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AFTS Secretariat
The Treasury
Langton Crescent
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AFTSubmissions@treasury.gov.au

Dear Mr Henry

Australia's future tax system

The Financial Planning Association of Australia (FPA)[1] welcomes the opportunity to provide further input to the Government's comprehensive review of Australia's taxation system.

The attached submission highlights key technical issues for consideration in the development of Australia's future tax system. The FPA suggests recommendations in the attached submission will assist in achieving an equitable and more efficient tax system in Australia.

This submission is provided in addition to the FPA's original submission to the Tax Review Panel in October 2008, and the Association's extensive paper submitted to the Retirement Income System Review.

The FPA would welcome the opportunity to discuss these issues with the Tax Review Panel.

If you would like further information on the issues raised in this submission, please contact Gerard Fitzpatrick, General Manager, Policy and Government Relations (02 9220 4505; gerard.fitzpatrick@fpa.asn.au).

Yours faithfully

Jo-Anne Bloch
Chief Executive Officer

[1] The FPA is the peak professional organisation for the financial planning sector in Australia. With approximately 12,000 members organised through a network of 31 Chapters across Australia, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than $630 billion.

Australia’s Future Tax System (submission 2)
Submitted to the Tax Review Panel

1 May 2009

FPA

1. Introduction

The Financial Planning Association of Australia (FPA) is the peak professional organisation for the financial planning sector in Australia. With approximately 12,000 members organised through a network of 31 Chapters across Australia, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than $630 billion.

The FPA considers the principles of simplicity, efficiency and equity must underpin our nation's tax system. While the purpose of the tax system is to collect revenue from residents and businesses to build a pool of resources to help fund essential services for all Australians, particularly those in most need of assistance, Australia's Future Tax System must also support the micro and macro economic growth of the nation in the competitive global economy.

The FPA has therefore highlighted tax issues impacting on consumer financial literacy and capability, business operations, deceased estates and superannuation, Australian expatriates, and insurance protection. The issues related to affordability of advice and underinsurance aim to assist all Australians, with specific recommendations to particularly target lower income earners.

The FPA considers adopting the following recommendations would effectively deliver good social outcomes by simplifying Australia's future tax system and improving the long-term financial security of Australian consumers and businesses.

2. Tax deductibility and tax rebate options for advice consumers

Tax concessional treatment of an expenditure is an efficient Government incentive to influence consumer behaviour. With respect to the cost of financial advice there are two behaviour perspectives which are to be encouraged - that of the investor and that of the advisor.

The educational value unlocked for consumers by the provision of advice is well documented and demonstrates that access to affordable financial advice is a critical element of Australia's economic environment. However, research also shows that the cost of delivering advice in Australia is relatively high due in part to the strict regulatory regime, limiting the ability for many Australians to access affordable advice[2]. Many consumers, particularly lower income earners do not currently seek professional financial planning advice because of the cost involved and their ability to pay for advice.

Consumers are paying for personal financial advice in varying ways that result in different taxation treatments for no apparent public benefit. Currently, a fee for service arrangement for the preparation of an initial financial plan recommending investments is not tax deductible under section 8-1 of the Income Tax Assessment Act 1997. This is because the ATO views this not to be an expense incurred in producing assessable income.

However, when the financial planner arranges for the issue of financial products as a result of providing this initial financial plan the adviser could opt to be paid by commissions from the product issuer rather than charging a fee for service to the client. The payment by commission for the implementation of the plan is effectively tax deductible for the client; payment by fee for service is not. The tax system is therefore encouraging commission based remuneration at the expense of fee for service. This results in a tax anomaly.

Public policy initiatives are needed to assist in creating a more affordable advice framework and to ensure consistency in the tax treatment of advice fees. There are many societal benefits to providing a tax incentive to help consumers pay for financial planning advice. These include the following behaviour modifications:

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[2] *FPA Value of Advice Research*, Rice Warner Actuaries, November 2007

- facilitating the greater education of investors about money issues including savings, retirement planning, social security, tax responsibilities, budgeting and debt management;
- encouraging more investors to seek professional assistance with their overall savings objectives;
- planners charging fee for service instead of commission (by extending the current tax incentive to include the initial financial plan, irrelevant of payment method);
- greater transparency of advice and financial product costs;
- expanding retirement savings beyond mere reliance upon superannuation and Government benefits;
- engaging consumers on the need for retirement savings;
- encouraging competitive pricing of financial advice through fee based charges.

