients before their own interests.

- A prospective ban on conflicted remuneration structures including commissions, volume-based payments, and asset based fees on borrowed amounts.

- a requirement for planners to obtain client agreement to pay ongoing advice fees every two years – the Opt-in requirement

- A requirement to provide an annual fee disclosure statement to clients with an ongoing fee arrangement.

- Expansion of the availability of 'Scaled Advice' to improve access to and affordability of financial advice for consumers.

- Strengthening of the Australian Securities and Investments Commission (ASIC)'s powers to act against unscrupulous operators.

The principles of providing greater consumer protection should be viewed in light of the Future of Financial Advice (FOFA) reforms, which are due to commence on 1 July 2013. We expect the FOFA reforms to have the effect of raising financial advice standards generally and tax advice will be a part of those standards. The introduction of a statutory best interest duty through the FOFA reforms will provide financial planners with an obligation to ensure that all aspects of financial advice including the tax component are provided in the client's best interest and at a high standard. Maintaining the process of raising standards with the current regulator, ASIC, will promote greater consistency, certainty and clarity for both industry and consumers, while to isolate tax advice from this broad push for improved standards will have the opposite effect.

The consumer protection objectives of the Tax Agent Services regime are already met by the Corporations Act in the following ways.

a) Providers of tax advice are appropriately and adequately trained

The FPA agrees that competency standards should be increased both for tax related advice given by financial planners and for financial product advice generally. A key tenet of the FPA's drive towards achieving the highest standards of professionalism is the requirement for higher levels of education for planners. In the very near future ASIC will be releasing for consultation amendments to RG146 Licensing: *Training for financial product advisers* with a view to lifting competency standards for financial planners, including the provision of tax advice.

It is therefore our view that, on the basis that tax advice of the kind provided by financial planners cannot be meaningfully separated from the actual financial advice provided by a planner on financial products and strategies, the issue of taxation qualifications, training and competencies should be streamlined and included in ASIC's review of RG 146 and proposed national competency exam (CP153). These standards should not be set separately under the TASA regulatory regime but incorporated into the existing competency regime for financial planners.

b) Proper complaints handling and redress is available to consumers

It is a legal and regulatory requirement that an AFSL holder belongs to an approved External Dispute Resolution (EDR) Scheme that can deal with complaints relating to all the financial services authorised under their license. For Licensees and financial planners, the Financial Ombudsman Service (FOS) and the Credit Ombudsman Service (COSL) have been approved by ASIC as having the processes and expertise to deal with all matters related to financial product advice and dealing services.

c) Enforceable ethical and professional conduct requirements are imposed on providers

The FPA believes there are foundational aspects of ethics that apply across professions. As demonstrated in the FPA's application to the Tax Practitioners Board for Recognised (TPB) Tax Agent Association status, ethics and professional obligations stand at the core of the FPA's principles and values. The TPBs registration of the FPA as a recognised association included recognition of the FPA Code of Professional Practice in this regard. The professional obligations under the FPA's Code go beyond those required by the TASA, TASR and the TPB.

The FPA's Code has also recently been updated to complement the FoFA reforms and the Association is in the process of seeking ASIC approval for its Code of Professional Practice.

While adherence to a code of ethics is not a mandatory requirement under the Corporations Act, the fit and proper person test goes some way to *legally* imposing ethical obligations on financial planners. However, associations to which financial planners belong impose adherence to a Code as a membership requirement.

The FPA submits that membership of a recognised tax agent association (RTAA) should afford the individual financial planner practitioner the default position due to membership of a RTAA to have met their code of conduct obligations under the Tax Agent Services Act.

d) Strong regulatory oversight in relation to Australian taxation law

In regulating financial planners, ASIC must ensure the advice provided is appropriate and consistent with all laws, including Australian taxation law. Further, under FoFA, the Government has strengthen ASIC's powers to act against unscrupulous operators.

The FPA believes extending the Tax Agent Services regime to financial planners provides no additional protections for consumers of financial advice.

5. Response to PJC Terms of Reference

We are now just weeks away from the existing deferral arrangements ending and we are still not clearer on the exact requirements and obligations for financial planners in respect to complying with the Tax Agent Services Act. Further we have two weeks of sitting days to have this legislation passed by Parliament, leaving no room for error and no time for industry to implement.

Considering that the Tax Agent Services Act will impact on 5,027[3] Australian Financial Services License holders and 51,147[4] authorised representatives of AFSL holders the lack of consultation and the tight time frame has been of real concern.

This legislation should not be rushed through Parliament. The legislation does not address any systemic issues, and financial planners continue to be fully regulated by ASIC, including for the tax advice they provide (see Consumer Protection section on page 9 of this submission). The FPA is of the view that time must be provided to permit Treasury to undertake proper and effective consultation with stakeholders to ensure the outstanding issues in the Bill can be satisfactorily resolved.

