Synchron

Don F Trapnell ANZIIF (Snr Assoc) DipAll AAII CIP
Director and Representative No. 266516

CIP SENIOR ASSOCIATE

33 Walsh Street West Melbourne VIC 3003
PO Box 438 North Melbourne VIC 3051
Ph: 03 9328 3900 **Fax:** 03 9328 4031 **Mob:** 0417 306 048
Email: d.trapnell@synchron.net.au

26 August 2014

Mr David Murray AO
Chair
Financial System Inquiry
GPO Box 89
SYDNEY, NSW 2001

Email: fsi@fsi.gov.au

Dear Mr Murray,

Submission – Financial System Inquiry – Payroll Tax

The Threat of Payroll Tax to Financial Advice Licensees

With the AFSL model, under the Corporations Act, the majority of self-employed financial advisers are authorised through a licensee. The implication of this is that whilst the financial adviser may recommend a range of products from different product providers, and be paid adviser service fees by clients, the flow of payments either through commissions or adviser service fees to the adviser is directed through the licensee. This is a payment arrangement that reflects the licensing regime under the Corporations Act.

These self-employed advisers are not employees and neither are they contractors. They run their own businesses (usually as a Pty Ltd entity) and provide services to their own clients. They have their own expenses in running their businesses including premises, insurance, accounting fees and so on. They are their own business and tax entity. The effective commercial arrangement between the adviser and the licensee is that the adviser will pay the licensee either a flat fee for licensee services, or a percentage of their revenue, or a combination of both.

Under FoFA, it is a fundamental requirement that clients are paying for the advice provided to them. The required business model where all advice fees being paid to the adviser must firstly be paid to the licensee is a consequence of the Corporations Act, rather than a reflection of the nature of the arrangement.

In recent years there have been a number of cases where state revenue offices have looked at financial advice licensees with a view to identifying payroll tax liabilities. Recent examples suggest that the key exemption available for financial advisers is one where, if the financial adviser employs a minimum number of other staff, then the revenue paid to them via the licensee will be exempt from payroll tax assessment. This however is subject to some uncertainty including how many employees and the nature of that employment or contracting arrangement.

Where the licensee was required to pay payroll tax on these self-employed advisers, it

would be in addition to the GST which is paid for the services provided to clients. The addition of payroll tax on top of the GST is fundamentally inconsistent. It results in double taxation.

Previously in NSW there was an exemption for financial advisers, which was only removed from the state payroll tax legislation as part of cross-state payroll tax harmonisation. The public position at that time was that this change would have no impact upon financial advisers, which in practice appears to have been proven to be incorrect.

Existing examples of where state revenue offices have pursued licensees for payment have included backdating the assessment for up to seven years. Should this continue there will be many licensees where this would be likely to result in the financial collapse of the licensee. Most critically this impact will be the greatest for the non-aligned or independent licensees who do not have an institutional parent to pick up this significant unplanned and retrospective tax assessment. This would result in a further reduction in the independent section of the financial advice marketplace to the detriment of competition and confidence in financial advice.

We would like to see the Financial System Inquiry address this issue as it is likely to have a fundamental impact upon the provision of financial advice to Australian consumers. We are seeking national action to ensure that self-employed financial advisers and their licensees are exempt from the state based payroll tax regimes and the resultant double taxation consequence.

Should you have any questions with respect to this submission then please do not hesitate to contact me on 03 9328 3900.

Yours sincerely,

Don F Trapnell