



27 September 2013

The Hon Joe Hockey MP
Treasurer
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Treasurer

Tax Agent Services Act (TASA) 2009 – Exemption for Actuaries

The Actuaries Institute is the sole professional body for actuaries in Australia. It represents the interests of over 4,000 members, including more than 2,000 actuaries. Our members have had significant involvement in the development of superannuation and insurance regulation, financial reporting, risk management and related practices in Australia and Asia.

The purpose of this letter is to request urgent action to exempt actuaries from the Tax Agent Services legislation, in particular in respect of services that are specified in tax legislation that require actuarial advice and/or certification.

By way of background we attach copies of previous correspondence on this matter, as follows:

- 17 August 2011 – letter to The Hon. Bill Shorten MP
- 27 May 2010 – letter to the Chair of the Tax Practitioners Board
- 5 August 2008 – letter to the Department of the Treasury

We would of course be very pleased to discuss our views on this matter with you. Please do not hesitate to contact Andrew Boal, Convenor of the Superannuation Practice Committee, at andrew.boal@towerswatson.com or on (03) 9655 5103.

Yours sincerely

John Newman
President

Cc Senator Arthur Sinodinos, Assistant Treasurer

Institute of Actuaries of Australia
ABN 69 000 423 656

Level 7, 4 Martin Place, Sydney NSW Australia 2000
t +61 (0) 2 9233 3466 f +61 (0) 2 9233 3446
e actuaries@actuaries.asn.au w www.actuaries.asn.au



Institute of Actuaries of Australia

17 August 2011

The Hon Bill Shorten MP
Minister for Financial Services and Superannuation
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Email: ministerial@treasury.gov.au

Dear Minister

Tax Agent Services Act 2009 – Exemption for Actuaries

The purpose of this letter is to request urgent action to exempt actuaries from the Tax Agent Services legislation, following recent advice which indicated that actuarial services (many of which are required by legislation) appear to have been inadvertently caught.

Background

The Institute of Actuaries of Australia (“the Institute”) is the sole professional body for actuaries in Australia. It represents the interests of over 3,800 members, including more than 2,000 actuaries. Our members have had significant involvement in the development of superannuation and insurance regulation, financial reporting, taxation and related practices in Australia over many years.

On 5 August 2008, the Institute sent a submission to Treasury in response to the Tax Agent Services Bill 2008 Exposure Draft. The Institute was concerned that, in the absence of a broad exemption applying to actuarial services, which typically involve the certification of amounts that are required to calculate a tax liability and are often required by legislation, the legislation may severely limit the existing scope of services that can be provided by actuaries without registering as tax agents. Further, it was (and still remains) our understanding that, in the framing of the draft legislation, there was no specific intention to introduce further regulation of actuarial services.

Indeed, at the time we were assured by Treasury that activities that involve simply calculating and certifying amounts that are required to calculate a tax liability would not be captured by the Tax Agent Services legislation as they do not “apply or interpret the tax law”. Nonetheless, we still sought an amendment to the Explanatory Memorandum to make it clear that such actuarial services would not be captured, but we were not successful. Instead, we were advised by Treasury that a Tax Practitioners Board would be established that would be able to issue a binding Legislative Instrument confirming that such actuarial certificates are exempt.

The Institute of Actuaries of Australia

ABN 69 000 423 656

Level 7 Challis House 4 Martin Place
Sydney NSW Australia 2000

Telephone 02 9233 3466 Facsimile 02 9233 3446

Email: actuaries@actuaries.asn.au Web site: www.actuaries.asn.au

On 27 May 2010, the Institute wrote to Mr Dale Boucher (Chair of the Tax Practitioners Board) seeking confirmation that:

- Certificates and other information which are required by law to be prepared by an actuary are not considered to be a tax agent service;
- Anti-detriment certificates prepared by an actuary for the purposes of section 295-485 of the Income Tax Assessment Act 1997 are not considered to be a tax agent service; and
- Other actuarial work of the nature set out in an appendix to that letter is likewise not considered to be a tax agent service.

