

22 October 2020

Mr Ian Klug
Chair
Tax Practitioners Board
By email: TPBSubmissions@tpb.gov.au

Dear Ian

Comment on proposed *Tax Agent Services (Specified Tax (Financial) Advice Services) Instrument 2020*

CPA Australia, Chartered Accountants Australia and New Zealand, Institute of Public Accountants, the Financial Planners Association and the SMSF Association are external members of the Tax Practitioners Board (TPB) Consultative Forum and together, the Joint Bodies. We write to you as the peak professional accounting and financial planning bodies in Australia representing tax practitioners. We make this submission to the Tax Practitioners Board (TPB) on the *Tax Agent Services (Specified Tax (Financial) Advice Services) Instrument 2020 (the draft LI)* on behalf of our members and in the broader public interest.

Our position is that while we support the proposition that tax (financial) advisers should be able to utilise relevant client information from the ATO to better assist clients, the breadth and extent of some of the services proposed under the draft LI raise a number of concerns¹.

These are as follows:

- When introduced, the tax (financial) advice regime was not intended to broaden the range of tax services that could be provided by financial advisers. Any additional services must therefore be shown to be of a kind usually given by a financial services licensee or a representative of a financial services licensee in the course of giving advice², and should be more clearly defined in the draft LI, and
- The education and experience requirements for registration as a tax (financial) adviser are established based on the definition of tax (financial) advice at the beginning of the registration period. Expanding the range of tax (financial) advice services may require amendments to the education and experience requirements.

Expanding the definition of tax (financial) advice services

Applying for a TFN

At this point in time, there is insufficient evidence to justify enabling tax (financial) advisers to be able to apply for tax file numbers (TFN) and we are of the view that this service should remain the role of registered tax agents.

¹ These concerns are consistent with those raised by the accounting bodies in relation to the expansion of scope of BAS services in the proposed *Tax Agent Services (Specified BAS Services No. 2) Instrument 2020*. See CPA Australia [submission](#) (14 July 2020) and CA ANZ [submission](#) (15 July 2020).

² Explanatory Memorandum, *Tax Laws Amendment (2013 Measures No.3) Bill 2013*



Representing an entity for Divisions 291, 292, 293, 294 of the ITAA 1997 and section 10 of the SISA 1993

We would appreciate further details of the TPB's intention when proposing to enable tax (financial) advisers to represent an entity in their dealings with the Commissioner of Taxation and the Australian Taxation Office (ATO). This covers a large range of interactions - from being an authorised contact to managing communications preferences, responding to ATO notices and potentially representing the client in disputes with the ATO.

Tax (financial) advisers are authorised to ascertain and advise on tax liabilities, obligations or entitlements in the course of giving advice of a kind usually given by a financial services licensee or representative³. We recognise that clients will often rely on their tax (financial) adviser to manage the administration and compliance of their financial affairs so the ability to interact with the ATO on their behalf may be desirable in certain limited circumstances.

We are therefore supportive of the elements of the draft LI that enable tax (financial) advisers to access ATO-held information⁴ about a client's superannuation affairs, to the extent that this information assists the tax (financial) adviser to provide customised advice or explain an ATO-issued notice to a client.

However, we advise caution in expanding the breadth of tax (financial) adviser services so rapidly, recognising that tax (financial) advisers have not been able to interact with the ATO to date and that the draft LI represents a significant shift from the status quo. We note that this aspect of 'representing clients in their dealings with the Commissioner' was specifically excluded from the scope of tax (financial) advice services in the original design of the regime as a distinguishing feature between tax and BAS agents, and tax (financial) advisers.

A number of tax-related activities could be argued to be associated with the provision of financial advice, such as Division 293 election forms. The Joint Bodies will compile examples provided by tax (financial) advisers which can be considered by the TPB, ATO and the profession during further discussions.

The Joint Bodies are of the view that tax (financial) advisers should not be permitted to represent their clients in relation to tax reviews, audits, disputes and objections. These activities should remain the role of registered tax agents given the legislative complexity and administrative knowledge required to deal with such issues.

We therefore recommend that the draft LI focuses on enabling read-only access to the client's ATO superannuation accounts via Online Services for Agents at this point in time. This will enable tax (financial) advisers to access the information needed to provide financial advice. We also seek confirmation from the ATO that access will be restricted to superannuation data and communications only.

Alternatively, if full access to clients' ATO superannuation accounts via Online Services for Agents is envisaged, a new range of responsibilities and obligations on tax (financial) advisers and those under their supervision, are introduced. We also note that the ATO issues Division 293 notices and superannuation determinations under the Income Tax role in communications preferencing⁵ so there may be impacts on the design and operation of ATO platforms that need to be considered.

