FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

28 July 2017

Inspector-General of Taxation
GPO Box 551
SYDNEY NSW 2001

Email: taxprofession@igt.gov.au

Dear Sir / Madam

Review of the Future of the Tax Profession

The Financial Planning Association of Australia welcomes the opportunity to provide input into the Review of the Future of the Tax Profession.

Our submission relates to the financial planning profession and their role as third party intermediaries in the tax system.

We would welcome the opportunity to discuss the matters raised in our submission with you further. If you have any queries, please do not hesitate to contact me on 02 9220 4500 or policy@fpa.com.au.

Yours sincerely

Heather McEvoy
Policy Manager
Financial Planning Association of Australia

FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

REVIEW OF THE FUTURE OF THE TAX PROFESSION

FPA submission to

Inspector-General of Taxation

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Introduction

The Tax Agent Service regime commenced for financial planners in 2014 with a three year transition period for registration with the Tax Practitioners Board (TPB). This presented a significant challenge for both the financial planning profession and the TPB of adapting the TPB policies within the TASA law to be appropriately applied to and able to be implemented for the services and business models of financial planners.

This is an ongoing regulatory challenge that creates potential risks of inadvertent non-compliance as the financial planning profession, policy makers and regulators grapple with inconsistencies between the requirements of different Regulators, and the impractical application of some laws to the diverse business operations for providing financial advice.

Our submission relates to the financial planning profession and their role as third party intermediaries in the tax system.

The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 11,000 are practising financial planners and 5,600 Certified Financial Planner® professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and super for our members – years ahead of FOFA.
- An independent conduct review panel, Chaired by lawyer Graham McDonald, deals with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules required of professional financial planning practices. This is being exported to 26 member countries and 170,000 CFP® professionals of the Financial Planning Standards Board.
- We established the Financial Planning Education Council in 2011 as an independent body chartered with raising the standard of financial planning education. The FPEC has built a curriculum with 17 Australian Universities for Bachelor and Master degrees in financial planning
- We are the only professional body in Australia licensed to provide the CFP® certification program. CFP® certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP® standing are equal to other professional designations, such as the Chartered Accountant designation of the Chartered Accountants Australia and New Zealand (CA).

We are also recognised as a professional body by the Tax Practitioners Board.

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1. Tax (financial) advisers (TFAs)

Financial planners provide incidental tax advice to consumers and play a very different role to that of tax agents in assisting consumers with their financial affairs. The financial planning profession is very different to the accounting profession.

Financial planners registered as tax (financial) advisers, do not provide advice on tax returns; their primary focus is the provision of financial planning advice, which may include consideration of tax and superannuation issues relevant to the client's circumstances and goals, and the subject matter of the advice. Financial planners are licensed to provide personal financial advice to retail clients under the Australian Financial Services (AFS) licensing regime of the Corporations Act. The majority of financial planners are authorised to provide advice under another business' licence.

The types of services provided to clients and the AFS licensing system, means there is also a significant difference between type of business models used by financial planning businesses, and accounting businesses. Accounting and financial planning are different services and use different types of business models.

The primary purpose of the establishment of the Tax Agent Services Act (TASA) and the TPB was to regulate professionals who prepare returns of income required to be filed for taxpayers. As stated in the Terms of Reference for the Review, financial planners are third party intermediaries in the tax system (1.c) and 2.a)). Although the primary reason for the TASA and TPB was for regulation of professionals who assist consumers with tax returns, it was extended to capture TFAs due to the advice they provide on superannuation and the consideration of tax matters necessary for providing financial advice, as the relevant laws are administered by the Commissioner of Taxation.

Therefore there is an ongoing and significant risk that TFAs will be unnecessarily caught by policy and regulatory changes appropriate and necessary for tax agents, but that may not be relevant or appropriate to the provision of financial advice and the services provided by TFAs, or be able to be implemented within the business models used by financial planning businesses.

Recommendation

1. The policy and regulatory environment must reflect the significant differences between the services provided by tax agents and tax (financial) advisers, including:

    a) the different services provided to clients
    b) the different business models used within each profession
    c) the additional regulatory oversight of the financial planning profession under the Corporations Act.

2. The regulatory requirements of the TASA regime that apply to tax (financial) advisers, including TPB policies, must be relevant to the services TFAs provide to their clients and their business models, and must be compatible with the requirements for providing personal financial advice under the Corporations Act.

