

Review of the Tax Practitioners Board - Discussion Paper July 2019

Submission of comments restricted to the Removal of the Accountant's Exemption re Self-Managed Superannuation Fund ("SMSF") set up etc.

## **Background**

Until 30 June 2016, accountants could provide a limited range of services to SMSF's under the accountants' exemption contained in Regulation 7.1.29A of the Corporations Regulations 2001. This exemption allowed accountants to provide advice on the establishment and winding up of SMSF's without the need to hold an Australian Financial Services License ("AFSL").

## **Effect of the removal of the accountants' exemption**

The removal of the accountants' exemption in relation to SMSF's is a classic example of legislative over-reach.

Registered tax agents prior to 1 July 2016 were able to assist clients with advice as to how to:

- a. Establish an SMSF
- b. Administer an SMSF, and
- c. Wind-up an SMSF.

Clients of registered tax agents also typically seek assistance regarding what contribution limits apply to them – with respect to both concessional and non-concessional superannuation contributions.

During the period of the accountants' exemption, registered tax agents had always recognized that in the absence of holding an AFSL they could not and should not provide any advice to their clients in relation to investment decisions – ie clients were continually reminded that those decisions should be made in consultation with a financial planner who held an AFSL. It should be noted that many individuals deliberately chose to make their own investment decisions without seeking the advice of a licensed financial planner and this practice has continued to be the case past the removal of the accountants' exemption.

The removal of the accountants' exemption failed to recognise that an SMSF is inherently just another type of legal structure, not dissimilar to proprietary limited company or other trust (unit/discretionary/hybrid) structure. Registered tax agents have always recognized that irrespective of legal structure they are providing accounting and tax advice to – that they could not and should not provide any financial planning advice unless they had an AFSL.

To remove the accountants' exemption in relation to SMSF's has impacted on the ability of non-licensed registered tax agents to provide wholistic tax and accounting advice to their clients. The removal of this exemption is akin to imposing restrictions on registered tax agents with respect to providing non-financial planning advice to the other structures their clients may have.

There is an absurdity in the real life experiences of registered tax agents in their having to advise clients they cannot provide advice on the set-up or wind-up of an SMSF despite working in consultation with clients' financial planners (who advise the clients on investment related decisions). The removal of the

accountants' exemption misses a key aspect of the relationship between a registered tax agent and client in that unlicensed registered tax agents have not provided advice to clients on investment decisions – so why remove the accountants' exemption? Furthermore, the removal of the accountants' exemption fails to recognize that many clients of registered tax agents, rightly or wrongly, do not wish to (as is their right) consult with a financial planner with respect to investment decisions they make.

For many clients of registered tax agents, the requirement sought to be imposed on those clients, to seek out a financial planner and pay for a statement of advice in relation to the establishment of a SMSF – such advice those clients strongly believe provides no value benefit to them - seeks to impose an unnecessary financial burden on those clients.

If one of the aims to remove the accountants' exemption was to ensure financial planning advice was not being provided to clients by unlicensed registered tax agents, such an aim fails to recognize that the accountants' exemption was never about providing such advice – it was about enabling registered tax agents to provide wholistic structuring and tax advice – it was never about telling clients where to invest their money!

In addition, accountants were advised that they could apply for a Limited Accountants' AFSL from 1 July 2016. However, our experience and the experience of other firms in the profession is that a Limited Accountants' AFSL is very difficult, if not impossible for an accountant to obtain. This has left accountants in a very difficult situation because we are not permitted to provide SMSF advice without an AFSL, but we cannot obtain an AFSL. However, our clients expect that as part of our tax and accounting service offering, we will provide SMSF advice. This places accountants in a difficult position.

Following the changes in the law from 1 July 2016, many accountants decided to become authorised representative of full AFSL license holders. This avoided the need to obtain their own license from ASIC. However, on our survey of the market we were unable to find an providers who were offering a Limited Accountants' AFSL to new customers. A number of providers with full AFSL's were willing to accept new customers, however until October 2019, under the Chartered Accountants' Professional Indemnity Capping Scheme, a partner or principal in an accounting firm was not permitted to be an authorised representative of a full AFSL and still access the Professional Indemnity Capping Scheme. We understand that the Chartered Accountants are in the process of changing this rule from October 2019. However, prior to that Chartered Accountants were in an intolerable position, because AFSL licensing unattainable for most of them.

Despite the change in the Chartered Accountants' Professional Indemnity Capping Scheme from October 2019, many accountants still find themselves in an intolerable position going forward. This is because unless the accountant was an authorised representative of a full AFSL prior to 31 December 2019, strict new education requirements for financial advisers mean that accountants now wishing to become authorised representatives of full AFSL licence holders must complete a Graduate Diploma in Financial Planning first in order to satisfy ASIC's stringent education requirements. The Graduate Diploma in Financial Planning is an extensive course and requires one year of full time study or two years of part-time study. The cost of completing this course from some universities for an Australian citizen is \$26,800. This is a ridiculous requirement for a Chartered Accountant to satisfy, when their aim is to provide their clients with SMSF advice. Surely a better and much more reasonable solution is to re-instate the accountants' exemption?