³ Section 90-15 Meaning of tax (financial) advice service, TASA

⁴ Examples included in the Explanatory Statement are:

- client's concessional and non-concessional contributions for a financial year (para 32)
- whether a relevant individual meets the criteria of a "dependent" under section 10 of the SISA 1993 (para 38)
- the taxable contributions for the income year (para 42), and
- any existing credits in the client's transfer balance account (para 43).

⁵ Communication types - income tax, Tax professionals – digital services, ATO, viewed 12 October 2020

Applying for an ABN to the extent it relates to the establishment of an SMSF

The proposal to allow tax (financial) advisers to apply for an ABN produces two distinct views:

1. That the information required to determine the rights and obligations of ABN holders, and to determine whether the fund should be registered for GST, goes beyond what would normally be collected for the provision of licensed financial advice, or
2. That as ABN registration is compulsory for self-managed superannuation funds (SMSFs), this activity is an integral part of the financial advice service an SMSF adviser may offer, noting that as SMSFs mainly make input-taxed supplies, the vast majority of SMSFs don't need to register for GST and it would not be in their interests to do so.

The Joint Bodies are of the view that further discussion is required to better understand the need for tax (financial advisers) to lodge an application to register an SMSF with the ATO and to obtain an ABN. How a fund's GST registration could be assessed and certified at this point would also need to be resolved.

Our views on each draft LI proposal are summarised in the following table, based on paragraph 7 of the Explanatory Statement.

Table 1: Joint Bodies' position on each element of the expanded tax (financial) advice services proposed

Proposed tax (financial) advice services	Joint bodies' position
(a) Representing an entity in their dealings with the Commissioner in relation to the application of section 202B of the Income Tax Assessment Act 1936 (ITAA 1936) .	Do not support.
(b) Representing an entity in their dealings with the Commissioner in relation to the application of Divisions 291 and 292 of the Income Tax Assessment Act 1997 (ITAA 1997) and/or Part 2-35 in Schedule 1 to the Taxation Administration Act 1953 (TAA 1953) .	View client information on ATO systems – support. Represent the client in dealings with the ATO – further discussion required. Represent the client in reviews, audits, objections or disputes – do not support.
(c) Representing an entity in their dealings with the Commissioner in relation to the application of section 10 of the Superannuation Industry (Supervision) Act 1993 (SISA 1993) to the extent that the service relates to the definition of “dependant”.	View client information on ATO systems – support. Represent the client in dealings with the ATO – further discussion required. Represent the client in reviews, audits, objections or disputes – do not support.
(d) Representing an entity in their dealings with the Commissioner in relation to the application of Divisions 293 and 294 of the ITAA 1997 .	View client information on ATO systems – support. Represent the client in dealings with the ATO – further discussion required. Represent the client in reviews, audits, objections or disputes – do not support.
(e) A service under section 9 of the A New Tax System (Australian Business Number) Act 1999 to the extent that the service relates to setting up a self-managed superannuation fund on behalf of a client.	Further discussion required.

Education requirements

It is essential that the educational qualifications and requirements for tax (financial) advisers are commensurate with the range and complexity of services they are permitted to provide. Expanding the range of tax (financial) advice services may therefore require amendments to the education and experience requirements, particularly if the draft LI is finalised unchanged.

Example areas include the operation of the *Taxation Administration Act 1953, A New Tax System (Australian Business Number) Act 1999*, GST for superannuation funds, the accountants' concession and the *Administrative Decisions (Judicial Review) Act 1977*.

Concluding comments

It is our view that the draft LI should be refined to include only a more targeted set of services that have clear consumer and efficiency benefits (i.e. access to ATO-held information) and that the scope of 'representing an entity' be more appropriately defined.

The Joint Bodies believe there is merit in holding further discussions about the draft LI to reach agreement on the specific types of services that are appropriate to include within the scope of items (b), (c), (d) and (e) in Table 1. The legislative instrument should strike the right balance between workability and equity for all categories of registered practitioners, consumer needs, cost-efficiency, adviser competency and the integrity of the tax and superannuation system. We therefore seek to collectively discuss our views with the TPB and ATO.

We are available to meet with you to progress the matters in this submission at your earliest convenience. The Joint Bodies also commit to providing our views during the public consultation period.

If you have any queries on this submission, please do not hesitate to contact Elinor Kasapidis, Tax Policy Adviser at CPA Australia on 04466 675 194 or elinor.kasapidis@cpaaustralia.com.au.

Yours sincerely




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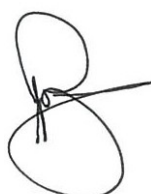

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