2. ATO's interactions with Tax (Financial) Advisers

Currently, TFAs are largely invisible to the ATO. The system has been built on the ATO's interactions with tax agents. It does not appear to consider or apply to TFAs and the services they provide their clients. This approach is vastly different to other Government agencies, such as Centrelink, where the role of financial planners in helping both clients and the department is recognised and catered for.

We understand that the ATO's digital transformation process received recommendations that TFAs be included into the ATO system, however at this stage there is no ability for taxpayers to appoint their authorised TFA to liaise with the ATO on their behalf in any capacity.

Under the Corporations Act, financial planners are required to provide financial advice that is appropriate for the client's circumstances. This is reliant on accurate client information. The ATO holds accurate client data particularly in relation to tax, income, superannuation and investments.

However, TFAs are currently not able to access the client data held by the ATO. Rather they must either rely on their client's accountant to pass on the required information, seek information from product providers (eg. superannuation funds), or seek the information directly from their client. This means TFAs are reliant on product providers, accountants and clients to pass on data that is most accurately held by the ATO. There have been many incidents where the information provided to TFAs by super funds and other product providers has been inaccurate, creating a liability for financial planners and clients.

This has also resulted in a very inefficient process. For example, a case study where a superannuation fund has provided inaccurate information – the client's accountant informed the financial planner, who liaised with the fund to correct the data, and is then required to provide the accurate data to the accountant, who is permitted to submit it to the ATO.

This issue was particularly problematic with the recent superannuation changes such as the implementation of the new Transfer Balance Cap in the lead up to the 1 July 2017 commencement date. Another example was the 2016 Federal Budget announcement on 3 May 2016 for a $500,000 lifetime non-concessional cap from 1 July 2016 including contributions from 1 July 2007. Although not enacted, the Government announcement resulted in taxpayers having to completely reassess their retirement strategies and obtain historical data in a very short time-frame to ensure they did not inadvertently breach the proposed law. This resulted in TFAs spending an inordinate amount time with accountants and clients collating data from the ATO as the only verifiable source of accurate data. Superannuation law and regulations are complex and is administrated by the ATO. Australian taxpayers should be able to rely on their TFA to source accurate data directly from the ATO in order to provide accurate and timely advice regarding their personal situation.

This puts clients at risk of incurring additional costs, missing vital regulatory deadlines (particularly in relation to superannuation and tax events), and TFAs are at risk of providing financial advice based on incorrect client data creating a significant liability.

TFAs must be able to have timely access to accurate client data sourced directly from the ATO so both the financial planner and the client can confidently rely on its accuracy.

Under the TPBs policy, TFAs are also not permitted to interact with the Tax Commissioner on behalf of their client. This creates another significant inefficiency and inconsistency in the regulatory system. TFAs are permitted under the Corporations Act to provide personal advice on superannuation. Unless tax agents also hold an AFSL (or limited AFSL), they are not permitted to provide personal financial advice, including advice on superannuation matters. However, superannuation laws are administered by the Tax Commissioner - tax agents are permitted to interact with the Tax Commissioner on behalf

of the client. TFAs are not permitted to interact with the Tax Commissioner. TFAs who provide superannuation advice under the Corporations Act, should be permitted to interact with the Tax Commissioner about their clients' liabilities in the context of superannuation.

TFAs can also act as SMSF administrators and are often involved in the creation of a self-managed superannuation fund via the Australian Business Register (ABR). The issues with visibility also extend to the ABR register. Some changes to business details can be done through the ABR, while other changes must be done through the ATO Business portal. TFAs should have edit access to both portals, in addition to access to the tax agent portal.

Financial planners are regulated as tax professionals but they are not afforded the same benefits of this regulation as given to their tax agent peers. This is to the detriment of their clients.

Recommendation

3. Tax (financial) advisers be permitted access to client data held by the ATO to ensure the accuracy of the client information upon which their advice is provided, in order to meet the best interest duty and appropriate advice obligations in the Corporations Act.

4. Tax (financial) advisers be permitted to act on behalf of a client with the ATO, particularly in relation to superannuation matters.

5. Tax (financial) advisers should have access to the Australian Business Register (ABR), ATO Business portal, and tax agent portal, particularly in relation to superannuation matters.

3. Consumer access to ATO data

The vast range and complexity of tax matters administered by the ATO has resulted in a siloed delivery of assistance for tax professionals and consumers. For example, a consumer or their representative cannot speak with the one ATO representative about themselves as an individual taxpayer, an SMSF member/trustee, and a small business operator.