The Tax Practitioners Board responded to this letter on 31 May 2011 advising its view that (contrary to Treasury's earlier advice to the Institute), where actuaries provide services of the kind outlined in our letter, then there will be a need for the actuary to register as a tax agent with the Tax Practitioners Board.

Urgent action required

We continue to have discussions with Treasury regarding this matter but we also thought it was now appropriate to draw your attention to it, as urgent action is required to ensure that actuaries can continue to provide services such as preparing actuarial certificates which enable superannuation funds to obtain a tax deduction for the cost of death and disability benefits.

We believe that the Tax Agent Services legislation should be amended to provide actuaries with an exemption along similar lines to the exemption currently provided for legal practitioners.

To support this view, you should be aware that all actuaries are required to abide by the Institute's Code of Professional Conduct ("the Code"). The Code places an onus on actuaries to ensure that, among other things, they have relevant professional experience in a particular area on which actuarial advice is provided.

Further, all actuaries have a duty under the Institute's Continuing Professional Development (CPD) to maintain professional knowledge and skill at a level required to ensure that the recipient of their services receives the advantage of competent professional services, based on current legislation and generally accepted practices and techniques. The Institute also has in place several practice committees that are responsible for the drafting and maintenance of numerous mandatory Professional Standards and other Practice Guidelines. Importantly, the Institute also has its own Disciplinary Scheme with an appropriate level of independence to ensure fairness and impartiality, as well as minimise the potential for conflicts of interest.


If some time is needed to consider the question of a permanent exemption, we request that an interim exemption, say until 30 June 2012 as applies to financial planners, be put in place as soon as possible.

The Hon Bill Shorten MP
Minister for Financial Services and Superannuation

17 August 2011

By way of background, we attach copies of the Institute's submission to Treasury on 5 August 2008 and our letter to the Tax Practitioners Board dated 27 May 2010. We would of course be happy to discuss our views on this matter with you further. Please do not hesitate to contact Andrew Boal, Convenor of the Superannuation and Employee Benefits Practice Committee (SEBPC) on (03) 9655 5103 (andrew.boal@towerswatson.com) or Melinda Howes, CEO on (02) 9239 6106 (melinda.howes@actuaries.asn.au).

Yours faithfully

A handwritten signature in black ink, appearing to read 'B. Rafe', with a stylized flourish at the end.

Barry Rafe
President

Encl: Institute letter to Tax Practitioners Board – 27 May 2010, and
Institute letter to Treasury – 5 August 2008



Institute of Actuaries of Australia

27 May 2010

Mr Dale Boucher
Chair, Tax Practitioners Board
Amungula Building
26 Narellan Street
CANBERRA, ACT 2601

Email: dale.boucher@tpb.gov.au

Dear Mr Boucher

Tax Agent Services Act 2009 ("TAS Legislation") Request for clarification in respect of actuarial certificates

The Institute of Actuaries of Australia ("the Institute") is the sole professional body for actuaries in Australia. It represents the interests of over 1,700 Fellows and 2,000 other members. Our members have had significant involvement in the development of insurance regulation, financial reporting and related practices in Australia over many years.

Purpose

The Tax Agent Services legislation contains provisions which may unintentionally capture the professional advice and certifications undertaken by actuaries in the areas of superannuation, life, health and general insurance.

Following past communications between the Institute and Treasury at the time the legislation was drafted, the Institute is now seeking confirmation from the Tax Practitioners Board that Certificates and other information which are required by law to be prepared by an actuary (or where actuaries are specifically accepted by the ATO as being an appropriate source of such information) are not considered to be a tax agent service.

This letter summarises the issues discussed at that time in regards to superannuation, discusses the implications for insurance and outlines those issues requiring confirmation.

