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To whom it may concern

**Corporations Amendment Regulation 2013**

The Institute of Public Accountants (the Institute) takes this opportunity to respond to **Corporations Amendment Regulation 2013**.

The Institute has over 24,000 members, students and academics throughout Australia and around the world. Our members are involved in the financial planning industry and will be impacted by the proposals set out in the proposed legislation.

The Institute of Public Accountants (Institute) welcomes the proposals as set out in the draft regulations. The accounting profession has worked closely with the government to develop an alternative to the current accountant's exemption. The draft regulations accurately reflect (with a few amendments) the work undertaken by the government and the accounting profession. We believe that not only will this provide an effective replacement for the accountant's exemption; it will also fill a gap in the current market for class of product advice for clients who are not seeking a financial plan but are in need of financial advice.

The Institute however wishes to propose amendments to the proposed regulations, particularly:

- Broadening regulation 7.6.04(3)(c)(ii)(A) to include closing down an SMSF;
- Ensuring that accountants can discuss limited recourse borrowing within an SMSF;
- Clarifying that regulation 7.6.04(1)(k) is referring to knowledge update testing; and
- Considering the impact of proposed Schedule 3

The Institute's response is set out in more detail in the attached appendix.

Please contact our Senior Policy Adviser, Reece Agland, via e-mail at [reece.agland@publicaccountants.org.au](mailto:reece.agland@publicaccountants.org.au) should you wish to discuss the details of this submission further.

Kindest Regards



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## Appendix

### Regulation 7.6.01BA – replacement of accountant's exemption

The Institute supports the proposed regulation 7.6.01BA. This regulation and the ancillary provisions have come about following extensive consultation between the accounting profession and government. The accounting profession has a long history in the provision of financial advice. As trusted advisers to business and individuals; accountants are perceived as having not only the skills to provide this advice but of being independent and thorough in their advice.

Prior to the advent of the *Financial Services Reform Act (FSRA)* accountants availed of the 'incidental advice exemption'; which permitted accountants to provide broad financial services advice so long as it was provided incidentally in relation to accounting or taxation advice. Most accountants used this exemption to provide tax advice in relation to financial products and investment advice. Invariably the advice was generic in relation to the class of products; rather than specific investment advice about particular financial products.

Unfortunately a small number of accountants exceeded the intended ambit of the incidental advice exemption and gave specific financial product advice. This has led to the removal of the exemption for accountants. Accountants wishing to provide financial advice now need to be licensed.

The removal of the exemption has also meant that accountants are not able to provide a range of traditional services. Accountants have long provided financial advice which whilst not product related was likely to be caught under the FSRA; in particular the establishment and administration of Self-Managed Superannuation Funds (SMSF). From an accountants' point of view the setting up of an SMSF is essentially the same as the setting up any trust structure. Accountants have for many years provided this service. An SMSF also has certain tax attributes that accountants as tax agents advise upon.

The need to ensure that SMSF could be established and for accountants to provide general financial advice led to a number of exemptions.

While exemptions have provided room for accountants to provide traditional services there were problems that reduced their effectiveness.

Accordingly, when the government proposed removing the exemptions for accountants, rather than oppose such moves the accounting bodies determined it would be better to provide accountants with a broader remit; along the lines of the previous 'incidental advice exemption'.

It was clear from the Government that any change had to involve accountants being brought within the licensing regime.

If the accounting profession was to accept loss of the exemption; something more than the status quo was needed.

For many accountants the licensing option was and is not financially viable. The cost of setting up for a license has been estimated at between \$25,000 and \$150,000 depending on the size of the firm and the scope of the license. As financial advice is generally an incidental service, these costs could not be justified.

The question then is how to bring accountants into the licensing system while keeping the cost of a license down. The proposals in regulation 7.6.01BA are the outcome of those deliberations.

We believe that the changes set out in the proposed regulations will reduce the complexity and the cost of a license so that more accountants are likely to seek their own Australian Financial Services License (AFSL). Others are likely to seek authority to provide limited scope advice in line with the proposed new license.

Most accountants do not wish to sell financial products. This is seen as a financial planning activity. It is acknowledged however that some accountants have embraced financial planning as part of their service offering to become fully licensed or authorised.