To discourage consumers from using of non-professional and non-licensed individuals for financial advice (many of whom have played significant roles in consumers losing money in a variety of high risk investments in the last 5 years), tax incentives should only be available to clients of professional licenced financial planners.

The FPA recommends:

- Income Tax Deduction of financial advice fees – the preparation of an initial financial plan and ongoing management fees or annual retainer fees, should be considered an expense incurred in producing assessable income, and thus tax deductible. No cap should be applied to the tax deduction. The income tax deduction is not to be limited to the extent that the advice is in respect of assessable income; it should be recognised as a deduction by reference to the person charging the fee.
- Tax rebate alternative - An alternate to the income tax deduction methodology is to allow an income tax rebate of 30 percent to a maximum of a $2,000 rebate amount. This would especially assist those persons earning an income of less than $80,000 per annum to pay for financial advice.

3. Removing tax impost on death benefit superannuation rollovers

A superannuation death benefit is the culmination of the retirement savings of the deceased paid to the fund member's nominated beneficiary. Tax concessional treatment has encouraged the accumulation and maintenance of the funds. Following the death of the superannuant the only persons presently 'entitled' to maintain that superannuation benefit within this environment are:

1. The spouse of the deceased;
2. The under-age-25 children of the deceased;
3. Any disabled (as defined) child of the deceased.

The FPA recommends:

- All beneficiaries should be able to nominate that the superannuation that they may derive from the death of another can be rolled over into their own superannuation to fund their own retirement.
- All superannuation death benefits should be capable of rollover, whether direct or via a deceased estate, with tax-free status.
- All superannuation death benefit rollovers should be classified as a tax-free component and excluded from the contribution caps.

Recognising the current economic environment and potential cost impact to the Government, an interim option would be:

- A tax-free dependant superannuation death benefit can be rolled over as a tax-free component; whilst
- A taxable dependant superannuation death benefit can be rolled over as a taxable component.

This should be an interim measure only, to encourage greater participation in retirement savings without significant impact in taxation collected.

4. Continuation of SMSF impacted by trustee illness or disability

The most commonly understood natural life of Self Managed Superannuation Funds (SMSF) is the earlier of when the money runs out or the members pass away. But there is a current earlier point in time that is extremely difficult to deal with under the current legislation – when the trustee becomes incapable of performing their duties due to dementia or other disability.

At 31 December 2008, the average value of a SMSF was $813,168[3]. With 89.9 percent of SMSF's having two or less members, the impact of the disability of one of them must be considered to be quite profound. When this fact is coupled with 35.21 percent of the members being over the age of 55, the risk of mental and physical disability impacting the trustees of the fund must be considered.

The disability of a trustee can place great strain on the surviving and continuing members. The risk of losing the SMSF places a further and unnecessary burden on remaining trustees. The current system creates the following issues when a SMSF trustees is affected by dementia or disability:

- Continuity of the SMSF is threatened as a result of the disability of a member. In such circumstances, trustees only have 6 months to appoint an Approved Trustee and convert to a Small APRA Fund, or the SMSF must realise all assets and transfer to a public offered or other multi member fund. This can significantly impact on the retirement savings of the member and is detrimental to the retiree.
- A person with a pre-existing power of attorney can, if the individual SMSF trustee election system is set to facilitate it, take the place of the disabled member. However, FPA members have found that many trustees do not have formal powers of attorney in place prior to the onset of incapacity. A spouse, child or parent of the trustee should be able to facilitate the role without the need for a formal appointment of legal personal representative, as is the current requirement under the Superannuation Industry (Supervision) Act (SIS). The requirement for the formal appointment of a legal representative is prohibitive and often results in the SMSF discontinuing to the detriment of the incapacitated trustee.
- Section 17A if the SIS Act prohibits remuneration from the SMSF or from any person for any duties or services performed by the trustee in relation to the fund, including when a professional is appointed to act on behalf of a trustee who is incapable of continue their role due to dementia or disability. There are many potential circumstances of a modest or reasonable payment being appropriate. This can also facilitate a greater responsibility in the role. The prohibition of payment of professional fees should be relaxed in SIS 17A.
- Splitting the powers of a controller can be very appropriate, especially in respect of a deceased death benefit which is split among different classes of beneficiaries. For example, where the second (surviving) spouse is to derive a pension for life following which the balance of the first deceased superannuant's benefit is paid to the child or children of their first marriage. Presently the SIS Act defines the second spouse to be a member and therefore requires them to be a trustee. This is in the context of a potential

[3] Australian Taxation Office

conflict of interest. Enabling the appointment of a professional trustee (who had professional and/or fidelity indemnity insurance) would resolve this issue.

