

31 March 2017

Marc Featherstone (Director)
My Tax Agent Limited T/A Savvy Tax Agent
PO Box 1455
Christchurch 8140

By email only: marc@savvytaxagent.co.nz

Dear Marc

Fair Trading Act 1986: Warning

1. As you are aware, the Commerce Commission has been investigating My Tax Agent Limited T/A Savvy Tax Agent (Savvy Tax) under the Fair Trading Act 1986 (Act). We have now completed our investigation and are providing you with this warning letter to alert you to our concerns.
2. In summary, the Commission considers that Savvy Tax has likely breached section 36L of the Act by failing to meet the disclosure requirements relating to an uninvited direct sales (UDS) agreement.
3. While we acknowledge the changes that Savvy Tax has made to its application form (**2017 Savvy Tax application form**), we do not consider the changes are sufficient to meet Savvy Tax's obligations under the Act. Particularly we remain concerned that customers are not given (and left with) a document that provides all the information required by s36L(2) of the Act.

The investigation

4. We understand that Savvy Tax provide tax services throughout New Zealand which include filing tax refund applications and seeking refunds on behalf of consumers. We understand that Savvy Tax enters into agreements to provide these services with consumers at their homes in circumstances where the consumer has not invited Savvy Tax sales representatives to their house for that purpose.
5. In providing tax services, Savvy Tax sales representatives require customers to sign an application authorising Savvy Tax to deal with Inland Revenue and to act as their tax agent (the **Savvy Tax application form**). A copy of this application is not left with the customer at the time the agreement is entered into. However, Savvy Tax sales representatives leave customers with a brochure (the **Savvy Tax brochure**).

AUCKLAND

L13, Forsyth Barr
55 Shortland Street
P.O. Box 105-222
AUCKLAND 1143, NEW ZEALAND

WELLINGTON

L9, 44 The Terrace
P.O. Box 2351
WELLINGTON 6140, NEW ZEALAND
Tel: (04) 924 3600 Fax: (04) 924 3700
Main Office

6. During the investigation, the Commission considered:
 - 6.1 a report received from a complainant in relation to a UDS agreement they entered into with Savvy Tax; and
 - 6.2 information provided by Savvy Tax in response to the Commission's request for information.
7. A summary of this information can be found at **Attachment A**.

The Commission's view

8. It is the Commission's view that the agreement between Savvy Tax and the complainant was a UDS agreement as defined by section 36K of the Act.
9. We consider that Savvy Tax is likely to have breached the Act when it entered into the UDS agreement with the complainant. The Savvy Tax Brochure it gave to the complainant did not contain all the information required by section 36L(2) of the FTA and we note that the complainant was not given a copy of the Savvy Tax application form.
10. The Commission also notes that, in its view, it would not have been sufficient to provide both documents to the complainant. Neither the Savvy Tax application form nor the Savvy Tax brochure (together or separately) provide all the information as required by s36L.
11. We understand that Savvy Tax is likely to regularly enter into UDS agreements during the course of its business.
12. When entering into a UDS, Savvy Tax should provide the customer with:
 - 12.1 a single document containing the information required in section 36L(2)(a) of the FTA on the front page; and
 - 12.2 a copy of the agreement at the time it was entered into s36L(1)(b)(i).

Disclosure requirements relating to uninvited direct sale agreements

Application form

13. The Savvy Tax application form provided to the complainant did not contain the information required by s36L(2):
 - 13.1 It did not provide a clear description of the service to be supplied as required by s36L(2)(a)(i).
 - 13.2 It did not contain a summary of the consumer's right to cancel the agreement as required by s36L(2)(a)(ii).

- 13.3 It did not set out Savvy Tax's name, street address, telephone number and e-mail address as required by s36L(2)(a)(iii).
- 13.4 It did not set out on the first page the total price payable or any other consideration to be given under the agreement or the method by which the total price or consideration will be calculated as required by s36L(2)(b).
14. The Commission acknowledges that Savvy Tax's 2017 application form contains the information set out at paragraphs 13.3 and 13.4 as required by s36L(2). But in our view it does not set out the information at 13.1 and 13.2.
15. In addition we understand that Savvy Tax still **does not leave a copy** of the Savvy Tax 2017 application form with the consumer at the time the agreement is entered into. Because of this, Savvy Tax is still likely to be in breach of s36L(1)(b)(i) of the Act. As noted in paragraph 12.2, s36L(1)(b)(i) of the Act requires a copy of the agreement be provided to the consumer at the time the agreement is entered into.