ToR 1: The application (ie definition) of the regime to ensure that the regime is applied to the appropriate persons

The FPA has significant concerns with the scope and definition of financial planning being defined in the Tax Agent Services Act when it is not even defined in the Corporations Act. Further, there are legislative amendments to the Corporations Act on enshrinement of the terms financial planner and financial adviser recently passed by the House of Representatives and currently being considered by the Senate, as part of the FoFA reforms. The absence in co-ordination and consideration of this issue has been both alarming and disappointing.

This is highlighted by the definition proposed in the Bill (s90-15):

> A ***tax (financial) advice service*** is a *tax agent service (other than within the meaning of subparagraph (1)(a)(iii) of the definition of that expression) provided by a financial services licensee or a representative of a financial services licensee in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee to the extent that….

[3] *ASIC figures as at 10 May 2013 as provided to PJC Inquiry, answers to questions on notice 22 April (received 13 May 2013)*

[4] *ASIC figures as at 10 May 2013 as provided to PJC Inquiry, answers to questions on notice 22 April (received 13 May 2013)*

The scope of this definition is extremely broad as is captures **any** tax advice service provided in circumstances in which an entity can reasonably expect to rely on it for tax purposes, where **any** form of payment has been received for that service. The FPA believes the scope of this definition captures anyone being paid to operate and provide advice under a license. It does not consider who **should** be captured versus who **is** captured; and similarly the type of advice that **should** be captured versus the advice that **is** captured. For example the definition of a 'tax (financial) advice service' captures the following activities/providers:

- Personal financial advice provided by superannuation funds, such as Intra-fund 'personal' advice;
- Personal financial advice provided to a 'wholesale' and/or 'sophisticated' investor;
- General advice, including that provided by bank tellers;
- Stockbrokers;
- General insurance brokers;
- Life insurance brokers; and
- Authorised credit licensees/representatives such as Mortgage Brokers.

While this is not an exhaustive or inclusive list, it illustrates this significant issue with the definition of tax (financial) advice service within Schedule 3.

Recommendation

Should the Parliament determine to proceed with this Bill, the FPA recommends the following definition which was developed and agreed upon by participants of the financial services industry (including the Financial Services Council (FSC); CPA; The Tax Institute; Australian Superannuation Funds Association (ASFA); Association of Financial Advisers (AFA); SPAA; and the FPA):

*A tax (financial) advice service is a tax agent service (as defined in section 90-5 of the TASA 2009) provided in the course of providing **financial advice services as defined below** that relates to ascertaining an entity's tax liabilities, obligations or entitlements or advising an entity about tax liabilities, obligations or entitlements. The scope of this service is limited by making it a TASA 2009 registration requirement that the entity be a financial services licensee or a representative of a licensee in order to be registered.*

For the purpose of this option, financial advice services would mean advice in respect of a client's financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice, including:

a) advice on financial products as defined in s764A carried out pursuant to an Australian Financial Services Licence

b) advice and dealing in financial products as defined in section 766B and 766C of the Corporations Act;

c) non-financial product advice including financial strategies or structures; and

d) taxation advice which is related to advice provided under (a) or (b) or (c).

For the avoidance of doubt, a tax (financial) advice service does not include preparing, or lodging, a return or a statement in the nature of a return.

Licensees and 'Sufficient Number'

Based on the Bill it is incumbent on the company/licensee to satisfy the TPB that they have a sufficient number of individuals who are registered as either tax (financial) advisers or tax agents, to be able to provide tax (financial) advice services to a competent standard and to carry out supervisory arrangements.

This does not consider or recognise the difference in approach for Australian Financial Services (AFS) licensees who may appoint financial planners to provide specified financial services on their behalf.

One potential solution would be to accept the licensee's statutory registration with the TPB and require those financial planners who provide tax advice services in the context of financial advice to operate in a similar fashion to "monitored members". In this case, the licensee retains ultimate professional responsibility for the conduct of the member, similar to the role of partners in accounting centric firms.

We agree that the company/licensee should be required to satisfy the TPB that they are capable of providing tax advice services in the context of financial advice to a competent standard and to carry out supervisory arrangements. However, we submit that this satisfaction may be achieved without the requirement to register individual financial planners with the TPB. For example, a licensee may be able to satisfy the TPB by demonstrating overall capability relating to the training and experience of representatives as well as the monitoring and supervision processes the licensee has in place.

Furthermore, we submit that the legislation should prescribe how the TPB will determine "sufficiency" with relation to the number of individuals registered or able to provide tax (financial) advice services to a competent standard. At the very least the EM should be updated to provide guidance on this matter.

It is worth mentioning that ASIC consultation paper 153 is reviewing the monitoring and supervision requirements for financial planners generally (Part D of CP 153). The FPA again calls for Treasury, the TPB and ASIC to co-operate and communicate on streamlining the obligations and requirements for financial planners rather than just duplicating the obligations.

Recommendation

The FPA recommends that the TPB recognise and accept the Licensee's statutory registration with the TPB and require those financial planners who provide tax (financial) advice services in the context of financial advice to operate in a similar fashion to "monitored members".