However, there exists a gap in the licensing system. A considerable volume of financial advice is at the lower end of the scale. Clients may not have the funds to invest in a financial product but seek general financial advice. Most financial planners are not interested in this segment. However, under the law much of this advice requires a license.

It has been agreed that accountants filled a gap in the provision of financial advice; being licensed persons provided general financial advice only. To achieve this, it is the Institute's view that the cost and complexity of securing a license needs to be reduced.

#### *Experience requirement*

One of the major factors preventing accountants from securing their own license are the onerous experience requirements. There is a requirement that experience must be under a licensed adviser. Accountants have long had experience in providing generic and incidental financial advice but not under an existing license holder. Realising accountants had experience (gained through the exemptions and the prior incidental advice) but not of the type required; it is clear that an alternate mechanism is needed. This has led to the decision to recognise the other practice experience of accountants; rather than requiring experience to be under a license holder. This exemption is for a limited period only. This is recognition that as more accountants obtain a license, the easier it will be for others to obtain experience under a license holder.

We believe this is a commonsense outcome that will ensure accountants are brought within the licensing system; recognising they have relevant experience.

#### *Class of product advice*

The accounting profession argued since before the FSRA that there needed to be a 'mechanism' to allow accountants and other advisers to provide general financial advice that did not lead to a product recommendation.

Most Institute members in practice have indicated they are not interested in selling shares or other financial products. However, they wish to be able to discuss the financial system and provide general advice. The current laws make this very difficult unless they are licensed. As noted the cost of a license for most has been prohibitive.

This gap in the marketplace can and will be filled by a new 'class of product advice'; meaning accountants can discuss shares and debentures and managed funds but are not able to advise clients which share or financial product to buy. We believe this is an acceptable compromise that will ensure greater financial literacy.

There are gaps in the proposed "class of product advice" definition. One such gap relates to 7.6.04(3) (c) (ii) (A) which addresses advice in relation to the establishment of an SMSF. We would argue that there is a need to include the closure of an SMSF. SMSF closure (it is no longer needed or is unsuitable) will require a determination that the assets of the fund are to be rolled over into another superannuation vehicle. For new sub-regulations to be effective they must include SMSF closures.

Another Institute concern is with the proposed sub-regulation on the issue of SMSF limited recourse borrowings. The profession has supported the incorporation of SMSF limited recourse borrowing within the licensing system. It is important that only those who are properly trained and licensed advise clients on such issues. As the primary adviser on SMSF, the Institute argues that the new license needs to include the ability to discuss limited recourse borrowing in an SMSF.

### *Exempt license*

Why are accountants getting a special deal? The rationale is that it is generally recognised that accountants who are members of a professional body have extensive experience and knowledge and are also subject to rigorous oversight by the profession.

Accountants who are members of a professional body are subject to the following:

- Extensive training in accounting and other financial advice
- On going and mandatory professional education
- Subject to practice quality assurance review
- Subject to investigation and discipline by their professional body
- extensive professional and ethical requirements such as those set by the Accounting Professional and Ethical Standards Board, the Australian Accounting Standards Board and the Audit and Assurance Standards board
- Required to have professional indemnity insurance

These requirements indicate that accountants are already subject to high levels of oversight.

To be licensed; accountants will however need to be properly trained in financial services and must, as with all licensee's meet RG 146 education requirements.

We therefore would argue that the government needs to recognise the high level of supervision and professionalism in the accounting profession.

### *SMSF advice*

Accountants have extensive experience in providing advice in relation to SMSFs. They are well versed in the requirements of the *Superannuation Industry (Supervision) Act 1993* (SISA) and the SIS regulations. Accountants also have extensive knowledge in relation to trust structures and the tax implications of SMSFs. Traditionally the financial planning sector has not operated in this sphere (although this is changing). This gap has been met by accountants.

Given their extensive knowledge and experience in relation to SMSF and the requirement that to be licensed accountants will have to be RG 146 compliant, it makes sense to grant accountants a full license in relation to SMSF. Because an SMSF is determined by ASIC to be a financial product, to give advice under the license conditions must be more than just class of product. It needs to be at the individual product level.

