WREN INVESTMENT ADVISERS

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Director: Andrew Quinn CPA

26 July 2010

Manager
Small Business, Trusts and Regulation Unit
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxagentservices@treasury.gov.au

Dear Sir / Madam,

Re: TAX AGENT SERVICES AMENDMENT REGULATIONS 2010

This submission is in response to the proposed exemptions from the new national tax agent services regime to in-house advisors and custodians, and the limited exemption to financial advisers which ends on 23 April 2011.

It has been prepared by Wren Investment Advisers, a Melbourne-based financial services firm with its own Australian Financial Services Licence (AFSL). We are also a CPA Australia public practice although the views expressed in this submission are our own.

1. Support for the proposed amendments

1.1 Our firm strongly supports all of the proposed amendments to the Act. The planned changes to section 90.5 are common sense exemptions to the definition of tax agent services which will make the operation of the Act fairer and more efficient.

1.2 The Draft Regulations will also help to reduce costs and encourage competition. Without the proposed changes, the time and cost of providing financial advice could increase significantly. In practice, it would hand considerable power to tax agents who would then have *de facto* control over the cost and timeliness of the financial advice provided to the planner's client.

1.3 We also strongly support the permanent exemption of certain financial advice services provided by AFS Licensees and their authorised representatives as outlined in the proposed changes in s.90.5 (2) of the Act.

1.4 In our view, the Draft Regulations which exclude the financial advice services provided by AFS Licensees and their representatives are well-worded and represent a fair compromise between (i) ensuring that financial advice meets community standards, and (ii) being realistic about the time and cost of having all incidental tax calculations checked by a tax agent.

2 Tax analysis provided by financial advisers

2.1 As noted in the Explanatory Statement by the Assistant Treasurer, the analysis and recommendations provided in a Statement of Advice are usually quite limited. They will typically emerge in the following situations:

- salary sacrifice calculations.
- long-term retirement projections.
- ownership/structural issues – e.g. whether an insurance policy should be held inside or outside superannuation.
- superannuation contribution options.
- dividend imputation and franking credits.
- the application of small business CGT concessions.

2.2 Financial planning clients will rarely, if ever, know exactly what their income is going to be in either the current year or future years. As a result, the tax estimates and analysis provided in Statements of Advice are nearly always referred to as *illustrative*, *indicative*, *projected* or *estimated*.

2.3 The tax calculations performed by financial advisers are more akin to 'what-if' scenarios and are typically forward-looking projections. In contrast, the tax work undertaken by accountants usually involves actual numbers, or past data, and is generally focused on determining what has already happened.

2.4 Most financial advisers use specialist software to prepare the tax figures in salary sacrifice calculations and retirement income projections. If used correctly, the output from this software should be quite robust, although it does of course depend on the quality information provided by the client.

2.5 In the 2008-2009 Annual Review published by the Financial Ombudsman Service, incorrect tax analysis is not listed among the 45 specific reasons for consumer complaints against financial advisers.[1] Unless there is other compelling evidence that tax estimates in the context of financial advice are a problem, it is difficult to see why the tax agent services legislation should apply to financial advisers.

2.6 In our experience, financial planners have no desire to compete with accountants on tax issues or act as their agent in dealing with the Australian Taxation Office. Indeed, they are usually keen to refer the client to a tax agent where more complex tax considerations are involved – such as the small business capital gains tax concessions – because of the potential litigation risk. It is a similar story when a client requires estate planning assistance: the planner will invariably suggest that the client contact a solicitor for specialist advice.

[1] Financial Ombudsman Service, *2008-2009Annual Review*, p.22

3 Issues to consider if financial planners are required to be tax agents

3.1 If financial planners are not given an on-going exemption for explaining tax matters when providing financial product advice, the costs to consumers are likely to be considerable.

3.2 A requirement for tax agents to confirm the tax implications of all financial product advice may add hundreds of dollars to the cost of a Statement of Advice and delay the implementation of the advice by weeks. If these delays cause the investor to suffer a loss, who will be responsible for compensating the client?

3.3 While many accountants seem keen to 'get one back' at financial advisers – particularly since the Cooper Review's recommendations to limit their role in establishing self-managed super funds – most do not have much desire, or in some cases the software or experience, to prepare the kind of forward-looking, multi-year analysis that financial planning clients often require.

3.4 If financial planners are required to be tax agents, there might need to be further changes to the Tax Practitioners Board (TPB)'s registration procedures. As they stand, very few financial planners will be able to satisfy the Board's experience requirements – i.e. 'substantial involvement in one or more types of tax agent services, or substantial involvement in a particular area of taxation law to which one or more of those types of tax agent services relate.'[2]

3.5 If the TPB's rules are not changed, financial advisers will need to refer all tax calculations and analysis to a registered tax agent. As mentioned earlier, this will create time delays and impose higher costs with little obvious benefit to the end-user.

3.6 The requirement to use a tax agent will also create an uneven playing field. Those financial planning practices which are owned by or aligned to an accounting practice will have a clear advantage in terms of time and cost compared to those advisers who need to refer the work to a third party.

3.7 In most accounting firms, the principal or partners of the firm are registered tax agents but few, if any, of their employee accountants have this accreditation. Does this mean that only the partners of an accounting practice can check salary sacrifice calculations?

3.8 A possible compromise would be to mandate that only financial advisers who are members of an accredited professional body such as the Institute of Chartered Accountants in Australia, CPA Australia, National Institute of Accountants or perhaps the Financial Planning Association are permitted to provide tax calculations and/or analysis for retail clients.

[2] Tax Practitioners Board 'Registration as an individual tax agent' *Information Sheet*, IS-L00909PW.

Summary

Our firm strongly supports the proposed amendments to section 90.5 of the Tax Agent Services Act 2009.

The exemptions contemplated for in-house advisors, custodians and the limited exemption to financial advisers are sensible and will make the operation of the Act fairer and more efficient.

However we believe that the exemption for AFS Licensees and their authorised representatives should be <u>permanent</u> given the likely higher costs and minimal benefits to the end-users of these services.

Inaccurate tax analysis in respect of financial product advice does not appear to be a widespread problem judging by FOS complaints. Our view is that the driving force behind this debate relates more to a battle between accountants and financial advisers on where the boundary lines are drawn.

The requirement that all Statements of Advice include a written statement indicating that the client should consult a registered tax agent before relying on the advice is therefore an adequate safeguard given the potential risks involved.

We also agree that the exemption should not include services that do not relate to financial product advice – i.e. the completion of a tax return or representing a client in their dealings with the Australian Taxation Office.

If you have any queries regarding this submission, please call me on (03) 9663-6602 or e-mail quinn@wrenadvisers.com.au.

Kind regards

Andrew Quinn

Andrew Quinn
Director