ToR 2: Steps that can be taken to minimise regulatory duplication on industry participants

The policy position that was agreed with the then Assistant Treasurer[5] was to streamline and reduce duplication in process by including ASIC in the role of registration, information sharing and in the dispute resolution process for consumers. The policy was to allow the interaction between financial planners and the Tax Practitioners Board (TPB) to be facilitated through ASIC.

The TPB annual report[6] even makes reference to co-regulation with ASIC and how the registration process will be through ASIC.

It is unclear how the TPB proposes to conduct its compliance activities, nor the level of their knowledge of the financial advice regime and financial planning process. However, the FPA believes that compliance cannot be streamlined when a financial planning business is subject to regulation by both the TPB and ASIC. Rather this can only lead to duplication for planners, and additional costs for consumers.

The FPA's original recommendation was that if this regime had to proceed it should be regulated within the existing financial services regulatory framework, but rather than adopting a full scale TASA regime within the AFSL regime, a cooperative relationship and information exchange mechanism be put in place between ASIC and the Tax Practitioner's Board (TPB) to enable ASIC to access the TPB's tax expertise if and to the extent required. This mechanism would assist in addressing taxation issues considered by ASIC to require advice or input from the TPB.

The FPA submits that ASIC must continue to regulate the provision of financial advice under its existing Corporations Act powers and only when a specific matter that they feel requires additional tax expertise would ASIC seek input/advice from the TPB.

The cooperative process would involve the TPB providing input and advice on relevant tax aspects to ASIC, which will then make the ultimate decision about the regulatory outcomes. It is important to note that ASIC must still be responsible for imposing sanctions and this cooperation process is designed only to assist ASIC in their investigations – this provides certainty and clarification for all stakeholders.

[5] *Media Release No 049 and No027: Future regulation of financial planners providing tax advice*
[6] *TPB Annual Report 2011/12, page 7.*

ASIC is already responsible under the Corporations Act for financial planning related tax advice. Such tax advice is so interlinked and entrenched in the financial planning advice that they can't be separated. We also do not believe that ASIC representatives are required to be tax experts - they need to understand tax as much as they understand financial planning advice.

We consider that having a cooperative relationship between the two regulators would avoid duplication and therefore control the cost of regulation – ASIC remain as the primary regulator and would retain complete responsibility for financial planners, ensuring consumer protection, certainty and efficiency.

Complainants should not be required to determine if their matter is tax or financial planning related. This is a very important advantage in that clients of financial planners seeking to lodge a complaint will still access the normal dispute resolution avenues – the Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) schemes and ASIC. EDR schemes are better placed to deal with financial planning complaints as they have the power to adjudicate on all aspects of the advice and dealing services provided, including tax advice aspects. This will relieve the client from the confusion and burden of having to determine the nature of the complaint themselves and knowing who and how to make their complaint – therefore maintaining integrity and protection to the consumer.

The current disclosure documents financial planners must provide to clients would be required to include additional references to TPB requirements, including the need to add reference to the TPB on the complaints handling procedures that financial planners currently provide to clients. To minimise consumer confusion and manage consumer expectations, the disclosure of the additional TPB complaints process alongside the financial advice complaints handling procedure, would need to clearly articulate the differences between these two complaints mechanisms.

Consumer complaints are likely to relate to financial advice set out in a Statement of Advice (SOA) or other disclosure document, and the tax advice component will not be clearly distinguishable or separable from the non-tax advice component but rather contain information about the tax implications relevant to the total advice. As such, the client may not know which regulator to approach. The appropriate AFSL procedure is that the client should first approach the AFSL holder and if not satisfied would be directed to an EDR scheme such as FOS. Rarely do complainants approach the regulator and in the case of ASIC they are usually referred back to the AFSL holder in the first instance. Would the TPB follow the same protocol? Which regulator will do the initial assessment? Would the TPB have the expertise to assess whether an SOA/other advice document complies with the law outside of the tax advice component? And how do we stop matters falling through the cracks because the most appropriate regulator is not immediately obvious? We consider that this problem can be solved by placing the responsibility for the assessment of the complaint on one regulator, ASIC, who would then have the ability to seek input from the AFSL in respect to their conduct and advice from the TPB, if appropriate.

There will need to be strong coordination between the two regulators to address the manner of regulation and any complaints/issues that may arise with the initial introduction of the tax agent services regime for planners. Without a coordinated approach there will to be initial and even ongoing uncertainty regarding which regulator is the most appropriate to address a problem.

With ASIC as the primary regulator and the cooperation mechanism to seek input and advice on appropriate tax matters from the TPB, consumer protection will be enhanced and will be done so without duplication. In a matter where the quality or accuracy of tax advice is in question by ASIC they will be able to engage the TPB for their advice, providing an additional resource for ASIC in their investigation, which will result in a more accurate conclusion and the application of appropriate sanctions.