Summary of past discussions and correspondence with respect to superannuation.

Attached is a copy of a submission sent by the Institute to the Treasury on 5 August 2008, which expressed concerns at the possibility of the TAS Legislation imposing further, unintended, regulation of actuarial services.

The Institute of Actuaries of Australia
ABN 69 000 423 656

Level 7 Challis House 4 Martin Place
Sydney NSW Australia 2000

Telephone 02 9233 3466 Facsimile 02 9233 3446

Email: actuaries@actuaries.asn.au Web site: www.actuaries.asn.au

During subsequent discussions with Treasury officers, the Institute provided specific examples of work undertaken by actuaries which might fall within the relevant definitions. Examples cited by the Institute included the following (please refer to Appendix 2 for a more comprehensive list):

- Certificates prepared in accordance with sections 295-465 of the Income Tax Assessment Act 1997 (relating to deductions for insurance or self-insurance costs); and
- Certificates prepared in accordance with sections 295-385, 295-390 and 295-395 of the Income Tax Assessment Act 1997 (relating to exemptions from tax in respect of assets backing current pension liabilities).

At the time, Treasury officers assured the Institute that, in their view, the abovementioned activities will not be caught by the relevant definitions in the TAS Legislation and that actuaries will not, therefore, be further regulated by the TAS Legislation. In particular, Treasury officers assured the Institute that the TAS Legislation will not capture as a "tax agent service" activities that just calculate and certify amounts that are required to calculate a tax liability as they don't "apply or interpret the tax law".

To provide actuaries with greater certainty, the Institute would have preferred to have at least seen the Explanatory Memorandum amended in such a way as to make it clear that there was no intention to further regulate the activities of actuaries. We were advised that time constraints would not allow such amendments to be made.

The Treasury did indicate at the time that a Tax Practitioners Board would be established that will be able to issue a binding Legislative Instrument confirming that such certificates are exempt.

Implications for other actuarial advice required by law – life, health and general insurance

In addition to the areas already discussed with Treasury, actuaries provide advice to life insurers, health insurers and general insurers that may be used in determining a company's taxable income. Actuaries also provide advice that involves making an allowance for future tax payments (eg when providing advice on product terms).

Confirmation requested

To provide greater certainty for actuaries, the Institute is now seeking confirmation from the Tax Practitioners Board that:

- Certificates and other information which are required by law to be prepared by an actuary are not considered to be a tax agent service;
- Anti-detriment certificates prepared by an actuary for the purposes of section 295-485 of the 1997 Act are not considered to be a tax agent service; and
- Other actuarial work of the nature set out in Appendix 2 is likewise not considered to be a tax agent service.

If required, we would be happy to further discuss our request for clarification. Please do not hesitate to contact either me on (02) 9239 6106, email melinda.howes@actuaries.asn.au or Andrew Boal, Convenor of the Institute's Superannuation and Employee Benefits Practice Committee on (03) 9655 5103 (andrew.boal@towerswatson.com) in this regard, or for any further information.

Meeting request

Actuaries also provide advice to life insurers in other areas, such as the equitable treatment of tax when calculating unit prices for investment-linked policies. The Institute would like to discuss the treatment of these services with the Board and if this regard, if you are agreeable, we will contact your office to arrange a suitable meeting.

Yours faithfully



Melinda Howes
Chief Executive Officer

Appendix 1:

Extracts from an Information Sheet issued by the Tax Practitioners Board

What is a tax agent service?

A "tax agent service" is any service that relates to:

- ascertaining or advising about the liabilities, obligations or entitlements of an entity under a taxation law; or
- representing an entity in their dealings with the Commissioner of Taxation; and

that is provided in circumstances where it is reasonable to expect that the entity will rely on it to satisfy liabilities or obligations under a taxation law or to claim entitlements under a taxation law.