It is also difficult for an individual to find data about themselves in one central location through the ATO website or other Government portal. Currently, a consumer must speak to or access multiple ATO customer touch points to find information and data about themselves on different tax and superannuation matters.

Australian taxpayers should be able to login and see all the entities and listings related to their name/tax file number in one location.

This would require the mapping of all of a consumer's data held by the ATO into one accessible touch point. The MyGov portal may be worth considering for this purpose, or at least offer valid experience in this regard.

Through an information portal, each consumer should be able to distinguish and nominate who they permit to access the data held about them by the ATO, and the type of data each nominee is permitted to access. For example, a taxpayer should be able to authorise their TFA to interact with the ATO either as information only and/or to update data in relation to their tax and superannuation affairs.

It is important to note that consumers want to feel comfortable and confident that their data is secure. This is paramount to the ATO's interactions with both consumers and their representatives, including TFAs, and goes to the heart of recent ATO technology issues.

Recommendation

6. Australian tax payers should be able to:

    a) access personal data about themselves via one ATO touch point, such as the MyGov portal

    b) permit nominated representatives to access to their personal data.

4. Inconsistent approach of multiple regulators

In the near future one piece of personal financial advice will be regulated by 7 regulators - ASIC, TPB, AUSTRAC, Information Officer (Privacy), APRA, ATO, and the new Financial Adviser Standards and Ethics Authority (FASEA) - all administering Acts and regulatory requirements using different language and imposing different compliance requirements on TFAs. In addition, the same piece of advice will have oversight and interpretation by the Courts, the new Australian Financial Complaints Authority (AFCA), Australian financial service licensee and professional bodies such as the Financial Planning Association.

This creates a significant risk that the regulatory and compliance requirements under one Act and Regulator may differ to those of others, leaving TFAs at risk of breaching one regulation in order to meet the requirements of another set of regulatory requirements. TFAs must interpret how each different set of regulatory requirements for each different Regulator differ from other regulators to ensure they do not in avoidably breach requirements. This has a significant impact particularly on small licensees.

Even small differences in requirements, such as the need to provide different documentary evidence to different regulators for the same type of regulatory activity such as CPD/CPE, significantly drives up process and compliance costs for businesses, ultimately impacting on the cost of advice for consumers.

It also makes it more challenging for consumers to comprehend, trust and engage with the financial system, and understand their rights and the consumer protection mechanisms available to them.

Recommendation

7. There must be a consistent approach to the regulation of tax (financial) advisers across all relevant regulators.

8. All relevant regulators of should work together to ensure regulatory requirements are consistently applied to tax (financial) advisers in a clear, comprehensive and complementary manner.

    a. Regulators should be required to consult with other regulators to ensure there is a consistent approach taken when developing regulatory guidance, legislative instruments and other policies that impact on the administration of the Acts they are responsible for. Joint Regulator and industry forums should be considered for this process.

b. Joint regulatory guidance should be also be considered. (The recent publication of AUSTRAC's Privacy Guidance, developed by AUSTRAC with the Information Officer, is a good example of the benefits of joint guidance.)

A. Education and professional standards requirements

The Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 established a new education and professional standards framework for the financial planning profession which includes:

- The establishment of the Financial Adviser Standards and Ethics Authority (FASEA), an independent standards setting body to set new education standards, a professional year framework and continuing professional development (CPD) requirements, as well as developing a comprehensive code of ethics for financial planners.

- New financial planners from 1 January 2019 will require a degree, to undertake a professional year and pass an exam.

- All financial planners, both new and existing, will be required to undertake Continuing Professional Development (by 1 January 2019), be subject to a code of ethics (from 1 January 2020) and pass an exam (by 1 January 2021).

- Existing financial planners who need to undertake additional study to meet the new education requirements will have until 1 January 2024 to meet the new standard.

The Bill also restricted in the Corporations Act the terms financial planner and financial adviser. To provide personal financial advice and use these terms an individual must have met the new education and professional standards and be listed on ASIC's Register of Relevant Providers. This includes the requirement to hold a degree or degree equivalent by the completion of the transition period.

However the TPB's education requirements for TFAs includes diploma level qualifications. We suggest that it may be appropriate in the future to align these requirements with the new education standards for financial planners in the Corporations Act including alignment of the transition requirements for both new and existing financial planners.

Similarly, the FASEA should consult with the TPB to ensure its new education standards, such as the degree curriculum and course requirements, align with or incorporate the TPB tax and commercial law course requirements of the TPB.