Given the current and future demographic challenges of an ageing population and the increasing popularity of SMSFs, this issue is at risk of escalating. Without greater flexibility in the SIS Act, trustees will face enormous legal and administration expenses to establish formal powers of attorney or such instruments at such time as when the trustee is incapable.

The FPA recommends:

- Expanding the ability for a spouse or child to step in to the role of trustee for a trustee who is incapable of performing their duties.
- Allowing the SMSF to continue when a trustee becomes incapacitated.
- Amend Section 17A if the SIS Act to permit remuneration from the SMSF for duties or services performed by the a professional appointed to act on behalf of a trustee who is incapable of continue their role due to dementia or disability

5. Australian expatriates with Self Managed Superannuation Funds

Currently where the majority of trustees of a Self Managed Superannuation Funds (SMSF) are temporarily absent from Australia for greater than two years, the fund is likely to fail the central control and management test. This means that the SMSF becomes a non-complying superannuation fund and therefore loses its concessional tax treatment. Members of public offer funds who are temporarily absent from Australia for more than two years, are highly unlikely to suffer the same tax penalties.

In respect of a SMSF, if the central management and control is not in Australia because the trustees have been posted overseas, for example due to work, and their absence is not "temporary" (as defined in TR 2008/9), the fund faces significant restructuring costs in order to meet the definition of an Australian superannuation fund

For example, the trustees need to resign and either appoint an Approved Trustee (and convert their fund to a small APRA fund) or an enduring power of attorney. Both options involve significant legal costs to draft the relevant deeds and administration costs to transfer the title of assets to the new trustee. Depending on the complexity you may be looking at the thousands.

If the fund is restructured to either a small APRA fund or wound up and the assets rolled over to a public offer fund there will also be administration fees and also possible capital gains tax to pay in selling down the assets. Again this may run in to the thousands of dollars.

If the trustee’s absence is not temporary and they don't restructure as noted above, the SMSF will become a non-complying fund and lose its concessional tax treatment and be taxed at the highest marginal tax rate.

Given the enormous disparity in consequence between a SMSF and a public offer fund when a member becomes a non-resident, it would be prudent to consider an exemption for resident SMSF trustees who subsequently become non-resident. In other words, provided the member was a resident when they established the SMSF, if they subsequently become a non-resident for tax purposes they could continue to meet the central management and control test while a non-resident. This would continue to restrict a non-resident from establishing a SMSF but provide flexibility for residents who are posted overseas for requirements such as work.

Given the global nature of business, the FPA believes this tax treatment is an inequitable anomaly.

The FPA recommends

- A simplification to SIS Act provisions to make it easier for individuals to work overseas and retain their benefits in a concessional taxed SMSF in Australia.

6. Capital Gains Tax (CGT) cost base for heirs

In the United States (US), all assets are valued on death and the beneficiaries of an estate start with the cost base for capital gains tax (CGT) being based on that valuation. This obviates the potential need to go back 50 or 60 years to discover the historical cost base of assets. The beneficiary starts with a clear and ascertainable value. The US approach also has the merit of recognising that the deceased did not in fact ever get to enjoy a gain from his assets in his lifetime.

The CGT is a little over 20 years old in Australia and the full significance of the administrative nightmare of tracing the history of assets back 50 or 60 years has yet to fully emerge. Very few taxpayers would keep the sorts of records the law theoretically requires as to the cost history of all assets. If the law were enforced to the letter and executors and beneficiaries were required to prove the cost bases of assets back to 1985 many would face difficulty. Even family homes may require record keeping back to that date if there have been periods of renting out which have limited the CGT-free status of the home.

Given that for most people the major asset is the family home and superannuation, and that the former is generally exempt and taxes on the latter are paid within the fund before benefits are paid, the compliance cost of perpetual record keeping of all assets back to 1985 seems unwarranted. To the extent that executors cannot prove the cost base of assets, the CGT operates not as a tax on gains but as a capital levy, taxing again the cost base of assets paid for with after-tax money.

Given the potential inequity and the high compliance costs it is recommended the US approach be adopted of rebasing the cost of assets for beneficiaries of estates.

The FPA recommends:

- The cost base of bequeathed assets are based on valuation at death for the purposes of the CGT liability of the deceased estate's beneficiaries.

