

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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104 | Accountants' Exemption

The accountants' exemption might come back soon. There are rumours that the government is working on a new exemption. In which form and nature remains to be seen.

Accountants Exemption

Ron Lesh of BGL has been involved in the campaign for the re-introduction of the accountants' exemption. So we asked him for details.

Financial Advice

An interest in an SMSF is a financial product. As are many of the investments typically held by an SMSF, such as ASX securities, managed investment schemes, debentures or life insurance.

Telling a client to start an SMSF or any other specific advice regarding their SMSF is financial advice.

AFS licence

When you provide financial product advice (and an SMSF is a financial product), you must comply with the Corporations Act that ban conflicted remuneration (RG 246) and either hold an AFS licence directly or become a representative of an AFS licence.

Accountants' Exemption

The so-called accountants' exemption allowed recognised accountants (i.e. members of CPA Australia, CA ANZ, and IPA) to give financial product advice about acquiring or disposing of an interest in an SMSF. It came in as a part of the government's Future of Financial Advice (FOFA) reform. FOFA came into effect from 1 July 2013.

This exemption was in regulation 7.1.29A of the Corporations Regulations 2001 (Corporations Regulations).

Exemption Expired

The accountants' exemption lasted for 3 years. It was repealed as of 1 July 2016. So now accountants fall under the full AFS licensing regime.

AFS Licensing

The new AFSL licensing arrangement, which came into effect from 1 July 2016, means that many small accounting practices, perfectly qualified to set up and administer an SMSF, have to withdraw their services due to excessive compliance costs and highly cumbersome regulatory processes.

There are still some small exceptions that apply to very specific actions.

Exceptions

Per reg 7.1.29 (5) you can give your clients factual information about SMSFs. You can guide them through the practical steps of establishing or winding up an SMSF, adding trustees or member and processing transfers. You are more likely to be able to rely on this exemption when your client has already made a decision to establish the SMSF before seeking your assistance to take the next steps.

Per reg 7.1.29 (4) you can provide tax advice on financial products, be it the SMSF interest itself or the investments held by the SMSF, as long as you don't receive any commission or kick-backs from that advice and give the appropriate warnings.

Per s766B(5)(c) you can provide advice as part of your work as a registered tax or BAS agent. As long as it is reasonably regarded as a necessary part of your work.

And you can refer a client to an AFS licensee or representative with the appropriate disclosure.

But that is it. And so whenever you talk to clients about an SMSF, you run close to the edge of requiring an AFS licence.

Royal Commission

In a submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, various professional organisations, BGL and others have called for the reinstatement of the accountants' exemption.

And it seems that the government has been listening. Ron Lesh hints in his talk that the government might be currently working on a possible solution.

All this is just our brief take on the issue, but please listen to the episode above. Ron Lesh explains all this in a much better way than we ever could.

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