"Taxation law" includes any Act of which the Commissioner of Taxation has general administration, or any regulations made under such an Act. It also includes the *Tax Agent Services Act 2009* (TASA) and any regulations made under the TASA.

What are examples of a Tax Agent Service?

A tax agent service includes, but is not limited to, the following:

- a BAS service;
- preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements under a taxation law;
- giving a taxpayer advice about a taxation law that the taxpayer can reasonably be expected to rely upon to satisfy their taxation obligations; or
- dealing with the Commissioner on behalf of a taxpayer in relation to a taxation law.

Tax agent services only include those services that involve the application or interpretation of a taxation law, and those services which involve representing an entity in their dealings with the Commissioner in relation to a taxation law.

Appendix 2:

Examples of work undertaken by actuaries which might fall within the relevant definitions

The following is a list of Professional Standards (PS), Practice Guidance (PG) or Guidance Notes (GN) issued by the Institute that involve the provision of advice in some way related to tax legislation. Item 14 also sets out other actuarial certificates for tax purposes (for which there is not a specific guidance note or professional standard).

We are concerned that, as items 4, 5, 6, 8 and 14(a) are needed and directly relied upon by superannuation fund clients in submitting their tax returns (and are prepared solely for that purpose), these items might be classified as tax agent services. Item 9 might also be considered to be tax advice as it is prepared for the purpose of an employer meeting its Superannuation Guarantee obligations (which may be considered to be tax obligations). Item 14(b) certifications are needed and directly relied upon by superannuation fund clients in preparing contributions data for submitting to the ATO in accordance with tax legislation (which may be considered to be tax obligations).

Whilst the other items take tax into account, the advice does not directly relate to tax and the allowance for tax is ancillary to the advice provided. However, where performed in relation to a Self Managed Superannuation Fund (regulated by the ATO under the Superannuation Industry (Supervision) Act 1993 (SIS Act)) they may be considered to be ascertaining or advising about the liabilities, obligations or entitlements of an entity under a taxation law. Finally, while all the examples below relate to superannuation, actuaries also prepare certificates or other information required for tax purposes in other practice areas such as life insurance.

1. **PS400: INVESTIGATIONS OF DEFINED BENEFIT SUPERANNUATION FUNDS** - Much of this Standard is independent of any legislation, but various legislative requirements are addressed in parts of this Standard. Legislation with which the actuary should be familiar includes the SIS Act, the Superannuation Guarantee (Administration) Act 1992 (SG Act), and relevant sections of the Income Tax Assessment Act 1936 (1936 Act) and the Income Tax Assessment Act 1997 (1997 Act).
2. **PS404: VALUATION OF SUPERANNUATION FUND ASSETS** - The Member must be familiar with any legislation applicable to the particular type of work covered by this Professional Standard which, depending on the nature of the work, may include legislation such as relevant provisions of the SIS Act, the 1936 Act, the 1997 Act and associated regulations. In particular the actuary will need to make assumptions about the level of contribution and investment tax payable by the fund.
3. **PG499.02: PROJECTED SUPERANNUATION BENEFIT ILLUSTRATIONS** - This Practice Guideline applies to any Member advising an employer, trustee, existing or prospective plan member or other party in relation to a Projected Superannuation Benefit Illustration. In preparing such advice, allowance will need to be made for contributions tax, investment tax and benefit tax.
4. **GN450: COST OF DEATH AND DISABILITY BENEFITS - CERTIFICATES BY ACTUARIES UNDER SUB-SECTION 279(3) OF THE INCOME TAX ASSESSMENT ACT 1936**- The purpose of this Guidance Note is to provide guidance to members on the operation of certain parts of Section 279 of the 1936 Act (which have now been replaced by Sections 295-460, 295-465 and 295-470 of the 1997 Act) relating to tax deductions for the cost of providing death and disability benefits. Taxation Ruling IT2617 requires that an actuarial certificate under Sub-section 279(3) must include "confirmation that the

valuation is consistent with any Guidance Notes issued by the Institute". This Guidance Note is currently being rewritten to apply to the new legislative references.