While we have reviewed the TPB's Information Sheet on 'Investigations' and 'Supervisory arrangements and supervision and control', it is not obvious how the TPB can provide better consumer protection than ASIC. The licensee obligations under the Corporations Act and the ASIC guidance on meeting licensee obligations provides far more detail than that provided by the TPB. Furthermore, ASIC's complaints and investigatory processes are more developed than those of the TPB and should therefore provide superior consumer protection. ASIC also has the expertise to scrutinise financial advice services as a whole, which the TPB is unable to do. The TPB has different scopes of power and you cannot expect the same breadth of compliance activities. ASIC regulates the person, the business and the actual advice. The TPB is limited to the conduct of the person.

A fundamental difference is the existence of established complaints handling procedures in the financial services industry from Internal Dispute Resolution (IDR) to EDR and to the regulator. This process is supported by industry, government, consumer organisations and the regulator, as effective with a demonstrated track record. To have, as it seems to be suggested, the possibility of the TPB being the first and only arbiter in any dispute about tax advice related issues is against established public policy.

Recommendation

The FPA recommends ASIC remains as the primary regulator for financial planning. Registration with the TPB should be facilitated via ASIC's licensing process. The TPB should be invited to provide advice and support on matters that ASIC believe are beyond their expertise in Australian taxation law. The existing complaints handling procedures for financial planners under the Corporations Act should remain as the primary consumer redress for financial advice complaints, including tax advice in the context of financial advice provided by financial planners.

ToR 3: The interplay of the Tax Agent Services Regime with the Future of Financial Advice reforms, in particular the 'best interests' duty

The FPA has persistently requested that the relevant departments within Treasury that worked on the Future of Financial Advice (FoFA) reforms be consulted and involved in the development of the regulatory framework for financial planners under the tax agent services regime.

Further the FPA called for ASIC's involvement, especially as they are responsible for the regulation of financial planners. The tax agent services regime has been an ongoing concern for a greater period than FoFA. However, as FoFA has developed the consideration of its impacts on the tax agent services regime was ignored.
Key to this concern is the ability for individual advice providers to rely on the (FoFA) Best Interest Duty safe harbour whilst complying with s961B(2)(d) of the Corporations Act which requires as ASIC Regulatory Guide 175 at paragraph 301 states, that the individual advice provider must have the expertise to provide the advice or refer the client on (decline to advise the client).

The FPA requests ASIC's guidance on the interplay between FoFA's best interest duty safe harbour and the TASA (specifically advice provided by an unregistered person working under a supervisor).

We seek ASIC's review and amendment of RG175.298-305 (paragraphs 298 and 301 in particular) to capture the TASA concept.

Recommendation

To ensure advice remains affordable and accessible and that advice providers are able to comply with both TASA and FOFA obligations, the FPA recommends that:

ASIC RG175.298 be amended to include a statement such as: "with regards to tax (financial) advice services, an individual advice provider need not be registered with the Tax Practitioners Board to demonstrate expertise but may provide tax advice under the supervision of a registered tax (financial) advice services entity".

ASIC RG175.301 be amended to read: "(d) an individual advice provider need not have the expertise in the provision of tax (financial) advice services as demonstrated by registration with the Tax Practitioners Board provided the individual advice provider is working supervised by a registered tax (financial) advice services entity."

ToR 4: Ensuring that new advice providers are not prohibited from employment in the future

The Bill is silent on the treatment of new financial planners that enter the financial services sector after 1 July 2013. There is no process or guidance for financial planners who enter the industry within the notification period.

A new financial planner who enters the financial advice industry after 1 July 2013 and satisfies their competency requirements under ASIC regulatory guide 146 (RG146) would be able to provide financial advice to their clients on general tax information. However, given TASA will apply from 1 July 2013 – what are the requirements applicable to a new entrant and when will the requirements become publically available?

The FPA notes that the TPB is currently considering education and experience eligibility requirements for financial planners to register as tax (financial) advisers. While the FPA supports the proposal for a combination of education and experience requirements, we are concerned about how new entrants to the profession can meet the experience requirements. This would create restrictions on entry to the profession and serve as a deterrent particularly to graduates and young students considering career options.

The experience requirements create a situation where new entrants to the profession cannot register with the TPB as in most cases they will not meet the relevant experience requirements. However, under TASA individuals are required to be registered with the TPB when doing the work required in order to gain the 'relevant experience' required by the TPB, resulting in new entrants breaching the law in these circumstances.

For example, Griffith University offers an integrated learning course in financial planning which requires students to undertake two years full-time study, followed by one year working in the financial planning industry, and a final year of study. It is unlikely that these people would be authorised under the Corporations Act or registered with the TPB.

A graduate may take position as a paraplanner which includes determining the tax liabilities of clients. Cadetships commonly offered within the financial planning industry, are another example.

ASIC's licensing regime also does not permit an individual to receive representative or authorised representative status unless that person meets its training requirements. ASIC's RG146.27 – 146.29 addresses this issue by specifically exempting para-planners and trainee advisers from its training requirements "provided a person who does meet the training standards plays a material role in, and (together with the licensee) remains responsible for, the provision of financial product advice to retail clients".

