



ABN 32 002 876 208

## Association of Taxation and Management Accountants

1 March 2013

### Submission to the Minister on draft regulations

#### Accountants to Exit from SMSF Advice

1. Until what is meant by a "limited licence" has been clarified, accountants who wish to give **advice** about SMSF will need to take out an AFSL or become an authorised representative of an existing licence holder.
2. Either alternative is unsatisfactory. It will be difficult and expensive to obtain a full licence, while it will only be expensive to become an authorised representative.
3. The cost of obtaining a full AFSL or becoming a licensed dealer, through a current major licence holder (such as AMP or MLC) will vary. I have seen one quotation for an authorised representative of \$474 a month for an "exempt licensee" and \$875 a month for the right to give full advice. This is far too much for a small firm accountant to pay in order to give **advice** about SMSF. The major cost, of course, is prohibitive professional indemnity insurance.
4. Not only is the cost prohibitive but there are stringent training and continuing CPD requirements. I've been told that it would be difficult if not impossible for an accountant to obtain a full AFSL.
5. This has meant that large organisations, like AMP, have been gearing up to increase its number of authorised representatives. The following is an extract from an article in the Financial Review of February 22 : *"Last year AMP added 209 new advisers to the fold. Mr Dunn said the group had spent \$52 million preparing for the Future Financial Advice reforms, with a further \$23 million budgeted."*
6. The article then questions whether the AMP and others are wasting their money. It quotes from a survey by SPAA which indicates that the number of SMSF trustees seeking advice from a financial planner fell to 27% in 2012 from 41% the year before, versus those nominating accountants *"as their main source of advice rose to 28% from 12%"*.
7. **Advice** to clients in relation to SMSF is a basic stock in trade of most accounting practices. There is no difference in kind between advice on partnerships, companies, trusts and SMSF. Clients want to know which of these is best for them, how to form or obtain the appropriate structure and how to run and administer it.
8. To artificially deem an SMSF as a "financial product", such that an AFSL is required, is to deprive clients not only of a full range of structural advice but also of the type of basic advice expected of their accountant – particularly where small business owners have come to rely on their accountant for much more than tax advice.
9. Where should the line be drawn between tax advice (requiring the accountant to be a registered tax agent), advice about the formation and termination of an SMSF (the so-called "Accountants Exemption", which is limited to the big three and expires on 30 June 2016) and accounting advice on the desirability and operation of an SMSF (which will require an AFSL)?
10. This anomaly will disadvantage accountants as against financial planners and (particularly in the short term) accountants who are not members of the big three (such as members of the ATMA) as against those accountants who are members of the big three. It will disadvantage the clients of accountants even more.

---

#### *The Small Business Professionals*

Suite 702, 12 Ormonde Parade, Hurstville NSW 2220. PO BOX 509, Hurstville BC NSW 1481.

Tel: (02) 9579 2256. Fax: (02) 8003 9737.

[www.atma.com.au](http://www.atma.com.au)

11. A further anomaly is that all accountants can now register with ASIC as SMSF auditors. To register, every applicant must have specific qualifications and experience and have passed designated courses. These requirements will more than adequately equip SMSF auditors to advise on all aspects of SMSF. Apparently these superior qualifications will not be recognised, for advice and general SMSF purposes, and SMSF auditors must still obtain an AFSL.
12. Until Treasury or ASIC clarifies what is meant by a "limited licence", we are left with only the provisions in the draft regulations "streamlining" the experience of members of the big three in applying for an AFSL in the transitional period and exempting AFSL holders from the audit requirements if they do not handle client money and only deal in SMSF and a limited range of other products. This is hardly a "limited licence" in any real sense as the accountant must first obtain an AFSL to get the limited benefit of dispensing with audit. Further the streamlining is not available to members of the ATMA or any organisation other than the big three. While the government expects *"up to 10,000 accountants to become licensed and able to provide a much broader range of financial advice than they were previously able to"*, is this realistic?
13. With the regulation of SMSF passing from the ATO to ASIC, firstly members of organisations (like ATMA) other than the big three have lost out and secondly accountants generally have lost out as against financial planners
14. However, the ultimate losers will be the general public and particularly the small business clients of accountants who will now be unable to rely on their long-term and trusted accounting advisers as a one-stop shop for all advice and requirements – including SMSF (see the survey quoted at paragraph 6 above)
15. It is hard to justify to them that SMSF are to be treated differently from partnerships, trusts and companies. This will be the case if very few of the expected 10,000 accountants are prepared to undertake the training and incur the cost of an AFSL.
16. That the government still believes that FOFA will ensure that SMS F advice is more readily available is evidenced by the speech by Bernie Ripoll on 4 February when he said:

*"This reform will expand access to financial advice and better protect investors".*

While FOFA may well better protect investors from shonky financial advisers, it will have the intended or unintended consequences of driving accountants (particularly small firm accountants) away from SMSF generally. Where is the evidence that accountants, generally, need more regulation?

17. There can be no doubt about the importance of SMSF's politically and economically. Apparently Australia has about 478,000 SMSF's with average balances of \$963,000 each, according to the ATO. According to an article in the Financial Review on February 18, there are \$470 billion in the SMSF sector. Many, if not most, of these funds are mum and dad funds which rely heavily on their local trusted accountant for advice.
18. Henceforth, like Gaul, SMSF will be divided into three parts and only certain accountants holding at least three licences (public practice certificate, registered tax agent and AFSL) will have access to, and can advise on, all three parts.
19. As an interesting and very current example of the above, I have just picked up a newsletter from a small accounting group. Under the heading "Accounting and Bookkeeping", the opening paragraph reads: –

*"We have recently had a number of new clients join us. The first thing that we did was examine their structures and whether they have set themselves up to maximise the legal methods of saving tax and other considerations in respect of protection of assets and succession planning."*

In the next few paragraphs of the newsletter there are two major references to SMSF.

20. As recently as February 26, Peter Kell in opening an ASIC FOFA workshop, indicated that the two main aims of FOFA were to improve the quality of financial advice and to improve **access** to financial advice. It is the ATMA submission that the proposed draft regulations will limit and restrict such access by driving away accountants from giving SMSF advice.

21. While the proposed ASIC reforms are welcome, for those who are not already governed by the rules of any professional association, they are not necessary for members of organisations such as ATMA who are subject to all the standards, publications, practice statements and pronouncements binding on the accounting profession. They are also required to hold professional indemnity insurance of at least \$1 million per person and complete 120 hours per annum of continuing professional education.
  22. So it is the ATMA submission that, it is in the public interest, that a new form of "limited licence" should be tailor-made for accountants who wish to continue to give SMSF advice as part of their accounting practice.
  23. It is in the public interest that the qualified members of ATMA should be given the three-year transition period to decide whether or not to obtain a limited licence – in the hope and expectation that such a licence will be tailored to the needs of small firm accountants and enable such accountants to remain able to give SMSF advice if.
  24. Two recent media releases by the Minister (27 February 2013) indicate not only the high regard in which accountants are held by the community with but also the expectation that the limited licence will give the community "better access to financial advice". Unfortunately, there is nothing in either media release to indicate recognition that not all accountants are members of the ICAA, CPA or IPA – each of which has been given a privileged position. It is our submission that members of the ATMA have equivalent qualifications and experience to justify their inclusion in the accountants exemption regime and to take their submissions into account in re-formulating and improving the limited licence regime.
- -----