Therefore it is incumbent on the regulation to allow accountants licensed under Regulation 7.6.01BA to include SMSF at the product advice level and not only at the class of product level.

### *Recognised accountant*

The term recognised accountant has been previously used to refer to accountants that belong to one of the three bodies making up the Joint Accounting Bodies; namely the Institute of Public Accountants, Institute of Chartered Accountants in Australia and CPA Australia.

We support therefore the adoption of the term 'recognised accountant' and the bodies included within that definition.

The Institute is open to bodies other than the three nominated bodies being included within the new license regime. However it is important this is only on a like for like basis. Not all accounting bodies are the same. Some are more relaxed in requirements and others do not have the extensive history of involvement with the profession.

The Institute would therefore support bodies other than the three nominated bodies on the basis that any other accounting bodies provide evidence of the following attributes:

- They require an accounting qualification of at least three years duration
- Have ongoing continuous professional education requirements
- Have an established disciplinary system for breaches
- Have a quality assurance process that reviews members in practice
- Have extensive professional and ethical standards
- Require the issuing of a public practice certificate or equivalent

- Be a not for profit association

#### **Reg 7.6.04(1)(k)**

The accounting profession requires that before an accountant can undertake any professional engagement they must have the necessary skills and capacity. In relation to licensed financial advice this would mean they are at minimum RG 146 compliant and have appropriate skills and experience.

It is unclear from the proposed amendments how the licensee is to satisfactorily demonstrate to ASIC that they have the requisite knowledge.

The explanatory memorandum suggests a three yearly knowledge review. The Institute believes that if this is the case; this needs to be set out more clearly in the proposed legislation. As it stands the legislation opens the door to undefined mechanisms.

The Institute believes all licensed financial advisers should provide evidence that they have remained up to date. This would be through continuous professional education ('CPE') requirements akin to those that will be imposed upon registered SMSF auditors. We believe CPE requirements are more effective as they allow the adviser to tailor study to those areas most relevant to their work. Mandatory CPE requirements also ensure that a minimum of study is undertaken each year.

A three yearly update exam whilst in our view a less effective mechanism; is better than no requirement.

We support proposed regulation 7.6.04(1) (k) on the proviso that it only refers to an update exam that will be imposed on all financial service licensees and representatives.

#### **Compliance certificate Reg 7.8.12A & 7.8.14B**

The Institute supports the proposal which requires exempt licensees to lodge a statement and balance sheet with ASIC rather than a full audit by a registered company auditor where the exempt licensee is not dealing with client monies in relation to a financial product.

Much of the advice that accountants provide under the new licensing arrangement will be of class of product type. They are not providing product advice (other than in relation to SMSF) and are therefore not dealing with client monies. These advisers are less likely to put client money at risk.

The Institute is also of the view that Registered Company Auditors ('RCA') should only be required in relation to complex audits that require extensive application of the audit standards. RCAs can be expensive and are diminishing in number. A review of an accountant who is an exempt licensee will not be a complicated review and does not involve deep understanding of the audit standards. We therefore believe that an RCA would be excessive to the regulatory need and a significant additional impost on exempted licensees.

We therefore support the requirement for a compliance certificate to replace an RCA audit.

#### **Removal of Regulation 7.6.01BA from 1 July 2019**

The Institute is concerned at the impact of the proposal to remove regulation 7.6.01BA from 1 July 2019. While the Institute understands that there is only to be a three year transitional period for the recognition of experience other than under a licensed person, for accountants who are members of one of the three recognised accounting bodies, we are concerned at the unintended consequences of the mechanism proposed.

Our understanding is that the removal of 7.6.01BA from 1 July 2019 will in effect mean that those who received their license under the regulation would suddenly become void as of that date. That would mean they would no longer be licensed. It also means that they would be forced to go through the expense and time of a new license application.

This was certainly not the intention of the accounting bodies when agreeing to the proposed reforms. This is not in the interest of the license holders or clients. We believe that the implications of the proposal in schedule 3 have not been properly thought through or explained.

We therefore would ask that Schedule 3 be removed and that more thorough debate be undertaken on how to manage the loophole.