If the paraplanner is in a trainee planner role, it would need to be clear that they are not providing tax advice to the client. The advice would have to be clearly signed off by a financial planner who is registered by the TPB before it is sent to the client.

In relation to the TPB's proposed 'relevant experience' requirements, the FPA has sought clarification and assurances from the TPB that current and future students and new entrants to the profession will be permitted to work in the financial planning industry without breaching TASA.

Recommendation

The FPA recommends that there needs to be a definitive process and transition period for new financial planners as well as competency and experience requirements that the TPB will impose.

Ensuring that new advice providers are not prohibited from employment in the future because of the tax agent services regime could be addressed, in part, by FPA's recommendations to the PJC's Terms of Reference 3 and 5.

ToR 5: What further transitional relief may be required?

The TPB is not resourced to register and regulate the expected 51,000[7] plus financial planners and advisers in this country.

Further, it is our understanding that at present the TPB is not sufficiently resourced to regulate financial planning advice. It is also unknown if the TPB has funding to help become resourced. It is our view that the TPB will have to spend millions to increase its capabilities and size to regulate a large number of financial planners when the majority of whose activities are outside of the scope of the TPB's focus.

According to the most recent annual report[8], the TPB had 52,000 agents registered at 30 June 2012. They included around 38,000 tax agents and over 14,000 BAS agents. The financial advice sector could potentially become the largest category within the TPB membership, yet would be the least represented in respect to all aspects of TASA and the TPB.

There is currently a lack of certainty about the compliance requirements that would be imposed by the TPB. Aside from the registration process, there is limited information about how the TPB will go about scrutinising those it regulates. It is also unclear as to how the TPB would administer and manage the inclusion of more than 50,000 additional registrations. Once registered, will the tax (financial) adviser operate without any contact from the TPB, or will there be regulator facing obligations, such as breach

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[7] *ASIC figures as at 10 May 2013 as provided to PJC Inquiry, answers to questions on notice 22 April (received 13 May 2013)*
[8] *TPB Annual Report 2011/12, page ii*

notifications or the requirement to participate in projects, as there are with ASIC? We note, in the TPB's 'Information sheet' on 'Investigations' that it may respond to complaints by a third party or may start an investigation of its own motion when no complaint has been made, implying the need for breach notifications and project participation. Will its approach to supervision be similar to ASIC's? Will it have the resources for this and in fact will those resources be skilled to assess tax advice in the context of the financial planning advice associated with it? Or will it merely respond to complaints?

By its nature, the requirement for financial planners to register with the TPB to become tax (financial) advisers will mean a barrier to continuing or commencing to practice. Therefore corresponding safety nets need to be implemented during the transition period to ensure that agreed service level agreements are in place between the applicant, ASIC and the TPB. By safety nets we refer to publically available (and consulted) processes and procedures including: application processing time frames, an appeals process and options for planners who may suffer a loss of business as a result of any delays in the registration process. The reality that approximately 50,000 financial planners could register at or about the same time requires assurance that the TPB will be able to meet this demand so as not to impede advice providers from operating their existing businesses.

Further, given the TPB registration is effectively a gateway requirement (a financial planner can not continue nor commence to operate their business with the registration), appropriate safeguards are required for this transition period and beyond to ensure prospective entities seeking registration have sufficient opportunity to comply with these new legal obligations.

The deferral arrangement for financial planners is due to expire on 30 June 2013. The commencement of the regime for financial planners is 1 July 2013. Should this measure proceed, the Bill is likely to only be passed by Parliament in late June and there are still regulations and guidance documents required by both the TPB and ASIC that would need to be released in order for financial planners to know how to comply with the new TASA requirements.

We strongly recommend that the government consider extending the deferral arrangement of TASA to financial planners for another six to twelve months. This will also support and provide scope for industry in implementing other significant legislative changes such as the Future of Financial Advice (FoFA) reforms and Stronger (MySuper) Super reforms.

Recommendation

The FPA recommends the extension of the deferral period for another six to twelve months to allow appropriate time and consideration for how the TPB should be resourced to regulate financial planners.

Recommended Transition Arrangements

The FPA supports a level playing field and recommends that the TASA transition period for financial planners should mirror that provided to those Accountants who choose to provide financial advice and therefore will be required to become licensed.

Accountants who choose to provide financial planning services will have a three year period to decide to commence the licensing process and then a subsequent three years to fulfil their licensing conditions.

Therefore the FPA recommends the following amendments be made to the existing notification/transition period of the Bill.

Recommendation

The FPA recommends that

- the notification period in the Bill be removed and that the transition period apply from 1 July 2013 to 30 June 2016.

- financial planning services will have a three year period to commence the licensing process and then a subsequent three years to fulfil their licensing conditions.

Transition for existing financial planners/advisers pre 30 June 2013 (up until 30 June 2016).

