

The Committee Secretary
Senate Economics Committee
Department of the Senate
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Parliament House
Canberra ACT 2600

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**Tax Agent Services Bill 2008 – Exposure Draft
Regulation of Actuaries**

Dear Sir/Madam

As you may be aware, the Institute's submission (copy attached) to the Treasury expressed concerns at the possibility of this Bill imposing further, unintended, regulation of actuarial services. During subsequent discussions with Treasury officers, the Institute provided specific examples of work undertaken by actuaries which might fall within the relevant definitions. Examples cited by the Institute included the following:

- Certificates prepared in accordance with sections 295-465 of the Income Tax Assessment Act 1997 (relating to deductions for insurance or self-insurance costs); and
- Certificates prepared in accordance with sections 295-385, 295-390 and 295-395 of the Income Tax Assessment Act 1997 (relating to exemptions from tax in respect of assets backing current pension liabilities).

Treasury officers have assured the Institute that, in their view, the abovementioned activities will not be caught by the relevant definitions in the Tax Agent Services Bill 2008 and that actuaries will not, therefore, be further regulated by the proposed legislation. While the Institute and its members will rely on this assurance that the legislation will not capture as a "tax agent service" activities that just calculate and certify amounts that are required to calculate a tax liability as they don't "apply or interpret the tax law", we would prefer to see the Explanatory Memorandum amended in such a way as to make it clear that there is no intention to further regulate the activities of actuaries.

From our discussions, we also understand that a Tax Practitioners Board will be established that will be able to issue a binding Legislative Instrument confirming that such certificates are exempt. To provide greater certainty for actuaries, the Institute will consider applying for such clarification once the legislation has passed.

Yours sincerely

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General Manager
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Attention: Ms Nan Wang
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Dear Sir/Madam

Tax Agent Services Bill 2008 - Exposure Draft

I would be grateful for your consideration of the following submission in response to the Tax Agent Services Bill 2008 Exposure Draft. We understand that submissions closed on 27 June 2008 and we appreciate your acceptance of our submission past this deadline.

As you are aware, the Institute of Actuaries of Australia (the Institute) is the sole professional body for actuaries in Australia. It represents the interests of over 1,400 fellows and 2,000 other members.

Members of the Institute are concerned that, in the absence of a broad exemption applying to actuaries, the legislation may severely limit the existing scope of services that can be provided by actuaries.

It is our understanding that, in the framing of the draft legislation, there has been no specific intention to introduce further regulation of actuarial services. We recommend, therefore, that a broad exemption be included in respect of actuaries, similar to the exemption provided for legal practitioners.

Provision of consulting services by actuaries

Actuaries are engaged in providing a diverse range of services to financial institutions, many of which involve the provision of advice on matters that relate to taxation law.

Some of the roles in which actuaries are employed are prescribed by legislation. For example, superannuation funds are required to engage an actuary to provide regular valuations for accounting, SIS and tax purposes, and to provide regular actuarial certification for tax purposes.

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Actuaries are also widely engaged as consultants for their knowledge and experience in a non-legislated capacity. For example, to provide advice to superannuation funds on the tax implications of funding strategies and benefit designs as well as tax issues relating to employers and members. Other areas in which actuaries are engaged include insurance, investment, banking, health, environment and enterprise risk management.

Under the Bill as currently drafted, many services currently provided by actuaries could be prohibited. A Tax Agent Service is defined in s90-5(1) as any service:

- (a) that relates to:*
- (i) ascertaining the liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or*
 - (ii) advising an entity about the liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or*
 - (iii) representing an entity in their dealings with the Commissioner; and*
- (b) that is provided in circumstances where the entity can reasonably be expected to rely on the service.*

The above definition of Tax Agent Service will replace the range of services specified in s251L of the Income Tax Assessment Act 1936. We consider it could be interpreted much more broadly, notwithstanding the interpretative provisions in Tax Determination 2005/16.

For instance, in the superannuation context, some examples of the types of services provided by actuaries that could be captured within the proposed definition of Tax Agent Service include:

- For tax purposes, the calculation and certification of notional taxed contributions, pension liabilities, deductible insurance premiums and notional premiums, pre-July funding credits, etc;
- Determination of actuarial liabilities of an employer for accounting, SIS and tax purposes;
- Estimation or determination of a tax liability (eg. tax on contributions or investment income) for the purposes of actuarial valuations, certification of funding and solvency and other actuarial calculations;
- Assisting trustees and employers to manage issues related to taxation, including:
 - implications of the non-provision of tax file numbers for superannuation funds;
 - advice on concessional and non-concessional contributions;
 - advice on superannuation benefits tax, including benefits tax on members under age 60, tax on superannuation death benefits, tax implications of receiving benefits as lump sum payments versus income streams.
- Providing technical signoff on product disclosure statements that explain tax issues to members;
- Providing technical signoff on superannuation fund websites that contain information relating to tax on superannuation;
- Provision of general advice under the Corporations Act.

