Taxpayers Australia Ltd T/A
Tax & Super Australia
ABN: 96 075 950 284

Date: 17th July 2019

Hon. Jane Hume, Senator
Assistant Minister for Superannuation,
Financial Services and Financial Technology
PO Box 6100
Senate, Parliament House, Canberra ACT 2600

Dear Senator,

Re: Reinstatement of the Accountants' Exemption

Taxpayers Australia Limited, trading as Tax & Super Australia (TSA) is a not-for-profit organisation that has assisted accountants, taxation and superannuation professionals for over a century. TSA was established in 1919 to help promote a simpler and fairer tax system for all Australians. With a subscriber base of approximately 13,000 including 4,000 members, the organisation has evolved to meet the challenges of Australia's modern tax regime and remain at the forefront of supporting accounting professionals.

TSA provided a submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services industry. A copy of our submission is attached to this letter for your reference.

TSA is gravely concerned over ASIC's new regulatory framework impacting our members i.e., tax practitioners and SMSF professionals. These concerns are two-fold: firstly, the inclusion of accountants under the Australian Financial Services Licenses regime and secondly, the substantial increases in the fee structure following the introduction of ASIC's new industry funded model and the resultant economic distortions and additional cost impost on our members.

We would like the Minister to undertake appropriate processes to ensure that shortcomings in the current regulatory arrangements are rectified. To this end, we would like to organise a meeting with the Minister to discuss this topic in greater detail and put forward our case for consideration.

New regulatory framework

ASIC introduced new regulations to bring accountants under the Australian Financial Services Licenses regime and imposed substantial increases in the fee structure following the introduction of their new industry funded model. These changes occurred even before the commencement of the Royal Commission inquiry into Misconduct in the Banking, Superannuation and Financial Services industry.

Traditionally, some ancillary guidance such as the ones listed below that have been provided by accountants to their clients for decades, now requires a separate statement of advice:

1. Conversations with the client about their contribution levels and providing taxation guidance, such as informing them of the maximum contribution limit etc.
2. Establishment of a SMSF.
3. Guidance and help rendered to the client in changing from an accumulation to a pension phase.

While the Royal Commission addressed the issue of fees for no service in the Financial Services industry, its findings appear to have not touched on ASIC's excessive fee structure and/or the new regulation to bring accountants under the Australian Financial Services Licenses regime.

Furthermore, The Royal Commission seems to have overlooked the conclusion of the Murray Report (2014) embraced by the then Treasurer Hockey, or its predecessor, Wallis Report (1997) embraced by the then Treasurer Costello, to exclude accountants from the need to be licensed under Australian Financial System Licenses. Wallace's comments explicitly stated, "Licensing of professionals providing incidental financial advice is generally not required."

There exists no empirical evidence to reject the conclusion of either the Murray Report and/or the Wallis Report. No evidence has been provided in the public domain regarding ASIC's new regulatory regime for the accounting profession. No conflicts of interest have either been noted and/or publicised.

Cost of the new framework

The overall cost of providing advice is bound to increase progressively making the process of seeking financial advice extremely expensive and ultimately unsustainable. ASIC's model of annual levies to be borne by the industry has resulted in substantial increases in costs.

Before the introduction of this new regulation, a Regulation Impact Statement (RIS) was prepared by ASIC for the Federal Cabinet. The statement contained an estimate of the change in average annual regulatory costs compared to the then business as usual case. For businesses, there was an estimated increase in costs of around $2.05 million.

The RIS was undertaken before the changes in the requirements for accountants to be on the Register came into effect. It is unclear as to how the $2.05 million was calculated and what categories of expenses were included in the cost-benefit study.

Considering the average cost of a Statement of Advice is approximately $2,000 and there are around 600,000 SMSFs in Australia, a quick back of the envelope calculation in terms of the increases in costs for beneficiaries of SMSFs indicate exorbitantly high compliance costs. Even the provision of one Statement of Advice per year per SMSF would increase total costs by 3 orders of magnitude compared to the costs estimated in the RIS.

Excessive regulatory costs destroying the market

The new regulatory framework imposed by the bureaucrats and regulators at ASIC is destroying a free and competitive market which has benefited ordinary Australians for decades.

There will be further increases in the average cost of a Statement of Advice. The supply side of Registered Financial Advisers will diminish because of the excessive costs of compliance (that will be difficult to be passed on) thrust upon accounting and tax professionals by a highly over regulated environment exacerbated by high costs of continuous re-training requirements in order to remain compliant. This will lead to a withdrawal of services from trusted and reputable sources such as the accounting and tax professionals (please refer to the Royal Commission Submission regarding TSA's survey of its members' views).

As an example of hidden costs under the new arrangements, the voluminous information sheet published by ASIC on AFS licensing requirements for accountants who provide SMSF services is over five and a half thousand words and at the end of the webpage states:

"Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice."

Winners and losers

Big winners from these ASIC regulatory changes are the union- controlled, Industry Superfunds. Unaffected are the employees at ASIC who have their taxpayer funded superannuation scheme immune to increased regulatory costs and reduced choices in investment strategies.

Losers are the members of the already existing 600,000 SMSFs and all those who would like to set up their own funds and have more control over their future. The opportunity for ordinary Australians to be involved in their own wealth building strategies and investment decisions through SMSFs is going to be extremely expensive and therefore people wanting to setup their own SMSFs will diminish over time. Furthermore, the existing SMSFs would also find the additional regulatory costs too high to contend with and therefore gradually transition to industry superfunds.

Summation

TSA is deeply concerned that this increasing regulatory burden on public practitioners will further negatively impact accessibility to quality advice for the community at large due to increased costs and diminishing supply.

Following the Royal Commission's inquiry into Misconduct in the Banking, Superannuation and Financial Services Industry where the major banks and financial institutions have started divesting themselves from their wealth business, we see this as a poor outcome for the ordinary Australians.

Our submission to the Royal Commission provided specific examples and options on how to make the financial system more efficient and less expensive for the 600,000 SMSFs in Australia.

The details of the unnecessary cost imposts by ASIC regulations are demonstrated in our submission to the Royal Commission through case studies.

The government response to the Royal Commission stated that "In undertaking these reforms, the Government will ensure that the financial system continues to provide consumers and small businesses with access to credit and other affordable financial services that they need, and that the financial system remains competitive, efficient and resilient."

There were no specific recommendations in the Royal Commission report on improving the economic efficiency of the system. TSA identified the issues and provided options that can be explored by the government to reduce costs to all taxpayers while maintaining the integrity of the system.

The government response to the Royal Commission stated that it "will require the regulators to take on new responsibilities and, in many cases, simply do more." There is also the alternative of the regulators focusing on problem areas and allowing market forces to work where there have been no identified problems as outlined in TSA's submission.

In summing up, we would like the Government to look into the submission put to the Royal Commission by Tax & Super Australia and consider our arguments and recommendations for a fairer, simpler and cost-effective regulatory system that will produce a better outcome without compromising the integrity of the services being provided.

Yours sincerely,

Moti Kshirsagar
CEO, Tax & Super Australia