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20 February 2020

Manager
Stamping Fee Team
The Treasury
Langton Crescent
Parkes ACT 2600

By email: stampingfeeteam@treasury.gov.au

Dear Treasury,

AFA Submission: Stamping Fee Exemption

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are currently practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

Introduction

The AFA has canvassed our members as part of this consultation process, and we are not aware of any of our members who currently take advantage of the stamping fee exemption. We believe that this exemption predominantly applies to stockbrokers, as opposed to financial advisers.

Whilst we do not support an exemption for capital raisings for investment entities, we do support the continuation of the original November 2012 exemption that applied for capital raisings for operating companies, which we believe supports the capital markets and investment in Australian companies. In supporting this tighter application of stamping fees, it is important to note that we do not believe that this is applicable to our members, since it appears that they are not utilising it.

It is our view that the availability of the stamping fees exemption for investment vehicles, such as listed investment companies and listed investment trusts, creates an unlevel playing field, since the

receipt of similar benefits for the placement of investments into unlisted investment vehicles is not permitted under the Future of Financial Advice (FoFA) legislation. The AFA supports the FoFA ban on the payment of conflicted remuneration on the recommendation of investment products. We therefore support amending the stamping fee exemption, so that it is once again restricted to operating businesses and excludes investment entities.

In the context that very few financial advisers utilise the stamping fee exemption, it has been a source of significant concern to our members, that the media has suggested that this exemption is a loophole that has been exploited by financial advisers. This is, in our view, an incorrect characterisation of this issue, and unfortunately another case where financial advisers have been unfairly treated.

History of the Stamping Fee Exemption

There has been a long history with the regulations relating to stamping fees, which we believe is important to set out and to also note the position that the AFA has taken.

On 22 November 2012 the Minister for Financial Services and Superannuation issued a batch of regulations that included Regulation 7.7A.12B that introduced an exemption for stamping fees, however this exemption specifically excluded investment entities.

On 26 June 2014, the Minister for Finance issued further regulations, including the repeal of the 22 November 2012 stamping fee exemption (7.7A.12B), and the introduction of a new broader exemption that permitted the application of the stamping fee exemption to investment entities. The 26 June 2014 package of regulations, was however, subsequently disallowed in the Senate on 19 November 2014.

The package of disallowed regulations included a number of important elements that were essential for the effective operation of some elements of the financial services market. One part, which was critical to the AFA, at that time, was a set of regulations that enabled a financial adviser to move from one Australian Financial Services Licensee to another without the loss of grandfathered commission arrangements. In the absence of these specific regulations, the conflicted remuneration regime was artificially preventing the movement of financial advisers from one Australian Financial Services Licensee to another.

As the disallowance of a regulation prevents the Government from introducing a new regulation of similar purpose for at least 6 months, it was necessary for the Government and the Opposition to agree on a set of core regulations that were described in a media release from the Minister for Finance on 26 November 2014 as “broadly supported elements”. A motion was passed in the Senate on 27 November 2014, to enable the reinstatement of specific agreed regulations, and accordingly, on 11 December 2014, this new package of regulation was introduced.

These new regulations, that were supported by the Government and the Opposition, included the previous fix to address the known problem with the retention of grandfathered commissions when an adviser changed licensee. This reflected the bipartisan support, at that time, for the retention of grandfathering for pre FoFA trail commissions on investment and superannuation products. This new package of regulations also included the re-instatement of the broader stamping fee exemption, which included the broader definition that incorporated investment entities, which had been introduced on 26 June 2014, but disallowed on 19 November 2014. Whilst the AFA had participated in discussions with both the Government and the Opposition, at that time, on the important items to have reinstated, we did not advocate for the reinstatement of the broader stamping fee exemption that applied to investment entities.

Impact of a Restricted Stamping Fee Exemption

Financial advisers and stockbrokers who provide personal advice with respect to any investment product, including a listed investment, are required to prepare either a Statement of Advice or a Record of Advice. They are also bound by the best interests duty, an obligation to ensure that the advice is appropriate and to prioritise the interests of the client. We would hope that these obligations would work to ensure that advisers and stockbrokers are, in the vast majority of cases, acting appropriately when recommending an investment in a capital raising. We recognise that the payment of a stamping fee, puts in place, a greater risk that this will not always be the case.

We do not believe that the prohibition of stamping fees for capital raisings for investment entities will have a negative impact on the Australian capital market. Any adviser/broker who is recommending these products still has the opportunity to charge a fee, and there are also non-listed investment options that are available for these advisers/stockbrokers and their clients. Neither do we anticipate that this will have a negative impact upon the overall economy.

Concluding Remarks

The AFA supports amendments to the stamping fee exemption to exclude investment entities.

The AFA welcomes further consultation with Treasury, should it require clarification of anything in this submission. If required, please contact us on (02) 9267 4003.

Yours faithfully,



Philip Kewin
Chief Executive Officer
Association of Financial Advisers Ltd