

ACCOUNTANTS SMSF EXEMPTION

On 28 November 2012 the Minister for Financial Services & Superannuation revealed details of the Australian Financial Services License that replaces the accountant's SMSF advice exemption. As an Accountant you may be wondering if this will change the way you do business with your SMSF clients. If so, read on!

“Doesn't the new license simply replace the exemption so that I can continue to do things the way I do now?”

No. Whilst further clarity is required at this time, it is clear that holding a limited license comes with legal obligations to provide advice documentation that will be new to accountants. This documentation must comply with an AFSL holder's obligations under Corporations Law.

“Isn't advice documentation only required when I recommend a specific product within an SMSF?”

No. The accountant's exemption previously excused you from providing advice documentation when establishing an SMSF and providing technical and strategic advice such as recommending contribution strategies, and some pension strategies, structural advice etc. The legislation's intent is to ensure that such advice is provided under Corporations Law requirement, giving consumers additional legal protection, disclosure and the best interest duty that and AFSL holder must meet.

When you make a recommendation to establish an SMSF, commence a pension or make contributions you will need to satisfy sections 947D of Corporations Law, and provide your client with disclosures, comparisons & alternative strategies. You must also satisfy sections 961B of Corporations Law by documenting your client's objectives, personal circumstances, and demonstrate a reasonable basis for your recommendations and provide advice that meets the “best interest” test. In addition you will need to provide a Financial Service Guide, and other advice documentation as required by the type of advice given.

“If I'm just recommending a client make a contribution to super, or simply commence a pension, do I need still need to provide advice documents?”

Yes, this is exactly the type of advice you will be required to hold a license to provide, and must comply with Corporations Law when making such recommendations. Whilst this may not require a lengthy SOA you will be required to complete other advice documentation that meet your obligations as an licensed advice provider.

“But I just want to continue to do what I do now”

This proposed legislation allows you to continue to deliver accounting services and prepare annual returns for your SMSF clients without holding an AFSL, however, ASIC and PI Insurers are extremely vigilant and will ensure that requirements under Corporation's Law are met even when providing “class of product “ advice. You will no longer be able to recommend SMSF establishment or provide clients with any kind personal financial advice without a license, including class of product advice.

“So what are my choices?”

It seems that this legislation will make it virtually impossible to provide clients with SMSF administration and annual returns without the need to give various forms of advice. Therefore, accountants who want to continue to provide SMSF services will need to make a choice.

With the Federal Government only expecting less than 10% of the country's 160,000 accountants to eventually become licensed once the reforms are legislated, it begs the question what will the majority of professionals in the industry do next year and beyond?

So what options do accountants have?

Option 1—Move out of the SMSF market and sell your SMSF fees.

Under this option you will have no need to gain an Australian Financial Services License, as your preferred outsource SMSF administration provider will provide all your clients SMSF advice and administration needs.

Several companies are considering purchasing SMSF administration fees, and organisations such as AMP, Exelsuper and others are already active in purchasing accountants' SMSF work for up to 1.1 times revenue.

The benefit is that you retain the client, but relieve yourself of the burden of the annual SMSF compliance work. The purchaser becomes your SMSF outsource partner and delivers your clients SMSF annual returns, technical and strategic advice, and investment and insurance advice while you retain and manage the client relationship for traditional tax services which is the bread and butter of most accounting practices.

Option 2 – Partner with a financial adviser.

Under this option you will have no need to gain an Australian Financial Services License, as whoever you choose to refer your clients to will provide all your clients SMSF advice needs while you continue to do what you have always done.... deliver outstanding

annual SMSF tax and compliance services.

It's important to recognize that this is a specialist partnership between a financial adviser and you. There is no doubt that most accountants have been approached, and may already have a referral arrangement with a financial adviser. SMSF is a technical and specialized area of advice, and needs a financial adviser who is properly qualified and educated, who can reliably advise clients on SIS compliance as well as investments and insurance that are appropriate for SMSF ownership.

Option 3 - Gain a limited AFSL

Whilst the detail of the replacement of the accounting exemption is yet to be clarified by government, getting the license will be a very achievable outcome for accountants. The real issue is the ongoing compliance requirements under corporations law that will be more onerous than were first considered.

As previously discussed, Treasury has already provided clarification surrounding the advice documentation requirements and how advice will be provided under an exempt license.

In simple terms, when an accountant makes a recommendation to establish an SMSF, commence a pension or make contributions they will need to satisfy sections 947D of Corporations Law, and provide clients with the same disclosures that the financial planning industry has been providing under the requirements of an AFSL. These include disclosures, comparisons & alternative strategies within a statement of advice. Accountants must also satisfy sections 961B of Corporations Law by documenting client's objectives, personal circumstances, and demonstrate a reasonable basis for recommendations that satisfy the "best interest test" that was introduced as part of the FOFA reforms. In addition accountants will need to provide a Financial Service Guide, records of advice, keep separate files for clients to whom they have provided advice, maintain educational standards, and from 2019, be required to meet the competency tests applied by ASIC to all financial services Licensees.

In summary, whilst the Accounting lobby has been most effective in gaining concessions for accountants who wish to apply for the license, those that do may find the ongoing requirements more than they bargained for.

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