- Financial planners/advisers who register with the TPB during this time will not be required to initially meet any TPB competency/experience requirements;

- No fee is payable to the TPB for registration;

- Existing PII cover as required under the Corporations Act is deemed to satisfy the PII obligations as required under the Tax Agent Services Act;

- No back dating or retrospective application of any Code of Conduct. This can only apply from the date the advice registers with the TPB. It is neither prudent to 'back date' a market participants conduct nor is it congruent with the government's own Guidance on Best Practice legislation; and

- That the law clearly state that these financial planners/advisers will be registered for a full three years from the date they registered with the TPB between 01/7/2013 and 30/06/2016.

Transition for financial planners/advisers who enter the sector from 01/7/2013 to 30/06/2016

- Financial planners/advisers who register with the TPB during this time will not be required to initially meet any TPB competency/experience requirements;
- Are required to pay a registration fee to the TPB;
- That the law clearly state that these financial planners/advisers will be registered for a full three years from the date they registered with the TPB between 01/7/2013 and 30/06/2016; and

Financial planners/advisers who enter the market from 01/07/2016 will need to operate under the TPB's supervisory requirements or register if they meet the TPB's education/experience requirements.

Use of disclaimers during transition

The FPA welcomes the recognition at paragraph 3.148 and3.149 that the financial services industry needs time to transition into the TASA regime and may continue to provide the services they currently provide to their clients – unregistered for a time – provided they use a disclaimed that they are "not registered tax (financial) advisers under the TASA 2009.

> "3.148 An entity that provides tax (financial) advice services for a fee or other reward from 1 July 2013 may be liable for civil penalties under the TASA 2009 unless they are:
>
> • a registered tax agent;
> • in some cases — a legal practitioner;
> • a registered tax (financial) adviser; or
> • an unregistered financial services licensee or representative that accompanies such a service with a disclaimer advising that:
>
> – they are not a registered tax (financial) adviser under the TASA 2009; and
>
> – if the recipient intends to rely on the advice, then they should request advice from a registered tax (financial) adviser or a registered tax agent.
>
> ***[Schedule 3, items 47 and 48, subitem 48(4)]***
>
> *3.149 Unregistered financial services licensees and representatives may only provide these services accompanied by a disclaimer until 31 December 2014. From after that date, unregistered entities that continue to provide tax (financial) advice services may be liable for civil penalties. [Schedule 3, item 47, subitem 48(4)]"*

However, should the Bill pass and apply from 1 July 2013, the implication is that the warning noted in paragraph 3.148 of the EM and in the Bill should be in use from 1 July 2013. The FPA is concerned that this will be impossible for the majority of the industry to comply with this requirement on 1 July 2013. Currently, most participants in the industry use the warning required under the deferment arrangement informing the client to seek tax advice from a registered tax agent. Therefore the current warnings would not comply with the TASA warning proposed in the Bill.

Recommendation

The FPA recommends that the TASA Bill and Corporations Act be amended to provide a transition under TASA and under the Corporations Act to afford the industry a minimum of six months from the commencement of the regime for all Product Disclosure Statements, Financial Services Guides, Statement of Advice templates, websites and other disclosure documents to be amended to comply with TASA and also to protect the industry from breaching disclosure requirements under the Corporations Act.

Alternatively, the FPA recommends that ASIC and the TPB provide the industry with a Class Order exemption from compliance with disclosure requirements (that is regarding using the correct TASA warning) for a minimum of six months.

Attachment 1: Examples of financial planning 'strategies' that are not provided in the course of advising on one or more financial products.

Examples of every day financial planning advice, which are 'related to '**strategy'** and do not require the recommendation of a financial product.

The FPA submits that these examples need to be included in the legislation/explanatory memorandum to provide certainty and clarity for industry as to the types of advice that are permitted as a 'tax (financial product) service.

1. Gearing /cashflow management

Angela and Adam are in their early 40s with 2 dependent children. They seek financial advice on accumulating wealth outside super.

Their financial planner recommends to them a gearing strategy as a way to accumulate wealth over the longer term. As part of this recommendation, the financial planner must determine that Angela and Adam have the cashflow to afford the interest costs on borrowed funds. In doing so, the financial planner takes into account the potential tax deductibility of interest costs and the effects this has on their income tax position and their eligibility to family tax benefits.

The financial planning advice on Angela and Adam's tax position is aimed primarily at ensuring they have the cashflow to afford the recommended strategy.

2. Salary sacrificing into super

Gail is age 50, on the highest marginal tax rate and has very little in accumulated superannuation. She seeks financial planning advice on how she can increase her retirement savings. Gail's financial planner ascertains the annual contribution Gail requires and recommends that the most effective way for Gail to make this contribution is via an effective salary sacrifice arrangement with her employer. As part of this recommendation, the financial planner compares a salary sacrifice super strategy with an after-tax contribution strategy, illustrating the effects on Gail's after-tax income and net superannuation contributions.