Alignment of the education standards will help ensure that universities and education providers offer complete courses that deliver learning outcomes necessary to satisfy the legal requirements of all Regulators of financial planners/TFAs, and to be registered to provide personal financial advice with both ASIC and the TPB.

With the alignment of education standards, consideration should also be given to accepting other regulator's endorsement of an individual having met the qualification and other requirements. For example, if an individual is registered by ASIC as meeting the Corporations Act education requirements, this should be sufficient for the TPB's registration purposes.

The FASEA is also tasked with the development of a Code of Ethics for financial planners. This should include consultation with the TPB regarding the provisions and compliance requirements of the TASA Code of Conduct. The alignment of compliance requirements would significantly reduce the impact of the regulatory burden created by multiple Codes.

Recommendation

9. FASEA consult with the TPB

   a) to ensure its new education standards for financial planners, such as the degree curriculum and course requirements, align with or incorporate the TPB tax and commercial law course requirements for registration as a tax (financial) adviser.

   b) regarding the provisions and compliance requirements for the new Code of Ethics for financial planners.

5. Consistent treatment across professions

Regulations should not afford any commercial benefit to one type of tax professional over another. Laws and Regulator policies and practices that provide an advantage to tax agents and their clients, should also be extended to TFAs to ensure there is symmetry in the system for clients using tax professionals.

The FPA notes that following the transition to the new education framework for financial planners, TFAs will soon have higher minimum entry requirements than the diploma level accepted for qualified accountants.

A. Equal standing for FPA members and members of other professional bodies

The Financial Planning Association (FPA) asks for our members to be given the same standing as members of other tax practitioner professional bodies such as the CPA Australia (CPA), Chartered Accountants Australia and New Zealand (CAANZ), Institute of Public Accountants (IPA) and National Tax and Accountants Association (NTAA) when it comes to being included as 'authorised witnesses' for Commonwealth Statutory Declarations.

Commonwealth Statutory Declarations are currently governed by the Statutory Declarations Act 1959 and the Statutory Declarations Regulations 1993.

Under current legislation only a person listed in Schedule 2 to the Statutory Declarations Regulations 1993 is a person before whom a statutory declaration can be made. Financial planners are not currently included on the list.

These Statutory Declarations can be used:

- In conjunction with the administration of any Department of the Commonwealth (i.e. ATO, ASIC, etc.)
- For the purposes of a law of the Commonwealth (i.e. Tax, Super, Social Security)
- In connection with any matter arising under a law of the Commonwealth.

Application with other Acts

The Statutory Declarations Act 1959 only authorises a person to witness a Commonwealth statutory declaration. Under the Regulations, this list includes a person who is authorised to witness a statutory declaration of a particular State (or Territory) where it is made in that State (or Territory).

Individuals who can witness Commonwealth statutory declarations cannot automatically witness a State (or Territory) declaration. Only where the State (or Territory) also lists the specific occupation, or deems the Commonwealth Regulations, can they also sign the State (or Territory) based declaration. Currently there is one state and one territory that deem occupations listed under the Commonwealth Regulations.

Other Acts, such as the Anti-Money Laundering and Counter-Terrorism Act 2006, deem persons listed under the Statutory Declaration Regulations 1993 to qualify as persons that can certify copies of documents [see the definition of certified copy under paragraph 1.21 of Instrument 2007 (No. 1)].

The AML/CTF Rules allow financial planners to certify documents if they are an authorised representative of an AFSL license, and have two or more years of continuous service with one or more licensees.

We note that the Statutory Declarations Regulations is currently under review by the Attorney-General's Department. While we have made a submission to the Department's review of the Regulations, a final decision not expected until mid-2018.

Consumer need

The benefits of using a financial planner have been recognised by many people. In 2015, 2.4 million Australians were actively using a financial planner and a further 1.1 million intended to start using one in the next two years.[1]

Financial planners help people simplify their finances and set achievable financial goals, particularly in relation to complex matters such as superannuation, debt management, insurance, investments, retirement and estate planning. This involves putting appropriate structures and arrangements in place, which often require documentation to be witnessed by an authorised witness.

Financial planners are not currently included in Schedule 2 of the Statutory Declarations Regulations. This means clients must find an authorised witness in order to finalise the documentation necessary to implement their financial plan (often at additional unnecessary expense plus significant inconvenience), and restricts the ability of financial planners to service their clients on a daily basis.

