

12 December 2019

Stuart Atchison and Zoe Leonard
Australian Taxation Office

Email: CRPSecretariat@ato.gov.au

Dear Stuart and Zoe

CRP 2019/D1: Taxation Administration (Remedial Power-Disclosure of Protected Information by Taxation Officers) Determination 2019

As the representatives of over 200,000 current and future professional accountants in Australia, the two major Australian accounting bodies Chartered Accountants Australia and New Zealand and CPA Australia) support the use of the Commissioner's remedial power to enable disclosure of protected information to tax agents and legal practitioners in relation to deceased estates.

We are pleased to see and fully endorse the application of remedial powers to address this unintended consequence of the changes made to information disclosure legislation in 2010 and to ensure that tax professionals can support their clients at a difficult time.

Responses to the consultation questions are included in the attachment.

If you have any queries about this submission, please contact either Elinor Kasapidis (CPA Australia) at elinor.kasapidis@cpaustralia.com.au or Michael Croker (Chartered Accountants ANZ) at michael.croker@charteredaccountantsanz.com.

Yours sincerely

Simon Grant FCA

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Attachment

1. Do you agree that the taxpayer confidentiality provisions under the taxation law, as enacted, are leading to, or could lead to, unintended outcomes in the context of representatives of executors and administrators of deceased estates?

Agree. The current law only allows for the ATO to communicate with the legal personal representative (LPR) of the deceased estate with no ability to authorise a registered tax agent or legal practitioner to act on their behalf.

This is leading to frustration, inefficiencies and miscommunication with the LPR being liable for unpaid taxes while being unable to authorise a tax professional to engage with the ATO to correctly finalise the deceased taxpayer's affairs.

2. Is the proposed Legislative Instrument reasonable and not inconsistent with the intended object or purpose of the law?

We agree with the reasoning presented in paragraph 23 of the Explanatory Statement.

3. Is the proposed Legislative Instrument reasonable having regard to the cost of compliance?

The law, as enacted, currently leads to higher costs of compliance for the LPR due to the inability of the registered tax agent or legal practitioner to deal directly with the ATO to finalise the deceased taxpayer's affairs.

We anticipate that the costs of compliance will decrease as a result of CRP 2019/D1 as efficiencies will be gained for the LPR and ATO by enabling registered tax agents and legal practitioners to resolve issues directly.

4. Does the proposed Legislative Instrument result in outcomes for an entity that might be less favourable than those under existing law?

We are not aware of any outcomes that might be less favourable given CRP 2019/D1 merely authorises a registered tax agent or legal practitioner to engage directly with the ATO, as can be done for other entities.

5. Does the proposed Legislative Instrument ensure that relevant provisions of Subdivision 355-B continue to operate in accordance with the intended purpose or object of the law?

Yes. The proposed section 355-25(2)(h) is in accordance with intended object of protecting taxpayer confidentiality and is consistent with the other subsections under section 355-25(2).

6. Legislative instruments ordinarily apply prospectively and they cannot apply retrospectively to disadvantage an entity other than the Commonwealth or an authority of the Commonwealth (section 12 Legislation Act 2003). For the present proposal, prospective application is proposed. What application date should this instrument have?

Registered tax agents and legal practitioners currently have no authority to directly communicate with the ATO in relation to a deceased taxpayer on behalf of their LPR.

It is therefore preferable that the commencement date is the day after the instrument is registered.