5. **GN451: UNSEGREGATED SUPERANNUATION LIABILITIES - CERTIFICATES BY ACTUARIES UNDER SUB-SECTIONS 283(3) AND 283(4) OF THE INCOME TAX ASSESSMENT ACT 1936-** The purpose of this Guidance Note is to provide guidance to members on preparing certificates under Section 283 of the 1936 Act (which has now been replaced by Subdivision 295-F of the 1997 Act) , particularly the determination of "Unsegregated superannuation liabilities". Taxation Ruling IT2617 requires that an actuarial certificate under Sub -section 283(3) must include "confirmation that the valuation is consistent with any Guidance Notes issued by the Institute". This Guidance Note is currently being rewritten to apply to the new legislative references.
6. **GN452: SEGREGATED ASSETS CERTIFICATES BY ACTUARIES UNDER SECTION 273A AND SECTION 273B OF THE INCOME TAX ASSESSMENT ACT 1936-** The purpose of this Guidance Note is to provide advice to members on the preparing certificates under Sections 273A and 273B of the 1936 Act relating to segregated assets (which have now been replaced by Subdivision 295-F of the 1997 Act). Taxation Ruling IT2617 requires that an actuarial certificate under paragraph 273A(b) or paragraph 273B(b) must include "confirmation that the valuation is consistent with any Guidance Notes issued by the Institute". This Guidance Note is currently being rewritten to apply to the new legislative references.
7. **GN454: AAS 25 - "ACCRUED BENEFITS" UNDER DEFINED BENEFIT SUPERANNUATION FUNDS** - The purpose of this Guidance Note is to provide guidance to actuaries who are required for the purposes of AAS 25 to calculate *Accrued Benefits* for a defined benefit fund. In doing so, the actuary is required to make appropriate allowance for rates of taxation on the fund's investment income and capital gains.
8. **GN455: PRE 1 JULY 1988 FUNDING CREDITS (PJFC)** - This Guidance Note is to be applied by actuaries in the determination of a superannuation fund's entitlement to PJFC at 30 June 1988 (or at such other date as may be approved); in the procedure for transfers of PJFC; and in the procedure for reporting Prescribed Events, in accordance with Section 342 of the *Superannuation Industry Supervision Act (SIS)* and related legislation. Subdivision 295-D of the 1997 Act (previously Sections 275A and 275B of the 1936 Act) cover the application of the PJFC.
9. **GN456: PREPARATION OF BENEFIT CERTIFICATES REQUIRED UNDER THE SUPERANNUATION GUARANTEE (ADMINISTRATION) ACT 1992 (SG Act)-** This Guidance Note deals with the preparation by actuaries of Benefit Certificates provided to employers under Section 10 of the SG Act. In preparing a Benefit Certificate, the actuary is required to make allowance for tax on contributions, expenses and death and disablement costs.
10. **GN459: PAYMENTS FROM SUPERANNUATION FUNDS TO EMPLOYERS** - This Guidance Note applies to the certification by an actuary that a complying superannuation fund would remain in a satisfactory financial position under Section 117 of the SIS Act. In doing so, the actuary is required to give careful consideration to the valuation of future income tax benefits (including any benefits arising as a result of the payment to the employer) and the need to allow for any tax liability arising due to the sale of assets necessary to achieve the payment to the employer.
11. **GN460: PRUDENTIAL REPORTING TO TRUSTEES AND THE REGULATOR** - Sections 1 to 10 inclusive apply to actuaries performing actuarial functions under the SIS Act in

respect of funds which are "regulated funds" as defined in the Act. Section 11 applies to all actuarial involvement with superannuation funds. In doing so, the actuary is required to give careful consideration to the valuation of future income tax benefits.