As previously stated, precedent for permitting financial planners to witness documents has been set in the AML/CTF Rules which allows financial planners to certify documents. Consumers often question our members asking why financial planners are not included in the statutory declaration regulations when they can certify identification documents under AML/CTF laws.

[1] **Investment Trends 2015 Direct Client Report**

Consistency

Like CPA, CAANZ, IPA and NTAA, the FPA is a recognised professional body by the TPB and continues to meet the requirements set by the Regulator for all tax practitioner bodies. However, the FPA is the only professional body to have received ASIC approval of a Code of Conduct for its members to sign up to under s1101A of the Corporations Act.[2]

CFP® professionals meet initial and ongoing competency, ethics and practice standards and abide by professional conduct rules and ongoing competency and practice requirements. The global CFP® standards and certification requirements are based on empirical research of the abilities, professional skills and knowledge needed to practice financial planning.

FPA's Financial Planner AFP® members must hold an undergraduate degree or higher, have at least 1 years' supervised experience in a financial planning related role, and adhere to our professional obligations.

The FPA would like to see our CFP and AFP members given the same standing as members of other professional bodies such as the CPA, ICAA, IPA and NTAA, and be included as 'authorised witnesses' for Statutory Declarations.

Recommendation

10. Certified Financial Planner® and Financial Planner AFP® members of the Financial Planning Association of Australia be included on the *list of other persons before whom a statutory declaration may be made*, in Schedule 2 of the Statutory Declarations Regulations.

B. Professional privilege for financial planners

Legal professional privilege ("LPP") is a right attaching to qualifying communications between lawyers and their clients. In its basic form, LPP applies to communications for the dominant purpose of:

- Obtaining or giving legal advice ("advice privilege") or
- Preparing for anticipated litigation ("litigation privilege").

This privilege is considered a right of the client rather than the (legal) professional, and it has its roots in the notion that fairness and public interest require a client being able to make full and frank disclosures to their professional adviser without the risk of prejudice and damage by subsequent compulsory admission.

Extending professional privilege to tax practitioners

It is widely viewed that LPP is necessary to ensure proper administration of justice. However, under common law, LPP only extends to the client-lawyer relationship.

In 2007 the Australian Law reform Commission (ALRC) delivered a report, "*Privilege in Perspective: Client Legal Privilege in Federal Investigations*", which reviewed LPP in the context of federal investigatory bodies, including the ACCC, ASIC, ATO, APRA, AFP and Royal Commissions of inquiry.

[2] Under s1101A of the Corporations Act, ASIC has the power to approve codes of conduct that relate to the activities of AFS licensees, their authorised representatives or product issuers.

One of the major recommendations of the ALRC report was that privilege be extended, in defined circumstances, to include tax advice provided by accountants. This extension would formalise the accountant's exemption (see below) and would bring Australia into line with the position in the US, UK and NZ.

The Tax Commissioner vs. professional privilege

Under Sections 263 and 264 of the Income Tax Assessment Act 1936 (ITAA 36) the Commissioner has broad powers enabling the ATO to have access to buildings and documents in pursuit of their legal aims. This provision captures the two primary Tax Acts, plus parts of the Taxation Administration Act 1953, which together contains the powers dealing with objections, reviews and appeals and the collection and recovery of income tax.

Since the decision of Baker v Campbell (1983) 153 CLR 52, communications and documents under LPP have not been available for inspection by the Commissioner under sections 263 and 264.

The accountant's exemption

In the 1980's the accounting lobby successfully argued that the ability of lawyers to claim LPP gave them a competitive advantage over the accounting profession when providing taxation advice. In response the ATO issued the 'Access and Information Gathering Manual' guidelines recognising that "*taxpayers should be able to consult with their professional accounting advisers on a confidential basis*" and created self-imposed limits on ATO access to accountant's papers.

This exemption provides different concessions for differing types of documents, such as source documents (i.e. records of transactions), restricted source documents (i.e. advice documents) and non-source documents (i.e. other advice documents).

As previously mentioned, financial planners have been required to fall under the registration and governance of the Tax Practitioners Board, with progressive registration since 1 July 2014. This change recognises that TFAs provide advice on taxation matters that clients rely on to make informed financial decisions.

While there is scope[3] for the ATO to lift the accountant's exemption, there remains a competitive advantage with accountants having access to this exemption while TFAs do not.

It was noted in the 2007 ALRC report that the fact that the same advice can be given by accountants and lawyers on taxation matters as the crucial factor in their push for the extension of privilege to taxation advice. On the same basis this should also extend to financial planners providing the same advice.