7. Capital Gains Tax (CGT) rollovers for like-kind exchanges

It is well recognised that the CGT has potentially severe and economically inefficient lock-in effects. This is why the Parliament is being forced continually to extend rollover relief for transactions where there is no true realisation of a gain, for example with paper share exchanges, demutualisation relief, and small business rollover relief. Where a business or a consumer swaps one asset for another and the capital remains in the venture, it is impossible to assert whether there has really been a gain enjoyed by the investor as he or she sees no money in the pocket.

It is recommended that this principle be recognised more fully through the introduction of a general CGT rollover for "like-kind exchanges" similar to the relief allowed under US capital gains tax.

This would mean that where, for example, a business (other than a small business with an active asset) sold its premises to move to another building it would not see its capital resources depleted by a tax charge for moving its business to a different building. The current CGT charge impedes restructuring, particularly for businesses. However, Australian businesses are currently under significant pressure to liquidate assets and restructure to cope with the 'global financial crisis'.

The FPA recommends:

- The capital gains tax system be amended to exclude "like-kind exchanges".

8. Discretionary trusts

The main objective of introducing the imputation system in Australia was to remove double taxation of company dividends from our tax laws. However, under the current system franked dividend credits received by discretionary trusts or other non-fixed trusts are prohibited from flowing through to all beneficiaries.

This means that dividends can be double taxed. For example, many unit trusts may not be "fixed trusts" and many family discretionary trusts may not be "family trusts" as required to obtain flowthrough of imputation credits. This may happen where 2 family groups share an investment in a company through a non-fixed trust. Because of the hidden trap of possible loss of franking credits, people are being driven to use inefficient partnerships of trusts with unlimited liability where they would otherwise have preferred a head trust to hold shares. This creates unnecessary complexity for the ATO and taxpayers.

A franking credit is just like a PAYG refund. People should be free to use them as they choose, as long as the franking credit is tied to the dividend declared on their tax return.

The FPA considers all trusts should be treated the same:

- there should be no tax penalty on discretionary trusts which are not technically family trusts or which are technically ineligible to make the family trust election;
- franking credits should be permitted to flow through to the ultimate investors of all trusts, partnerships and companies.

The FPA recommends:

- The tax laws should be amended to allow franking credits to flow through discretionary trusts without the family trust election principles in the same way, provided the trustee has held the shares for the required period (ie. 45 days).

9. Insurance issues and protection mechanisms

There is considerable concern about rising levels of Australian household debt, particularly in the current economic environment. Insurance should underpin family financial plans as it provides financial protection in times of needs. Many families would struggle under the burden of this debt and may have to re-assess their living arrangements and children's education if either parent were to fall seriously ill or die.

The importance of appropriate life insurance cover is heightened by these rising levels of Australian household debt, which is rated the fourth highest of the developed countries[4].

Recent research found that Australian parents with dependant children were critically underinsured by $1,370 billion dollars in life cover and 2.47 million families were open to the risk of financial hardship if either parent died. Nearly 70 per cent of people in small business were not insuring their most important asset - their income[5].

The implications of the underinsurance problem for individuals and the Australian community should not be underestimated or ignored. The unforeseen loss of income through death, illness or disability, can leave a family with no other option than to rely on Government benefits.

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[4] Investment and Financial Services Association, *Life Insurance Headlands Statement*, 2007

[5] Investment and Financial Services Association, *Life Insurance Headlands Statement*, 2007

9.1 Inconsistent tax treatment of insurance increases the protection gap

The Superannuation Guarantee (Administration) Act 1992 requires a default fund to offer a minimum level of life insurance cover. However the cover that people may have in their superannuation fund often gives them a false sense of security as many believe they have more protection than is actually the case or lack an awareness of how much cover is sufficient. Recent research found the average level of cover provided through superannuation represents just 20 percent of the needs of the average Australian[6].

Life, Total and Permanent Disability (TPD), and income protection insurances incur different tax treatment depending on the type of policy and how it was purchased. The FPA suggests that addressing the anomalies and complexities of the tax treatment of insurance would greatly assist in closing the protection gap.

Insurance held via superannuation is owned by the trustee of the fund for the benefit of the insured consumer. The trustee deducts the insurance premiums from either ongoing contributions or the account balance of the fund.