12. **GN461: FUNDING AND SOLVENCY CERTIFICATES** - This Guidance Note applies to the preparation of Funding and Solvency Certificates required by certain defined benefit regulated superannuation funds, and control of all technically insolvent funds used for Superannuation Guarantee purposes. In doing so, actuaries are required to give particular attention to items that are vulnerable to changes in circumstance including future income tax benefits and reserves for capital gains or other tax, as well as contribution and investment taxes.
13. **GN465: STATEMENTS OF OPINION RELATING TO DEFINED BENEFIT PENSIONS** - Actuaries making statements of opinion relating to the payment of defined benefit pensions from a defined benefit superannuation fund for the purposes of Regulation 9.31(1)(ba) of the SIS Regulations, inserted by Modification Declaration No. 23. There are different Government authorities involved in pension funds for different reasons. The main authorities are APRA, the Australian Taxation Office and the authorities supervising social security entitlements.
14. **OTHER ACTUARIAL CERTIFICATES FOR TAX PURPOSES** (for which there is not a specific guidance note or professional standard):
 - (a) Anti-detriment certificates for the purposes of section 295-485 of the 1997 Act (whilst actuarial certification is not necessary under the Act, actuarial certification of an appropriate amount for a defined benefit fund was an acceptable approach according to the Explanatory Memorandum to the Bill which introduced the anti-detriment provisions to the 1936 Act in 1988); and
 - (b) Certifications of 'new entrant rates' and 'benefit categories' etc under Schedule 1A of the Income Tax Assessment Regulations 1997 of for the purposes of calculating notional taxed contributions.
15. **PS 200: ACTUARIAL ADVICE TO A LIFE INSURANCE COMPANY OR FRIENDLY SOCIETY** - This Standard covers apportionments of income and outgoings, and the determination of policy liabilities, required under sections 78, 79 and 96 of the Life Insurance Act 1995. The results are used to calculate taxable income for life insurance companies (Subdivisions 320-D, 320-F and 320-H of the 1997 Act). The Standard also covers product advice required under the Life Insurance Act. Product advice needs to reflect current and plausible future experience related to taxes.
16. **GN 252: ECONOMIC VALUATIONS OF LIFE INSURANCE BUSINESSES** - Actuaries valuing life insurance businesses generally use cash flow models. These models need to reflect the impact of taxation on profit and hence economic value.
17. **GN 650: ACTUARIAL REPORTS AND ADVICE ON OUTSTANDING CLAIMS IN HEALTH INSURANCE** - Actuaries provide advice on the provision for outstanding claims for health insurers, and the movement in the provision for outstanding claims directly impacts on the profit, and therefore tax payable.



Institute of Actuaries of Australia

5 August 2008

General Manager
Business Tax Division
Department of the Treasury
Langton Crescent
PARKESACT 2600

Attention: Ms Nan Wang
Nan.wang@treasury.gov.au

Dear Sir/Madam

Tax Agent Services Bill 2008 - Exposure Draft

I would be grateful for your consideration of the following submission in response to the Tax Agent Services Bill 2008 Exposure Draft. We understand that submissions closed on 27 June 2008 and we appreciate your acceptance of our submission past this deadline.

As you are aware, the Institute of Actuaries of Australia (the Institute) is the sole professional body for actuaries in Australia. It represents the interests of over 1,400 fellows and 2,000 other members.

Members of the Institute are concerned that, in the absence of a broad exemption applying to actuaries, the legislation may severely limit the existing scope of services that can be provided by actuaries.

It is our understanding that, in the framing of the draft legislation, there has been no specific intention to introduce further regulation of actuarial services. We recommend, therefore, that a broad exemption be included in respect of actuaries, similar to the exemption provided for legal practitioners.

Provision of consulting services by actuaries

Actuaries are engaged in providing a diverse range of services to financial institutions, many of which involve the provision of advice on matters that relate to taxation law.