In 2011 the ALRC provided a submission in response to the Discussion Paper on "*Privilege in relation to Tax Advice*". This submission covered a number of areas, including the extension of the proposed Privilege to BAS agents. The ALRC response was that BAS agents may be included under any extension within their limit to provide advice with respects to taxation law under section 90-10 of the Tax Agent Services Act 2009.

Further, the ALRC made a general observation that it is the lawful provision of advice with respect to particular laws that provides the foundation for applying the rationale to other professionals.

[3] *White Industries Aust v Commissioner of Taxation (2007)* 66 ATR 306

The FPA shares the same interpretation that would see the new category of Tax (Financial) Adviser captured within any law created to extend the provision of LPP (in defined circumstances).

Recommendation

11. The FPA requests as an interim measure that financial planners are included in the ATO's self-imposed 'accountants exemption' to ensure there is no commercial advantage where the same advice is being provided by the two different professions.

12. Longer term, the FPA requests statutory provisions to ensure all tax practitioners, including CFP® and AFP Financial Planners®, receive professional privilege, in defined circumstances, relevant to the areas of law they provide advice in (i.e. taxation, superannuation, social security, estate planning, etc)

C. Tax deductibility of advice fees for consumers

The precedent of tax deductibility of professional fees is already set and allows consumers to deduct fees paid to registered tax agents, BAS agents and lawyers. There is now an opportunity to amend a current anomaly in respect to the tax deductibility of financial planning fees. This is consistent with the Coalition's election commitment to reduce costs for consumers to access financial advice[4].

TFAs must comply with the same regulatory requirements of the TASA Code as tax agents, therefore there should be symmetry in the benefits extended to clients of both professions. The legal requirements should not provide a commercial advantage to one type of tax professional over another.

Including financial planners in the Tax Agent Services regime, and the banning of commissions on financial advice through the Future of Financial Advice reforms, has set the right environment to introduce tax deductibility of financial advice fees.

Currently, a fee for service arrangement for the preparation of an initial financial plan is stated by the Australian Taxation Office[5] to be not tax deductible under section 8-1 of the *Income Tax Assessment Act 1997*.

Tax Determination TD 95/60 differentiates between a fee for drawing up a financial plan and a management fee or annual retainer fee. The determination states that the ATO is of the opinion that the expense incurred in drawing up a plan is not deductible for income tax purposes because the expenditure is not incurred in the course of gaining or producing assessable income, but rather is an expense that is associated with putting the income earning investments in place. This is in contrast to the tax deductions available for professional fees incurred when purchasing an investment property, and the legal fees associated with establishing a trust.

Taxation Ruling IT39 states that where expenditure is incurred in 'servicing an investment portfolio' it should properly be regarded as being incurred in relation to the management of income producing investments and thus as having an intrinsically revenue character.

[4] The Hon Senator Arthur Sinodinos AO, Delivering affordable and accessible advice (20 December 2013), available at <http://axs.ministers.treasury.gov.au/media-release/011-2013/>
[5] Refer to ATO Taxation Determination TD 95/60

Consumers are paying for personal financial advice in varying ways that result in different taxation treatments for no apparent public benefit. This variety of treatment appears to be contrary to the ATO's obligation under the Taxpayers Charter it adopted in November 2003 to treat tax payers consistently.

The inability to claim a tax deduction for the fees associated with an initial financial plan acts as a disincentive for people to take the first step towards organising their finances on a strategic basis. This has widespread cost implications, both for the individuals and the community as a whole. Encouraging the use of professional financial planning advice results in a more financially literate community, and benefits society overall.

Quality financial advice can;

- reduce financial and social exclusion for consumers and help them navigate the financial marketplace and learn how to better manage their finances providing them with dignity and peace of mind throughout their life

- deliver significant consumer benefits including changes in savings behaviour, setting proper budgets, following a plan for paying off debt, and organising finances and building wealth

- change people's behaviour and habits of managing their financial affairs by teaching them sensible and simple practices that can be used in their everyday lives to prepare for their future financial needs, and

- improve the financial capability of consumers, enabling them to make informed judgments and effective decisions about the use and management of money throughout their lives.[6]

Research commissioned by the FPA has found that 30% of those who have not used financial advice and do not intend to seek advice in future have stated that the high cost of advice is a key reason for why they have not sought the advice.[7] Public policy initiatives to improve access to affordable advice for all Australians, particularly those most in need of assistance in managing their finances, will reduce the cost of advice for consumers while maintaining consumer protections and advice quality.