Brochure

16. The brochure also does not meet the requirements of s36L(2).
- 16.1 It does not contain a summary of the consumer's right to cancel the agreement under s36M(1) as required by s36L(2)(a)(ii).
- 16.2 It does not disclose the total price payable or any other consideration to be given under the agreement or the method by which the total price or consideration will be calculated as required by s36L(2)(b).
- 16.3 It does not provide a clear description of the service to be supplied under the agreement as required by s36L(2)(a)(i). The brochure does not prominently state, in one place, that the service provided by Savvy Tax includes reviewing 5 years of tax returns, filing tax refund requests and on-going assessment of eligibility for tax refunds.
17. We consider Savvy Tax is at risk of breaching the Act where it enters into UDS agreements and only leaves the consumer with the brochure.

Warning to Savvy Tax

18. The Commission will be closing its investigation into Savvy Tax by issuing this warning.
19. The concerns raised in this warning are not exhaustive and are not meant to replace legal advice in complying with the Act. We recommend you take legal advice to ensure your sales agreement and internal processes comply with the Act.
20. Please note we may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Savvy Tax.

21. This warning letter is public information.
22. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

23. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act.
24. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

25. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose severe penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
26. You should be aware that our decision to issue a warning letter does not prevent any other person or entity from taking private action through the courts.

Further information

27. We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz.
28. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
29. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
30. Thank you for your assistance with this investigation. Please contact Gemma Coppins on (04) 924 3607 or at gemma.coppins@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Ritchie Hutton
Head of Investigations

Attachment A

The report

1. The complainant alleged that Savvy Tax's sales representative visited her home in April 2016. She claims she was told that their services "were free for the first time", "that everyone in the neighbourhood had signed up", it was just a "check" and they assured her that it was not related to a tax return.
2. The complainant advised that she gave the sales representative her IRD number, name and driver's license and that they filled out the form for her. The complainant recalls signing the form but states that there was no logo or tax agent name on it.
3. The complainant stated that the sales agent allegedly advised they would be "in contact". However the agent did not provide her with any forms or contact details. She advised there was no further contact by the trader (emails, texts, etc.) which would indicate that she had registered the trader as her tax agent.
4. Savvy Tax completed IR3 tax returns for the complainant for the 2013, 2015 and 2016 financial years.
5. The complainant alleges of the \$497.69 refunded by IRD in relation to her tax returns, Savvy Tax took \$367.60 in fees.
6. The complainant provided the Commission with the document she signed. This was a Savvy Tax application form. She claims that it was not provided to her at the time she signed it and that she had to ask Savvy Tax to send it to her retrospectively.

Information provided by Savvy Tax

7. Savvy Tax responded to the Commission in October 2016 stating that:
 - 7.1 they prepare and file personal income tax returns [REDACTED]
 - 7.2 their clients are obtained through direct sales, tele-marketing, website and word of mouth;
 - 7.3 their clients have the Savvy Tax Application Form fully explained to them as there is important personal information that is required so they can file correct income tax returns;
 - 7.4 sales representatives explain Savvy Tax's terms and conditions and fee structure, and the client is required to initial and sign that they understand and accept them;
 - 7.5 a brochure is left with the client explaining the process and providing their contact details;
 - 7.6 the Savvy Tax application form, brochure and ID badges have been vetted and approved by the IRD;

- 7.7 all Savvy Tax staff are trained on the Privacy Act, Fair Trading Act and Door to Door Sales Act;
 - 7.8 Savvy Tax has a training manual on how to avoid misleading and deceptive conduct;
 - 7.9 the “No refund, No fee” policy only applies to PTS tax returns and not to IR3 returns; and
 - 7.10 if clients do not have a sufficient tax refund to cover the minimum fees, Savvy Tax do not chase them for the balance.
8. Savvy Tax also advised the Commission of its process for filing tax returns.
 9. Savvy Tax provided a final response to the Commission in January 2017. The response included:
 - 9.1 an application form which was amended in January 2017 (2017 application form);
 - 9.2 a one-page list of terms and conditions which Savvy Tax advised is read and verbally confirmed with consumers at the time of signing up; and
 - 9.3 a copy of the brochure (which was also provided in Savvy Tax’s response in October 2016)
 10. Savvy Tax advised that it believes its process and documents meet the requirements of the legislation. It also believes its terms and conditions adequately explains its fee structure and the “no refund, no fee” policy.