Premiums

Inconsistencies in the tax treatment of insurance premiums include:

- Premiums on death, TPD and income protection insurances purchased through a superannuation fund are tax deductible to the fund.
- For policies held inside superannuation, consumers can usually fund the insurance premiums via a personal tax-deductible superannuation contribution if self-employed, or out of deductible employer contributions (including salary sacrifice) made to their fund.
- For personal death and TPD insurance policies held outside superannuation, premiums paid are not tax deductible. (Different taxation treatment may apply where insurances are held for business or other purposes).
- Premiums for income protection/salary continuance policies are deductible in both superannuation and non-super environments.
- Premiums for trauma policies are not deductible whether the policy is purchase inside or outside superannuation.

Benefits

Determining the taxation consequences of receiving death or TPD benefits from superannuation or an employer is a highly complex task. It is unlikely that any person who is not a tax specialist or financial adviser would be able to calculate potential tax payable, or the strategic consequences of decisions they make in relation to where they hold these insurances, how benefits are drawn down in the event of death or TPD and to whom those benefits may be payable.

The insurance benefits paid on a consumer's claim are also subject to inconsistent tax treatment, including:

- The benefits of a death or TPD policy held outside superannuation is generally paid tax-free. This is not the case for benefits from policies held within superannuation. Legislation should be amended so that the taxation implications of insurance proceeds paid to consumers are the same for personal insurance policies held inside or outside superannuation.

[6] Rice Warner Actuaries, *Cost of underinsurance report*

- The taxation of death benefits from superannuation payable to 'non-death benefit dependants' (especially adult children) is inconsistent with that applicable to the terminally ill (who can withdraw benefits tax free prior to death and make gifts to adult children). This encourages early withdrawal and unnecessarily complex and expensive strategies such as recontribution.
- The application of an element untaxed in the taxable component where an insurance payout is included in the death benefit creates a high level of taxation on death benefits paid to a non-death benefits dependent (eg. payment to an adult child) and the ATO can receive a significant portion of the payment.

Client case study:

A client of an FPA member was 57 when he died very suddenly. He had been a member of a fund for 8 years and had a superannuation balance of $8,000 and an insurance life policy of $100,000. The death benefit was split between his two adult sons. The tax payable on the death benefit was $25,920 and each son received $41,040. If the client had not died so suddenly he could have withdrawn the full benefit under the terminal illness conditions with no tax payable and then made a tax-free gift of $54,000 to each son.

- The untaxed element also creates an anomaly where the life insurance policy is held in a fund that includes accumulated savings compared to a stand-alone insurance fund. The formula for calculating the element untaxed is based on the full death benefit payable (less any tax-free component). In this way, some of the accumulated savings is also converted to an element untaxed and a higher rate of tax of 31.5 per cent applies. If the superannuation fund did not include an insurance payment the accumulated savings only includes an element taxed, and tax of 16.5 per cent is applied.

Group insurance

Since July 2007, dependant beneficiaries of non-superannuation group insurance policies taken out by employers for the benefit of employees in the event of death and total and permanent disability (TPD) have had their lump sum payment taxed at the top marginal rate for amounts over $140,000.

In contrast, dependent beneficiaries receiving a lump sum payment from an insurance policy taken out through a superannuation fund, continue to do so tax-free for the full amount.

This inconsistent tax treatment has been created as a consequence of the "Simpler superannuation" reforms which changed the rules to require insurance proceeds from non-superannuation policies to be treated as employment termination payments. This rule change removed the previous tax concessions which were consistent with tax treatment of superannuation insurance policy benefits.

The new rules have already created market uncertainty and significant compliance costs to consumers and the insurance industry. Many of the insurance arrangements have been in place for many years and there is a real risk that people who may potentially be affected by this Government policy are unaware of the changes and the impact they will have on the protection of their family. As they stand, the rules also effectively eliminate the employer-arranged group insurance policy, which comprise a significant segment of group insurance policies, ultimately reducing market choice and potentially reducing overall insurance coverage.

The FPA suggests the Government seek to achieve the following policy outcomes to reduce the cost of upfront premiums for consumers to assist in addressing underinsurance:

- The provision of a tax offset on insurance premiums for low income earners.
- The extension of the requirement to have minimum compulsory life insurance cover beyond the default superannuation fund to all superannuation accounts that receive employer contributions.

- The minimum cover required under the Superannuation Industry (Supervision) Act be based on a consistent formula rather than the current lump sum requirement. There should be one formula for death cover and one for Total and Permanent Disability cover.
- Part of any increase in the superannuation guarantee should be used to increase the level of insurance cover of Australians.
- Death and TPD insurance premiums be deductible, whether in or outside of superannuation, to create consistency, reduce costs to consumers, improve protection, and simplify level of cover calculations. Improving insurance cover for consumers protects financial assets and income, which in the long term supports longevity risk and adequacy goals in retirement.