Making financial advice more affordable for consumers supports the Coalition's superannuation policy *"[t]o encourage as many Australians as possible to actively plan and save for their retirement, to take full advantage of the benefits the superannuation system provides and to work toward a self-funded retirement."*[8]

It also assists Government to fulfil its obligation to address the substantial issues of financial and social exclusion by helping consumers gain access to expertise to help them navigate the financial marketplace and learn how to better manage their finances.

Rice Warner research[9] identified clear societal benefits of financial advice;

- reduced debt - increases disposable income for more productive purposes;

[6] FPA Value of Advice Research, Rice Warner Actuaries, February 2008.
[7] Investment Trends, 'FPA Member Satisfaction Report' (December 2014)
[8] Brian Loughnane, 'The Coalition's Policy for Superannuation' (September 2013), available at < http://parlinfo.aph.gov.au/parlInfo/download/library/partypol/2717533/upload_binary/2717533.pdf;fileType=application%2Fpdf#search=%22library/partypol/2717533%22>
[9] Above n 4.

- higher rates of return on investments over long periods - building wealth;
- insurance protection - prevents people from relying on welfare;
- higher levels of savings – reduces reliance on government benefits during and after retirement;
- a financially literate and conscientious society that would make better long-term decisions.

Financial planners provide valuable advice that is important for the long-term economic welfare of Australians. The financial planning profession is uniquely positioned to help Australians build their wealth and plan for a financially independent retirement.

Specifically legislating for initial advice fees to be tax deductible would greatly improve consumers' access to affordable financial advice. While this would involve some additional costs to Government, these costs would be significantly outweighed by the long-term benefits. To control the cost to revenue, the Government could include caps on either the size of the tax deduction or an income cap on those able to receive a deduction.

The FPA notes the Federal Labor Party's proposal to cap deductible claims for managing tax affairs at $3,000[10]. This will potentially include legal, accounting and financial advice fees relating to tax matters. The complexity of such a cap will be differentiating the aspects of accounting versus legal versus advice fees that can and cannot be included in the cap so the invoicing and deduction can be appropriately applied and administered. It also potentially provides commercial advantage to one professional over others, and is a very low cap that would impact on the cost of services for consumers. For these reasons, the FPA would suggest a cap for each of the professions separately with a cap limit that is appropriate for the type of service provided, would be more appropriate and simpler to administer.

Recommendation

13. The FPA recommends that the Government engage the Productivity Commission to examine the short-term and long-term position of the Budget if the preparation of an initial financial plan and ongoing fees were tax deductible. This report should be robust to a variety of different solutions, such as means-tested or capped tax deductions.

14. The FPA recommends the preparation of an initial financial plan, and ongoing management fees or annual retainer fees, be expressly stated to be tax deductible.

6. Tax Practitioners Board

The 2014 commencement of TASA for financial planners who provide a tax (financial) advice service for a fee, saw the implementation of a new regime for financial planners and the oversight or an additional profession which was new to the Tax Practitioners Board. This presented a steep learning curve for both the profession and the Regulator. We compliment the Regulator's efforts during this period to engage with and understand the financial planning profession.

[10] Hon Bill Shorten MP, Leader of the Opposition, Budget-in-reply speech- House of Representatives, Canberra, 11 May 2017

However, the primary purpose for the establishment of the TPB in 2009 was to regulate BAS agents, and tax agents – that is, accountants. Hence the TPB was formed with accounting and book keeping expertise to respond to its regulatory responsibilities.

Three years on from the expansion of TASA to TFAs, we are concerned about the TPB's in-house expertise and ability to appropriately regulate and assist TFAs with TASA enquiries. FPA member feedback indicates that many of our members have received advice and policy responses from the TPB that indicate an inadequate level of understanding of how financial planning businesses operate and the process and regulation of financial advice. This expertise should be proportionate to the number of registered TFAs, at all levels of the TPB and at appropriate touch points with registered TFAs.

There is still only one TPB Board member who is a TFA despite the recent appointments made by the Minister. Over 25% of TPB registered tax professionals are TFAs, represented by just 12.5% of the TPB Board members.[11]

The following examples highlight the challenges faced by the TPB due to the differences in the business models used and advice provided by financial planners versus accounting professionals.

- While the TPB have gone to great lengths to accommodate TFAs into their registration framework, there is still an issue with how the TPB treat licensees. To assist TFAs, licensees were permitted to act on behalf of their advisers and were able to bulk register authorised representatives (self-employed advisers) during the notification period. However during the transitional period (which was the only time employed advisers could be registered) licensees could not bulk register the employed advisers even though they were their direct employer. For re-registration licensees are permitted to bulk register their authorised representatives but not their Corporate Authorised Representatives (CAR).

