



28 February 2025

Director  
Governance and Integrity Policy Unit  
Law Division  
The Treasury  
Langton Crescent  
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Email: [TaxSecrecyReview@treasury.gov.au](mailto:TaxSecrecyReview@treasury.gov.au)

Dear Sir/Madam,

**SMSF Association Submission – Review of tax regulator secrecy exceptions: *Consultation Paper***

The SMSF Association welcomes the opportunity to provide this submission in response to the review of the tax regulator secrecy exceptions consultation paper. We thank the Treasury and Government for including a discussion on providing access to client data for financial advisers. This has been a significant barrier for financial advisers in providing essential tax and superannuation advice to their clients and is the focus of our submission.

**SMSF Administration and Service Providers**

Many of the issues arising for financial adviser's mirror many of those experienced by registered tax agents providing specialist administration services to self managed superannuation funds (SMSF).

Due to the specialist nature of SMSFs, it is not uncommon for a different tax agent or administrator to attend to the SMSF's taxation and accounting services, to the tax agent who looks after the individual's personal taxation matters.

SMSF administrators are registered tax agents with existing rights to access the ATO's online services. However, access is strictly limited to the SMSF only and does not extend to the fund members. Yet member information, crucial to the performance of their role, and the services provided in relation to the SMSF are not accessible. That is despite their registered tax agent status.

Examples of information required but not accessible includes an ability to view an individual's transfer balance account, despite having the responsibility to report events impacting that account and managing pension interests. Information regarding contribution caps and thresholds, such as the unused concessional contributions and status of non-concessional contribution bring forward caps and total superannuation balances are also examples of critical data.

Access to this data by SMSF administrators is important for many reasons. For example, it would enable the early detection of reporting errors and would greater assist SMSF administrators to



provide SMSF members with more accurate and complete information about their superannuation tax affairs.

Adding to the complexity, any ATO correspondence relating to the client's SMSF interest are directed to the individual's tax agent and are not visible to, or accessible by the SMSF administrator. That is despite that correspondence relating to the taxpayer's interest in the SMSF. There can often be a need for the specialist firm to be involved to support and assist that individual to action the necessary steps required in response to certain notices.

### Recommendation

SMSF administrators should be granted restricted access to a SMSF members personal tax information.

A designated role is needed that sits alongside the primary tax agent. Crucially it should be separate and distinct so as not to interfere with the primary tax agent relationship.

Given the nature of the information to be provided, access should only be permitted where the role is authorised by the individual taxpayer.

Access should be limited to accessing information only. All other rights, such as the changing of a taxpayer's personal details or the lodgement of individual returns or forms would remain the role of the primary tax agent.

Any additional costs associated with this system change must be separately provisioned and fully funded.

We strongly encourage Treasury and Government to consider this cohort in in this body of work.

## Tax (Financial) Adviser Access to Client Tax Reports

### *The Case for Change*

We welcome the discussion on access to certain ATO-held information by financial advisers who are 'qualified tax relevant providers' providing tax (financial) advice.

A 'Tax (financial) advice service' is defined in section 90-15 of the Tax Agent Services Act<sup>1</sup> as:

*(1) A **tax (financial) advice service** is a tax agent service ... provided by a financial services licensee or a representative of a financial services licensee in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee to the extent that:*

- a) the service relates to:
  - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or*
  - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; and**
- b) the service is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
  - (i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;*
  - (ii) to claim entitlements that arise, or could arise, under a taxation law.**

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<sup>1</sup> Tax Agent Services Act 2009 (Cth).



These elements of the definition mirror the definition of a ‘tax agent service.’<sup>2</sup> The key difference between the two classes of tax services is the express exclusion of the preparation of returns or statements in the nature of return as a tax (financial) advice service.<sup>3</sup> There are essential policy elements for this distinction.

Of crucial importance here is the direct correlation for the provision of tax advice and the reliance a client can place in that advice.

Notably, the Australian Taxation Office have issued new guidance<sup>4</sup> on the tax deductibility of financial advice fees. A deduction for taxation advice can only be claimed where the advice relates to the client’s tax affairs<sup>5</sup> and is provided by a recognised tax adviser.<sup>6</sup>

Parity is needed for all tax professionals, to ensure that each cohort has access to information essential in the provision of timely and accurate advice to their clients.

Significant disparity arises between professionals due to the operation of the transfer balance cap and total superannuation balance provisions. Financial advisers are licenced to provide superannuation contribution and pension advice but unable to access the information necessary to provide that advice. We also note that similar issues to those experienced by SMSF administrators also arise for financial advisers who are also registered tax agents but are not the individual’s registered tax agent. Access is strictly limited to the individual taxpayer’s registered tax agent.