Some of the roles in which actuaries are employed are prescribed by legislation. For example, superannuation funds are required to engage an actuary to provide regular valuations for accounting, SIS and tax purposes, and to provide regular actuarial certification for tax purposes.

The Institute of Actuaries of Australia

ABN 69 000 423 656

Level 7 Challis House 4 Martin Place
Sydney NSW Australia 2000

Telephone 02 9233 3466 Facsimile 02 9233 3446

Email: actuaries@actuaries.asn.au Web site: www.actuaries.asn.au

Actuaries are also widely engaged as consultants for their knowledge and experience in a non-legislated capacity. For example, to provide advice to superannuation funds on the tax implications of funding strategies and benefit designs as well as tax issues relating to employers and members. Other areas in which actuaries are engaged include insurance, investment, banking, health, environment and enterprise risk management.

Under the Bill as currently drafted, many services currently provided by actuaries could be prohibited. A Tax Agent Service is defined in s90-5(1) as any service:

- (a) that relates to:*
- (i) ascertaining the liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or*
 - (ii) advising an entity about the liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or*
 - (iii) representing an entity in their dealings with the Commissioner; and*
- (b) that is provided in circumstances where the entity can reasonably be expected to rely on the service.*

The above definition of Tax Agent Service will replace the range of services specified in s251L of the Income Tax Assessment Act 1936. We consider it could be interpreted much more broadly, notwithstanding the interpretative provisions in Tax Determination 2005/16.

For instance, in the superannuation context, some examples of the types of services provided by actuaries that could be captured within the proposed definition of Tax Agent Service include:

- For tax purposes, the calculation and certification of notional taxed contributions, pension liabilities, deductible insurance premiums and notional premiums, pre-July funding credits, etc;
- Determination of actuarial liabilities of an employer for accounting, SIS and tax purposes;
- Estimation or determination of a tax liability (eg. tax on contributions or investment income) for the purposes of actuarial valuations, certification of funding and solvency and other actuarial calculations;
- Assisting trustees and employers to manage issues related to taxation, including:
 - implications of the non-provision of tax file numbers for superannuation funds;
 - advice on concessional and non-concessional contributions;
 - advice on superannuation benefits tax, including benefits tax on members under age 60, tax on superannuation death benefits, tax implications of receiving benefits as lump sum payments versus income streams.
- Providing technical signoff on product disclosure statements that explain tax issues to members;
- Providing technical signoff on superannuation fund websites that contain information relating to tax on superannuation;
- Provision of general advice under the Corporations Act.

Many of the above services will directly involve the actuary either:

- ascertaining the liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
- advising an entity about the liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law.

In some cases, the tax advice may be incidental to the main actuarial advice. In other cases it would appear that the advice would not be incidental but is the primary focus of the advice, eg. the calculation and certification of notional taxed contributions, pension liabilities, deductible insurance premiums and notional premiums, pre-July funding credits, etc.

Regulation of services provided by actuaries

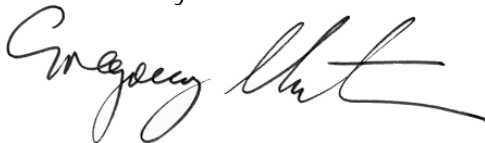
In order to regulate the broad range of services provided by actuaries, all Members are required to abide by the Institute's Code of Professional Conduct. The Code of Professional Conduct places an onus on actuaries to ensure, inter alia, they have relevant professional experience in the particular area on which actuarial advice is provided.

Further, all Members have a continuing duty under the Institute's Professional Standards to maintain professional knowledge and skill at a level required to ensure that the recipient of their services receives the advantage of competent professional services, based on current legislation and generally accepted practices and techniques.

In order to ensure that this legislation does not introduce further regulation of actuarial services, therefore, the Institute recommends that an exemption be included in the regulations in respect of actuaries. We submit that this exemption should be similar to the exemption provided for legal practitioners and have included, in Appendix A, our recommended drafting changes.