- There is also incongruity in the how the traditional structure of an accounting practice / partnership brushes up against the financial services licensing regime in how the TPB treats the provision of advice. For example, if an accounting firm has a corporate entity, tax agents provide services on behalf of that entity. The TPB assumes that TFAs are structured the same when operating through a CAR, - that is, the principal is providing services on behalf of their corporate entity. However, under the Corporations Act licensing system, the Corporation Authorised Representative role relates more to the practice structure (staff and asset protection etc), but it is the Authorised Representative that has his/her name on the Statement of Advice document. The individual Authorised Representative provides that advice under their own name, not under the CAR's name. These are structural and possibly legal issues that show the disparity in approach to planning practices.

Recommendation

15. The TPB should have appropriate in-house expertise on financial planning business operations, processes, client-planner relationships, and oversight by other regulators.

16. The percentage of representatives with tax agent, tax (financial) adviser or BAS agent expertise, on the TPB Board of Directors should be directly proportionate to the percentage of registered practitioners in each category.

[11] http://kmo.ministers.treasury.gov.au/media-release/067-2017/

17. Similarly, there should be an appropriate number of individuals with TFA expertise, preferably from the financial planning profession, within the TPB including in its policy and call centre areas.

7. Consumer education

Tax and superannuation are complex systems that are complicated for consumers to understand. The Government and industry are continuously working to increase engagement and encourage informed decision making to improve outcomes for consumers. However the seemingly endless regulatory changes exacerbate both consumers' ability to understand the rules they must follow and their level of engagement with these systems, particularly with superannuation. This puts both consumers and the effectiveness of the system at risk.

To overcome this issue, information about the tax and superannuation systems and rules, and personal data, must be easily accessible by each individual.

While the ATO has significantly improved the availability of consumer focused information (to explain the 2016 Federal Budget changes to superannuation for example) and should be commended for such efforts, feedback from FPA members suggests that clients found the information challenging to understand as it included too much superannuation jargon. To increase consumer engagement and understanding, such information should be drafted for 'the average person'. Consumer testing, and the use of technologies such as videos, could be useful tools to continue to improve the accessibility of ATO's information for consumers. A great example of this done well is the ATO's SMSF video series.

Many Australians have more than one superannuation account. Changes in the contributions caps, the introduction of the Transfer Balance cap, carry forward rules, indexation requirements, and planned increases in the Superannuation Guarantee, impact on an individual's ability to comply with these rules and avoid exceeding the caps. To manage their superannuation, an individual must have immediate access to the information and data held by the ATO about their financial affairs.

Recommendation

18. The ATO continue to improve the accessibility of information about the tax and superannuation systems for consumers. Reducing industry jargon, consumer testing and maximising appropriate communication technologies may assist in this regard.

19. An individual must have immediate access to the superannuation and tax information and data held by the ATO about their financial affairs.

8. Fintechs

Financial Technology, better known under the term 'fintech', describes a business that aims to provide financial services by making use of software and modern technology. These are both start-ups and established companies competing directly with traditional banking and financial institutions, providing products and services within the categories of lending, personal finance, retail and institutional investments, equity financing, consumer banking, financial advice and several others.

A platform is an online service that allows financial planners to manage their clients' investment portfolios. Some platforms can be used by consumers directly. In its most basic form, a platform aggregates data from several sources to provide a consolidated view of the client's total investments. Many platforms also provide facilities for investments to be selected, bought and sold.

A wrap usually refers to a type of platform offering access to a wider range of investments. Wraps receive remuneration from product providers and also charge a separate fee for their services which is paid directly from the consumer's cash account on the platform.

Therefore platform and wrap providers have access to client data including in relation to investment decisions that may trigger a tax event. Currently this information is often required to be data entered by either a TFA or a TA and provided to the ATO.

Consideration should be given to permit platform and wrap providers to submit such information directly to the ATO for tax purposes. This should include a mechanism for checking the accuracy of the data provided. For example, a TFA or TA to check the application of CGT requirements prior to submission.

Recommendation

20. Allow financial technology companies, such as wrap accounts and platform providers, to provide TFA relevant client data directly to the ATO for tax purposes. Such data should be reviewed for accuracy by the TFA prior to the platform submitting the information to the ATO.