Many of the above services will directly involve the actuary either:

- ascertaining the liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
- advising an entity about the liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law.

In some cases, the tax advice may be incidental to the main actuarial advice. In other cases it would appear that the advice would not be incidental but is the primary focus of the advice, eg. the calculation and certification of notional taxed contributions, pension liabilities, deductible insurance premiums and notional premiums, pre-July funding credits, etc.

Regulation of services provided by actuaries

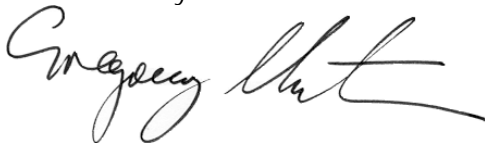
In order to regulate the broad range of services provided by actuaries, all Members are required to abide by the Institute's Code of Professional Conduct. The Code of Professional Conduct places an onus on actuaries to ensure, inter alia, they have relevant professional experience in the particular area on which actuarial advice is provided.

Further, all Members have a continuing duty under the Institute's Professional Standards to maintain professional knowledge and skill at a level required to ensure that the recipient of their services receives the advantage of competent professional services, based on current legislation and generally accepted practices and techniques.

In order to ensure that this legislation does not introduce further regulation of actuarial services, therefore, the Institute recommends that an exemption be included in the regulations in respect of actuaries. We submit that this exemption should be similar to the exemption provided for legal practitioners and have included, in Appendix A, our recommended drafting changes.

I hope you will find views and suggestions in this submission helpful. Please do not hesitate to contact John Maroney, Chief Executive Officer (john.maroney@actuaries.asn.au tel: +61 2 9233 3466) or Philip French, Director Public Affairs (philip.french@actuaries.asn.au: tel +61 2 9239 6111) should you have any queries about the contents.

Yours faithfully



Greg Martin
President



Institute of Actuaries of Australia

Appendix A – Suggested drafting changes to the Tax Agent Services Bill 2008

Suggested drafting changes to s50-5

50-5 Providing tax agent services if unregistered

(1) You contravene this subsection if:

- (a) you provide a service that you know, or ought reasonably to know, is a *tax agent service; and
- (b) the tax agent service is not a *BAS service; and
- (c) you charge or receive a fee or other reward for providing the tax agent service; and
- (d) you are not:
 - (i) a *registered tax agent;
 - (ii) a *legal practitioner covered by subsection (3); or
 - (iii) an *actuary covered by subsection (4).

(2) You contravene this subsection if:

- (a) you provide a service that you know, or ought reasonably to know, is a *BAS service; and
- (b) you charge or receive a fee or other reward for providing the BAS service; and
- (c) you are not one of the following:
 - (i) a *registered tax agent or BAS agent;
 - (ii) a *legal practitioner covered by subsection (3);
 - (iii) an *actuary covered by subsection (4);
 - (iv) if the BAS service relates to imports or exports to which an *indirect tax law applies—a customs broker licensed under Part XI of the Customs Act 1901.

Insertion of subsection (4) as follows:

(4) An *actuary is covered by this subsection if the actuary is a Fellow or Accredited Member of the Institute of Actuaries of Australia acting in the course of his or her profession to provide a tax agent service.

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Suggested drafting changes to s50-10

50-10 Advertising tax agent services if unregistered

(1) You contravene this subsection if:

- (a) you advertise that you will provide a *tax agent service; and
- (b) the tax agent service advertised is not a *BAS service; and
- (c) you are not:
 - (i) a *registered tax agent; or
 - (ii) a *legal practitioner covered by subsection (3);
 - (iii) an *actuary covered by subsection (4); or
 - (iv) a person providing services on a voluntary basis under a scheme approved by the Commissioner by notice published in the Gazette.

(2) You contravene this subsection if:

- (a) you advertise that you will provide a *BAS service; and
- (b) you are not:
 - (i) a *registered tax agent 1 or BAS agent; or
 - (ii) a *legal practitioner covered by subsection (3); or
 - (iii) an *actuary covered by subsection (4); or
 - (iv) if the BAS service relates to imports or exports to which an *indirect tax law applies—a customs broker licensed under Part XI of the Customs Act 1901; or
 - (v) a person providing services on a voluntary basis under a scheme approved by the Commissioner by notice published in the Gazette.

Insertion of subsection (4) as follows:

(4) An *actuary is covered by this subsection if the actuary is a Fellow or Accredited Member of the Institute of Actuaries of Australia acting in the course of his or her profession to provide a tax agent service.

Renumbering of subsection (4) to subsection (5) and of references therein:

(5) A notice under subparagraph (1)(c)(iv) or (2)(b)(v) is not a legislative instrument.

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