I hope you will find views and suggestions in this submission helpful. Please do not hesitate to contact John Maroney, Chief Executive Officer (john.maroney@actuaries.asn.au tel: +61 2 9233 3466) or Philip French, Director Public Affairs (philip.french@actuaries.asn.au: tel +61 2 9239 6111) should you have any queries about the contents.

Yours faithfully



Greg Martin
President



Institute of Actuaries of Australia

Appendix A – Suggested drafting changes to the Tax Agent Services Bill 2008

Suggested drafting changes to s50-5

50-5 Providing tax agent services if unregistered

(1) You contravene this subsection if:

- (a) you provide a service that you know, or ought reasonably to know, is a *tax agent service; and
- (b) the tax agent service is not a *BAS service; and
- (c) you charge or receive a fee or other reward for providing the tax agent service; and
- (d) you are not:
 - (i) a *registered tax agent;
 - (ii) a *legal practitioner covered by subsection (3); or
 - (iii) an *actuary covered by subsection (4).

(2) You contravene this subsection if:

- (a) you provide a service that you know, or ought reasonably to know, is a *BAS service; and
- (b) you charge or receive a fee or other reward for providing the BAS service; and
- (c) you are not one of the following:
 - (i) a *registered tax agent or BAS agent;
 - (ii) a *legal practitioner covered by subsection (3);
 - (iii) an *actuary covered by subsection (4);
 - (iv) if the BAS service relates to imports or exports to which an *indirect tax law applies—a customs broker licensed under Part XI of the Customs Act 1901.

Insertion of subsection (4) as follows:

(4) An *actuary is covered by this subsection if the actuary is a Fellow or Accredited Member of the Institute of Actuaries of Australia acting in the course of his or her profession to provide a tax agent service.

The Institute of Actuaries of Australia

ABN 69 000 423 656

Level 7 Challis House 4 Martin Place

Sydney NSW Australia 2000

Telephone 02 9233 3466 Facsimile 02 9233 3446

Email: actuaries@actuaries.asn.au Web site: www.actuaries.asn.au



Institute of Actuaries of Australia

Suggested drafting changes to s50-10

50-10 Advertising tax agent services if unregistered

(1) You contravene this subsection if:

- (a) you advertise that you will provide a *tax agent service; and
- (b) the tax agent service advertised is not a *BAS service; and
- (c) you are not:
 - (i) a *registered tax agent; or
 - (ii) a *legal practitioner covered by subsection (3);
 - (iii) an *actuary covered by subsection (4); or
 - (iv) a person providing services on a voluntary basis under a scheme approved by the Commissioner by notice published in the Gazette.

(2) You contravene this subsection if:

- (a) you advertise that you will provide a *BAS service; and
- (b) you are not:
 - (i) a *registered tax agent 1 or BAS agent; or
 - (ii) a *legal practitioner covered by subsection (3); or
 - (iii) an *actuary covered by subsection (4); or
 - (iv) if the BAS service relates to imports or exports to which an *indirect tax law applies—a customs broker licensed under Part XI of the Customs Act 1901; or
 - (v) a person providing services on a voluntary basis under a scheme approved by the Commissioner by notice published in the Gazette.

Insertion of subsection (4) as follows:

(4) An *actuary is covered by this subsection if the actuary is a Fellow or Accredited Member of the Institute of Actuaries of Australia acting in the course of his or her profession to provide a tax agent service.

Renumbering of subsection (4) to subsection (5) and of references therein:

(5) A notice under subparagraph (1)(c)(iv) or (2)(b)(v) is not a legislative instrument.

The Institute of Actuaries of Australia

ABN 69 000 423 656

Level 7 Challis House 4 Martin Place

Sydney NSW Australia 2000

Telephone 02 9233 3466 Facsimile 02 9233 3446

Email: actuaries@actuaries.asn.au Web site: www.actuaries.asn.au