#### *Existing Regulatory Frameworks*

Financial advisers already have strict compliance obligations imposed under various statutes and regulators. They must comply with *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), *Privacy Act 1988* (Cth), *Corporations Act 2001* (Cth) and any obligations imposed by regulators such as AUSTRAC and ASIC as well as any further obligations imposed by their AFS licensee.

The *Financial Planners and Advisers Code of Ethics 2019* (Cth) notes that financial advisers ‘*should be committed to offering a professional service—informed by a code of ethics intended to shape every aspect of their professional conduct.*’ Crucially, they must:

- Act in accordance with all applicable laws, including this Code, and not try to avoid or circumvent their intent (Standard 1)
- Act with integrity and in the best interests of each client (Standard 2)
- Act for a client only with the client’s free, prior and informed consent (Standard 4)

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<sup>2</sup> *Tax Agent Services Act 2009* (Cth), s 90-5.

<sup>3</sup> *Tax Agent Services Act 2009* (Cth), s 90-15(3).

<sup>4</sup> Australian Taxation Office, *Income Tax: Deductions for financial advice fees paid by individuals who are not carrying on an investment business* (TD 2024/7, 25 September 2024).

<sup>5</sup> *Income Tax Assessment Act 1997* (Cth), s 25-5(1)(a).

<sup>6</sup> *Income Tax Assessment Act 1997* (Cth), s 25-5(2)(e), s 995-1: ‘recognised tax adviser’: (c) a qualified tax relevant provider (within the meaning of the *Corporations Act 2001*).



- All advice and ... recommendations that given to a client must be in the best interests of the client and appropriate to the client's individual circumstances (Standard 5)
- Take into account the broad effects arising from the client acting on the advice and actively consider the client's broader, long-term interests and likely circumstances (Standard 6)
- Ensure that records of clients, including former clients, are kept in a form that is complete and accurate (Standard 8)
- Ensure that all the advice given ... to a client must be offered in good faith and with competence and be neither misleading nor deceptive (Standard 9)
- Individually and in cooperation with peers, advisers must uphold and promote the ethical standards of the profession and hold each other accountable for the protection of the public interest (Standard 12)

Breaches of the Code or the Corporations Act can result in significant sanctions, either following a hearing with the Financial Services and Credit Panel (FSCP) (which can include public naming), education directives, financial penalties, suspension or banning orders. ASIC can also seek to take civil and criminal actions through the Courts.

#### *Funding and Resourcing*

Any funding and resourcing needed to onboard financial advisers to the ATO online services must be separately provisioned. The funding, resourcing, and the scope of works to improve current access and address issues arising for registered tax agents must continue. One body of work should not deprioritise or cannibalise the other. Each must be fully funded and resourced.

Getting the settings and systems right for registered tax agents, SMSF administrators, and financial advisers are critical, as the demand for advice and information continue to increase.

#### *Cyber Security and Fraud*

We note the comments in the consultation paper regarding the varied ability of financial advice businesses being able to manage their cyber security risks, and that many small financial advice businesses may lack the expertise and resources to provide a high level of data protection.

We believe these comments are ill informed and misguided and importantly note that the consultation paper provides no evidence or references to support these contentious statements.

As noted previously, financial advisers must comply with a raft of legislated obligations and are regulated by several regulatory bodies. This includes ASIC specifically requiring AFS licensees to implement cyber risk management and cyber resilience processes to ensure cyber incidents are avoided, detected and managed appropriately as part of their general risk management frameworks. The penalties for non-compliance are significant.

Given this, AFS licensees often adopt policies that are more stringent to those legislated to ensure strict compliance. This includes conducting due diligence on firms and individuals seeking to be authorised with them. Once authorised, they carry out regular monitoring and audits of advice and documents including how retained data is stored, mandatory cyber insurance and cyber training to ensure a high level of compliance and consumer protection.



Importantly, the concentration of small businesses in the financial advice sector is not unique and should not be used as justification not to provide access to ATO information. A significant portion of registered tax agent and BAS agent population also comprise of micro and small businesses.

#### Recommendation

Qualified tax relevant providers should be given access to relevant client taxation and superannuation information held by the ATO.

This project should be separately, fully funded by the government and adequately resourced to ensure successful implementation.

If you have any questions about our submission, please do not hesitate to contact Tracey Scotchbrook, Head of Policy and Advocacy via email [traceyscotchbrook@smsfassociation.com](mailto:traceyscotchbrook@smsfassociation.com)

Yours sincerely,

Peter Burgess  
Chief Executive Officer

#### **ABOUT THE SMSF ASSOCIATION**

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.