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Submission on draft legislation titled ‘Creating a regulatory framework for tax advice (financial product) services and other amendments’.

The Institute of Public Accountants (IPA), is one of the three professional accounting bodies representing over 25,000 accountants, business advisors, academics and students throughout Australia and internationally. The IPA prides itself in not only representing the interests of accountants, but also small businesses and their advisors.

The IPA welcomes the opportunity to provide a submission on the draft legislation for the regulation of tax advice services, provided by financial planners. Bringing financial planners within the existing regulatory regime is vitally important to ensure consistent regulation of all forms of tax advice, irrespective of who provides such services.

It is not uncommon that financial planners give tax advice in the course of providing financial advice. A core part of well-considered and comprehensive advice on financial products will often include information about the tax implications of investing in particular products.

On the 1st of March 2010, the Government introduced the Tax Agent Services Act (TASA) to regulate providers of tax agent services and to ensure minimum professional and ethical standards apply. The policy objectives of the TASA framework were to strengthen the integrity of the tax system, enhance the protection of consumers of tax agent services and thereby reduce the level of

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uncertainty for taxpayers, and the risks associated with the self-assessment system.

When this legislation was introduced, the Government carved out tax agent services provided by financial services licensees and their authorised representatives. This carve out expires on the 30th of June 2013. Financial advisers to date have been able to provide their clients with tax advice without being subject to the application of professional and ethical standards imposed by TASA, due to the abovementioned carve out.

Anecdotal evidence suggests that there may be anywhere between 8,000 and 17,000 financial advisers who could be providing tax advice for a fee or other reward. We are therefore pleased that the Government is now proceeding with bringing financial planners within the TASA regulatory regime. Whilst the carve out from TASA exists for this group, consumer protection is has been compromised, which is an unsatisfactory situation.

In relation to the draft legislation 'Creating a regulatory framework for tax advice (financial product) services and other amendments' we wish to make following points:

- Transitional Provisions – The proposal in the draft legislation provides for an initial 18 month notification phase. This notification period starts on the 1st July 2013 and ends on the 31st December 2014 and requires existing (pre 1 July 2013) financial service licensees and their representatives to notify the Tax Practitioner Board (TPB). Regardless of when the entity notifies the TPB during this 18 month timeframe, they will be taken to be registered for three years from the 1st July 2013, and more importantly will be subject to the Code of Professional Conduct from that date onwards. The proposed notification period appears excessive given that it will apply retrospectively. TASA imposes a range of obligations including a Code of Professional Conduct which includes providing tax advice (financial product) services competently. Entities will no longer have the protection of the carve out from TASA as from the 1st July 2013. There will be a natural presumption for

entities providing financial services that they will be liable to professional and ethical standards under TASA from the date they decide to notify TPB. Notifying the TPB within the specified notification period guarantees registration without having to satisfy any education or experience requirements. This represents the only real incentive for financial planners to come forward into TASA regime during the notification phase. We advocate for a far shorter notification period to ensure tax advice provided by financial planners is subject to professional and ethical standards as required by TASA. Financial planners have already had the benefit of a 3 year holiday from having to be regulated under the TASA regime. A shorter notification period will reinforce entities professional and ethical responsibilities under the TASA regime.

If the notification period is to remain this long, we recommend that an education programme will need to be implemented to explain to the entities providing tax advice (financial product) services, the ramifications associated with registration under TASA during the notification period. There is no incentive for entities to apply until the last day of the notification period, as it only becomes a contravention of TASA not to notify until the 1st January 2015. Thereafter, entities providing tax advice associated with financial advice will need to apply under the transitional arrangements and will need to have their education and experience requirements assessed by the TPB before they will be considered for registration.

- For new entrants providing tax advice (financial product) services after the 1st July 2013, it is unclear what registration options are available to them as they are ineligible to apply under the notification period.

Do they need to wait until the 1st January 2015 to apply under the transitional phase?

What will be the registration education and experience requirements for this group to register?

Will this group also be granted relaxed registration requirements?

It would be helpful if these issues were addressed in the explanatory memorandum.

- The definition of what is included in “tax advice (financial product) service is quite broad and includes following:
 - ascertaining an entity’s actual, or potential, tax liabilities, obligations or entitlements under a tax law; or
 - advising an entity about their actual, or potential, tax liabilities, obligations or entitlements under a tax law.

Whilst the Code of Professional conduct requires registered entities to provide services competently, the above definition is too broad to complement the Code requirement. We recommend some restrictions on what tax advice services can be provided by financial planners.

In summary, other incidental tax advice providers, including groups such as valuers, and quantity surveyors, have not had the benefit of TASA carve out since it was introduced back in 2010. In the interest of consumer protection and preserving the integrity of the TASA regime, the Government should fast track its regulation of tax advice provided by financial advisers.

We look forward to financial planners being subject to the same regulatory framework which applies to all other providers of tax advice.

The IPA welcomes the opportunity to discuss further any of the matters we have put forward in our submission. Please address all further enquires to Tony Greco (tony.greco@publicaccountants.org.au or 0419 369 038).

Yours sincerely

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