The financial planning advice on Gail's tax position is aimed primarily at illustrating the method by which she can achieve the greatest increase in her retirement savings.

3. Transition to retirement

Caroline is age 55 with reasonable superannuation savings and a plan to retire from the workforce at age 62. She seeks financial planning advice on whether her super is sufficient to fund her retirement and ways in which it can be increased if necessary, without a reduction in her cashflow.

Caroline's financial planner recommends that she commence to draw a transition to retirement pension from her existing super, then salary sacrifice an amount to super so as to maintain her net income. As part of the recommendation, the financial planner:

- estimates Caroline's current net income, and the amount of pension payment and salary sacrifice contribution needed to maintain it
- estimates Caroline's increased retirement balance at age 62.

The financial planning advice on Caroline's tax position is aimed primarily at addressing Caroline's requirement for a way to increase her super balance without reducing her cashflow.

4. Life, TPD and income protection insurance

David recognises the need for personal insurance protection and seeks financial planning advice on the amount and type of insurance cover he should take out. He is a member of a superannuation fund that offers a range of insurance cover but could also establish his own personal policies. He wants to maximise the benefits available while minimising the costs to him of the insurance.

David's financial planner reviews David's assets and liabilities and recommends the amount of cover that he requires. The financial planner also compares for David the effects of taking out the cover in his own name through a personal policy and taking out the cover through his superannuation account. As part of this comparison, the financial planner takes into account the after-tax cost to David of his insurance premiums and any potential taxation on the benefits payable under the policies.

The financial planning advice on David's tax position is aimed primarily at illustrating which method of structuring his insurance provides him the greatest benefit at the lowest cost.

5. CGT liabilities on disposal of investments

Erica owns portfolio of shares. She seeks financial advice on long-term wealth accumulation and an appropriate asset allocation.

Erica's financial planner assesses her risk profile and recommends an asset allocation that is consistent with that profile. As part of this process, the financial planner recommends that Erica sell some of her existing shares and use the proceeds for investment in managed funds to increase diversification of her investments.

In recommending which shares Erica should sell, the financial planner takes into account not only meeting Erica's asset allocation but also minimising any potential capital gains tax liability.
The financial planning advice on Erica's tax position is aimed primarily at ensuring that Erica can continue to accumulate wealth with investment that meet her risk profile.

6. Receipt of superannuation benefits

John is age 58 and contemplating retirement in the near future. He has retirement benefits of $400,000 that he may take as either a lump sum or a pension. John seeks financial advice on when may be the best time for him to retire and how he should take his benefits in order to pay out the remaining $80,000 on his mortgage and produce ongoing income in retirement.

John's financial planner recommends that he defer his retirement until age 60 and that he take part of his benefit as a lump sum to pay out his mortgage and use the remainder to commence an account based pension. In making this recommendation, the financial planner has considered the impact both before and after age 60 of superannuation lump sum taxes, taxation of superannuation income stream benefits, including any tax offsets, and income tax and capital gains tax on future investment earnings.
The financial planning advice on John's tax position is aimed primarily at ensuring that he can most effectively use his accumulated superannuation to meet one-off expenses and provide his required retirement income.

7. Eligibility for small business CGT concessions

George is a small business person nearing retirement age, but with very little in superannuation. He wants to sell his business and use the proceeds to fund an income in retirement. He seeks financial advice on his options for achieving this.

George's financial planner discusses with his the availability of small business CGT concessions that may apply on the sale of his small business. He outlines how they may be used to either minimise or eliminate any CGT liability that would otherwise arise and also how the exempt amount can be contributed to superannuation under the CGT contributions cap.

The financial planning advice on George's tax position is aimed primarily at identifying how the CGT concessions can be used to maximise the amount George can contribute to super.

8. Overseas super transfer

Hilary lived and worked in the UK for several years in the 80s and 90s but is now permanently resident in Australia. She has a UK pension fund that she is considering repatriating to Australia. She seeks financial advice on whether this is possible, how it can be done and the consequences of doing so.

Hilary's financial planner gives her advice on the request she must make to her UK fund and on the requirement that the transfer be only to a specific type of UK-accredited fund. In addition the financial planner outlines to her the potential taxation liability in receiving the payment, the election she can make to instead have the payment taxed at the fund level and how the amount counts to her contribution caps and any consequent excess contributions tax liability.

The financial planning advice on Hilary's tax position is aimed primarily at addressing for her the consequences of different potential course of action she has in relation to her overseas transfer.

9. Cashing out / directing ETPs

Isobel has been made redundant by her employer and consequently has received a bona fide redundancy which includes a tax free component and a taxable component, as well as an ex-gratis payment. In addition, Isobel received a payment of some accrued annual and long service leave. She seeks advice on clarification of the taxation implications of her payout, options to contribute to superannuation, and a course of action most suitable for accumulating wealth over the long term.

