

Saturday, 15 December 2012

Manager  
Retail Investor Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [futureofadvice@treasury.gov.au](mailto:futureofadvice@treasury.gov.au)

Dear Sir/Madam

**Draft - Corporate Amendments Regulation 2012 (No. ) - Replacement of Accountants Exemption with the proposed Limited AFSL.**

Exelsuper, as an active stakeholder in the SMSF services marketplace would like to provide this submission in relation to the draft Corporations Amendment Regulation 2012 (No. ) *"Replacement of Accountants Exemption with the proposed Limited AFSL."*

**About Exelsuper**

Exelsuper is a small specialist SMSF service provider, and operates under both a full Australian Financial Services License and a Tax Practitioners License. All our advisers are qualified as SPAA Specialist SMSF advisers and Certified Financial Planners as well as holding relevant accounting qualifications for the completion of SMSF annual reporting requirements for SMSF's.

Our submission is somewhat unique in that we are neither Financial Planners seeking an outcome that precludes accountants from providing advice, nor are we accountants wanting to maintain the current exemption we enjoy from the requirements of corps law under an AFSL. We sit a-political on these issues as we have both an AFSL and a Tax Practitioner License and can choose to provide SMSF advice as an accountant or Financial Planner. Each licensing regime comes with different obligations, and our view is that this is inconsistent with the interests of the community, creates confusion for business that cross both accounting and financial planning professions and an anomaly that we are glad to see is being addressed. Our SMSF establishment and ongoing technical and strategic non product advice activities are provided under our AFSL as we believe this is the most appropriate manner in which to advise clients, enables us to supervise the advice provided by our advisers, and creates consistency in the delivery of client information. For this reason we welcome the requirement to conduct these activities under an AFSL.

**General Comments on Draft**

My comments are focus principally on the impact on the industry's provision of SMSF advice which is our area of specialty.

Exelsuper supports the draft intent and feels that proper licensing of all advice providers to the self managed superannuation marketplace, whether accountants or financial planners, will result in increased regulatory control, standardisation across Accounting and Financial Planning industries



and consistency in disclosure, increased consumer protection and frankly a clear set of guidelines when SMSF advice is provided.

However, we wish to highlight a number of points in an attempt to assist Treasury to ensure the legislation is fair, recognises the contribution accountants make to the nation's financial literacy, creates consistency amongst financial advice professionals, and ensures that the legislation achieves its main aims.

## **Specific Comments**

### **Licensees adherence with Corporation Law**

The accountant's exemption previously allowed us, as accountants, to be effectively excused from providing advice documentation when giving advice, as long as we were not recommending the sale of a product as such. We are encouraged to see that the legislation's intent is to ensure that all advice is provided under an AFSL and is therefore subject to adherence with Corporations Law. Whilst the proposed license is an exempt license, we would be vehemently opposed to new licensees being exempt from sections 947D of Corporations Law (providing clients with disclosures, comparisons & alternative strategies) and 961B of Corporations Law (The "know your client rule" by documenting client's objectives, personal circumstances, and demonstrate a reasonable basis for recommendations) when providing advice of any kind. This includes "class of product" advice and SMSF advice relating to contributions and pensions.

As practitioners who specialize in SMSF advice we can cite numerous examples where clients have established SMSF's based on a recommendation from their accountant, however, on applying for rollovers have found that they are unable to do so due to existing funds restrictions, or have rolled over funds and have lost insurance in the process and are unable to regain cover. We are also concerned that the lack of due diligence done by accountants who's advice is not subject to corporations law has resulted in numerous instances of poor or inappropriate advice provided by accountants. Adherence to sections 947D and 961B by all those who recommend the establishment of an SMSF, and provide ongoing SMSF contributions and Pension advice is vital in cleaning up such practices.

The danger has always been that general "class of product" advice, (or generic advice) results in action by clients that may not be inappropriate. In our view, Advice is advice, whether generic, "class of product", unrelated to a product sale etc. and must be accompanied by appropriate advice documentation which instills in the process the disciplines necessary for client protection. Such disciplines also create consistency for clients and ensure that advice outcomes, costs and recommendations can be compared, and create a level playing field for all advice givers in the SMSF market.

### **Exempt from meeting organisational competencies until 2019**

We wish to raise our significant concern that exempt licensees have no obligation to demonstrate or maintain relevant competencies prior to 2019, and only need to complete a knowledge upgrade review within three years of the grant of a license. This effectively gives practitioners the ability to continue to provide advice to SMSF trustees and members having a "general" knowledge of this

area. Whilst we understand that Accountants general knowledge of SMSF accounting is robust, to assume that this includes a working knowledge of SIS legislation is dangerous indeed.

SMSF now represents over 1/3 of all superannuation holdings in this country, and SMSF trustees reliance on accounting advice to effectively assist them to meet their trustee obligations is well documented, and is specifically the reason why licensing accountants to provide advice to SMSF clients is important. Surely the intent of the legislation is to ensure that SMSF members are protected and the advice they receive from accountants in regard to their Trustee obligations under "SIS" should come from a licensed and competent adviser. Surely accountants must therefore be able to demonstrate competencies in relation to SIS legislation. A general knowledge update before 2019 is hardly protection for SMSF trustees, and in our view, is akin to allowing a General Medical Practitioner to perform a heart transplant!!

We agree and are supportive of the intent that a recognised experienced accountant replaces the need for a responsible person who can demonstrate organisational competency, however, the legislation does not allow for persons, who are not recognised accountants, but who can demonstrate organisational competence to apply for an exempt license.

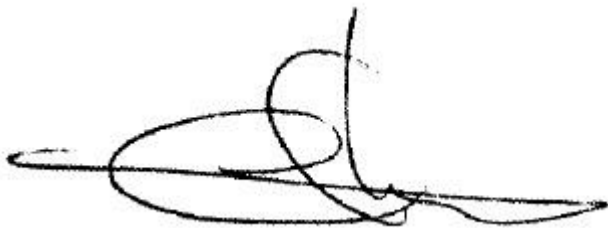
For example, Commonwealth Bank operate significant advice channels and do so under various Australian Financial Service Licenses. They own COUNTRY Wealth Accountants, yet seemingly would be unable to gain an exempt license, despite being able to demonstrate organisational competencies. Whilst I understand that they could issue a Limited Authority under their Non Exempt AFSL, however, I ask you to consider if this creates an unfair and inequitable outcome for those who are not members of CPA, ICA or Institute of PA.

### **Conclusion**

Statistics show that 1 in 10 Australians intend to commence an SMSF in the near future. As a result the provision of high quality advice to this sector is critical to the wealth and financial wellbeing of the nation. Our view is that the licensing of accountants who provide SMSF advice is an opportunity to regulate the activities of those providing advice, and raise the standard and consistency of processes, practices and ultimately outcomes for clients.

Should you have any questions regarding our submission, please do not hesitate to contact me at this office.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Chris Harris', with a large, stylized flourish extending to the left.

**Chris Harris**