However a significant barrier to the uptake of insurance is the complexity of the various tax treatments of insurance benefits inside and outside superannuation.

The FPA recommends the following changes would simplify the complex and inequitable tax treatment of benefits:

- Death benefits - the removal of taxation on all death benefit proceeds paid from superannuation regardless of the beneficiary, as per personally held insurances. As a minimum, remove the untaxed element calculations for all death benefits and additionally, remove all tax on death benefits paid to adult children if the child rolls these amounts to his/her own superannuation fund. If taxation treatment of death benefits is to continue to relate to whether the recipient is a dependant or not, the FPA recommends a standard definition of dependant apply across all regimes - superannuation, taxation and 'anti-detriment' payments (refer to *Appendix 2: Analysis and evidence of insurance issues*).
- Consideration should be given to reducing the complexity of the taxation of Total and Permanent Disability benefits in comparison to the taxation arrangements of other benefits.
- That the Government position be reversed to allow for the provision of benefits from the Group Life and TPD policies outside superannuation to receive the same tax-free status as benefits paid within superannuation policies. The concessional taxation approach to these benefits should be restored.

10. Payroll tax

The FPA is concerned with the application of payroll tax to authorised representatives of Australian Financial Services Licensees and consider that reform of this tax should ensure that this anomaly is addressed.

The FPA considers that a clear case for reform was made by the Financial Industry Council of Australia[7] (FICA) as presented in its submission to the Tax Review Panel to reform State taxes including payroll tax. FICA research conducted by Access Economics, highlighted that reforming State taxes could deliver long run economic welfare benefits of between 1 percent and 2 percent. This is the equivalent of gains to household consumption of between $6 to $10 billion - making State taxes reform a major microeconomic reform initiative.

[7] FICA is comprised of the Australian Bankers' Association (ABA), Abacus–Australian Mutuals, Australian Finance Conference (AFC), Australian Financial Markets Association (AFMA), Financial Planning Association (FPA), Investment and Financial Services Association (IFSA), and the Insurance Council of Australia. FICA provides a focus for the discussion of the overarching international and domestic issues affecting providers of financial services in Australia. FICA was formed in June 2004. FICA's members have financial assets under management, including banks and other depositories and both the general and life insurance industries, which generate around 8% of Australia's GDP. FICA facilitates high level responses to regulatory and market developments affecting the overall sector, building upon the work done by the individual FICA constituents.

The benefits of inter-jurisdictional consistency of payroll tax nationwide harmonisation and consistency with existing Commonwealth legislation would significantly reduce the compliance burden on business, particularly small business, which would ultimately reduce the cost of advice for consumers.

The 2007 project to harmonise the payroll tax system across jurisdictional boundaries, was fundamentally flawed in its application in that it failed to recognise that the relationship of an Authorised representative and its Licensee is substantially different to a typical relevant contractor relationship captured by the provisions of the legislation. The fundamentals of how Australian Financial Services Licence (AFSL) holders operate and the nature of their business structures are a direct result of requirements of the Corporations Act (2001).

There exist a number of distinctions which make the relationship of a financial adviser and their Licensee unique. Unlike a typical principal/agent relationship, financial planning firms are able to set up various structures while operating as independent entities carrying on a business, and assuming entrepreneurial risk. Also, authorised representatives' relationship and engagement with their own clients/customers is of a very different character from client relationships of 'contractors'. Typically, authorised representatives receive no direction in relation to how to service their clients, how to structure their business and what type of clients they should acquire. The NSW Office of State Revenue's former Revenue Ruling PT064[8] recognised this difference. The ruling provided an exemption and was supported by measures which prevented abuse and were well understood by the industry.

The collection of payroll tax is currently administered by seven separate Governments. This has resulted in FPA members being required to undertake different payroll tax audit activity in NSW, WA and Victoria, excessively and unnecessarily increasing the compliance burden for business which impacts on the cost of advice for consumers.

The FPA recommends:

- Reform of the payroll tax system to meet the key objective of efficiency, equity, simplicity and certainty
- Reforms to the tax system should take into consideration the complexities of the Corporations Act 2001 requirements on financial planners to ensure that Authorised Representatives are not inappropriately captured for payroll tax.

[8] NSW OSR Revenue Ruling No. PT064 – Effective 19 July 2004