Isobel's financial planner outlines to her the consequences of cashing out the termination payment, in terms of tax she would pay on the payment and the effects the consequent increase in her taxable income would have on Isobel's overall taxation position. The financial planner also outlines to her the consequence of contributing the payment to super, in terms of tax payable within the fund. Finally, the financial planner compares for Isobel potential growth in her invested payment over a number of years, considering potential income and capital gains taxes that may apply insider and outside super.

The financial planning advice on Isobel's tax position is aimed primarily at addressing how she can best accumulate wealth over the long term.

10. Self employed / unsupported persons contributing to super

Self employed farmers, Sue and Jim are concerned about their financial security and seek to help them plan for their retirement.

The financial planner discusses the deductible contributions to super available to the self employed to build their wealth inside super. Also discussed is the tax implications and rules of the sale of the farm as the family business, and the taxable capital gain on the sale of a city apartment as a CG assessable asset.

The financial planning advice on Sue and Jim's tax position is aimed primarily at addressing how build wealth inside super and manage income tax to plan for their retirement.

11. Aged care – insurance / investment bond inside a private trust

Aged care can be extremely expensive with costs payable often varying depending on the financial situation of the individual seeking the care. Matilda is concerned about the impact of the aged care fees on her financial security and independence and seeks strategies to minimise the impact of the income tested fee when entering aged care.

Matilda's financial planner discusses the option to structure insurance / investment bond inside a private trust. As the investment is not deemed as a financial product this will produce a zero taxable distribution from the trust, which will reduce the income tested fee.

The financial planning advice on Matilda's tax position is aimed primarily at addressing how she can best reduce the fee payable to the aged care facility and prolong her financial independence.

12. Small business - Buy/Sell and Key Person insurance

Partners in a small business approach a financial planner (specialising in risk advice) to set up buy sell and key person insurance cover to fund succession planning and business risk mitigation strategies.
The financial planner discusses the different forms of business ownership structures, and the taxation and other implications of Buy/Sell insurance under each business structure option. Such business ownership structures could include individual ownership, cross ownership, through superannuation, or under an insurance trust.

Issues of deductibility of premiums, taxes on benefits and other taxation and business implications of key person revenue and capital protection are also discussed.

The financial planning advice on the business partners' tax position is aimed primarily at addressing how they can best protect their business into the future.

13. SMSF and in specie transfer of related party assets

Robert and Josephine approach a financial planner seeking advice on moving their commercial property to their SMSF as they want to minimise their overall tax position and prepare for their pending retirement.

The financial planner discusses and compares the tax implications of holding commercial property outside super versus inside the couple's SMSF. The planner works with Robert and Josephine to identify other 'related party' assets such as listed shares, unit trusts and in-house assets, to help achieve their tax and retirement goals. The planner explains the implications for deductibility of interest on related party finance, of moving Robert and Josephine's limited recourse borrowing arrangements into their SMSF.

The financial planning advice on Robert and Josephine's tax position is aimed primarily at addressing how they can improve their overall tax position and their retirement preparedness.

14. SMSF and complying lifetime pension (LTP)
A member trustee of a SMSF dies and the residual of the complying LTP forms part of a reserve. The remaining members seek advice on the tax implications of payouts from the reserve to ensure the SMSF can meet their future needs.

The financial planning advice on the remaining SMSF members' tax position is aimed primarily at addressing how they can ensure the SMSF can continue to meet their future needs following the death of another member trustee.

15. Employee benefits
Michael receives a promotion at work with a package which includes the opportunity to lease a motor vehicle and to participate in a staff share scheme where employees are offered $1,000 of shares in the parent company as part of a profit sharing arrangement. Michael approaches a financial planner for advice regarding the FBT implications of the employee benefits on offer, and the effect this may have on his overall tax position.

The financial planner also explained the record keeping obligations of a vehicle lease arrangement with an employer and shares received, for tax purposes.

The financial planning advice on Michael's tax position is aimed primarily at educating Michael about the FBT implications of the employee benefits on offer and his obligations in regard to record keeping, to enable him to make an informed decision about the employee package offered with his promotion.

16. Superannuation contributions
Thomas and Lara have paid off their mortgage and want to focus on building up their retirement savings. Of particular concern is that Lara does not receive any SG as she does not work.

The financial planner explains that Thomas could make a spouse contribution of up to $3,000 and receive a tax rebate of up to $540 for Lara as a non-working spouse.

The financial planning advice on Thomas and Lara's tax position is aimed primarily at addressing Lara's lack of superannuation to build up their retirement savings.

17. Expat tax issues
Toni has been offered a position in Dubai for a tenure of around 5 years and will be a non-resident of Australia for tax purposes and seeks advice on the taxation implications of retaining certain assets in Australia.

The financial planner discusses her 'non-resident' status and the tax implications of Toni's desire to retain her principal residence in Australia as an investment property, while earning an income in Dubai. The planner also explains the tax implications of the income Toni will earn on shares and term deposits she would like to continue to hold in Australia.

The financial planning advice on Toni's tax position is aimed primarily at addressing her desire to retain certain assets in Australia as a non-resident while living and working in Dubai.