



# Accountants AFSL

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# Does an accountant need an AFSL?

1. AFSL Game till 30<sup>th</sup> June 2016
2. What is SMSF Financial Advice?
3. What options does an accountant have after 1<sup>st</sup> July 2016
4. What is the difference between "SMSF Advice" and "Accounting Advice"?
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# AFSL Game till 30<sup>th</sup> June 2016

Two of the biggest issues that ASIC and the ATO have focused on to date

- 1) Costs of SMSFs (Set up and Admin) and
- 2) SMSFs being established with low account balances.

**1<sup>st</sup> July 2016 = Regulation 7.1.29A of the Corporations Regulations was repealed.**

**Financial product advice means** a recommendation or statement of opinion that is provided with the intention of influencing a person's decision on a financial product, or could reasonably be regarded as intending to have such an influence.

# What is Financial Advice

## Am I giving financial advice ?

*If you carry out certain activities (e.g. **advising or dealing**) in relation to 'financial products' including securities*

## Am I giving financial product advice?

Financial product advice means a recommendation or statement of opinion, or a report of either of those things, that:

- is intended to influence a person or persons in making a decision in relation to:
  - a particular financial product or class of financial products; or
  - an interest in a particular financial product or class of financial products; or
- could reasonably be regarded as being intended to have such an influence

# Legislation

CORPORATIONS ACT 2001 - SECT 766A

## When does a person provide a financial service?

a person provides a *financial service* if they:

- (a) provide financial product advice (see [section 766B](#)); or
- (b) deal in a financial product (see [section 766C](#)); or
- (c) make a market for a financial product (see [section 766D](#)); or
- (d) operate a registered scheme; or
- (e) provide a custodial or depository service (see [section 766E](#)); or
- (f) engage in conduct of a kind prescribed by regulations made for the purposes of this paragraph.

Eligible  
Services



766A (2)(b) The regulations may set out: the circumstances in which persons are taken to provide, or are taken not to provide, a financial service.

# From 1st July 2016

An accountant

- giving financial advice to any person must be licensed to provide this advice
- must act in the best interests of the client
- give priority to **interests of the trustees** when providing personal financial advice (RG 175.214 provides "best interests duty and related obligations")

This does not mean that an SMSF with a low account balance is necessarily inappropriate - there is no legislated minimum.



# Legislation



## CORPORATIONS REGULATIONS 2001 - REG 7.1.29

Circumstances in which a person is taken not to provide a financial service tasks /activities

(1) For paragraph 766A(2)(b) of the Act, a person who provides an eligible service **is taken not to provide a financial service** if:

(a) the person provides the eligible service **in the course of conducting an exempt service**; and

(b) **it is reasonably necessary to provide the eligible service in order to conduct the exempt service**; and

(c) the eligible service is provided as an integral part of the exempt service.

*In plain English, you can't provide the "exempt" advice unless it is part of your accounting, tax and business services advice to the client.*

# Legislation

## CORPORATIONS REGULATIONS 2001 - REG 7.1.29 (3)

(3) For this regulation, a person who does any of the following **provides an exempt service** :

(a) provides advice in relation to the **preparation or auditing of financial reports** or audit reports;

*Conduct audit of a fund*

(b) provides **advice on a risk** that another person might be subject to and identifies generic financial products or generic classes of financial product that will mitigate that risk, other than advice for inclusion in an exempt document or statement;

*You can talk about risk and the types of insurance policies available **but do not advise a client on how much insurance they should hold or provide assistance in completing application forms.***

(f) arranges for another person to engage in conduct referred to in subsection 766C(1) in relation to interests in a self managed superannuation fund in the circumstances in paragraphs (5)(b) and (c);

(g) **arranges for another person to engage in conduct referred to in subsection 766C(1), by preparing a document of registration or transfer in order to complete administrative tasks on instructions from the person;**

*Where a client has an SMSF or **has instructed you to establish an SMSF**, you can then help in completing forms to withdraw/rollover an existing super account to the SMSF. You should make the client aware of the risk of losing insurance benefits by withdrawing from an existing super account.*

**Acting on instructions** you can prepare forms to transfer assets between parties (off -market share transfer forms) – in-specie contributions or rollover

# Legislation

## CORPORATIONS REGULATIONS 2001 - REG 7.1.29 (4)

(4) For this regulation, a person also **provides an exempt service** if:

(a) the person provides **advice to another person on taxation issues** including advice in relation to **the taxation implications** of financial products; **and**

(b) the person **will not receive a benefit** (other than from the person advised or an associate of the person advised) as a result of the person advised acquiring a financial product mentioned in the advice, or a financial product that falls within a class of financial products mentioned in the advice; **and**

(c) either:

(i) the advice **does not constitute financial product advice to a retail client**; or

(ii) the advice constitutes financial product advice to a retail client and it includes, or is accompanied by, a written statement that:

(A) the person providing the advice is not licensed to provide financial product advice under the Act; and

(B) **taxation is only one of the matters that must be considered when making a decision on a financial product**; and

(C) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.

## Explanation    CORPORATIONS REGULATIONS 2001 - REG 7.1.29 (4)

*Accountants can discuss and charge a fee for personal financial advice in relation to:*

1. *The **tax implications** of investing in cash v shares v property v superannuation*
2. *The **tax benefits** of a transition to retirement pension, but do not infer that the client dispose of an existing super account to start such an income stream*
3. *The **tax benefits** of using the various small business CGT concessions in so far as they relate to making contributions to super,*
4. ***Taxation consequences** of participating in a share buyback with a high franked dividend;*

***as long as you provide the disclaimer as per para 7.1.29(4) (c)(ii).***

*You **cannot provide** advice and compare one type of investment was superior to another investment, or an SMSF was superior to other superannuation funds.*

*You **cannot provide** retirement planning or estate planning advice.*

# Legislation

## CORPORATIONS REGULATIONS 2001 - REG 7.1.29 (5)

- (5) For this regulation, a person **also provides an exempt service** if:
- (a) **the person provides advice in relation to the establishment, operation, structuring or valuation of a superannuation fund, other than advice for inclusion in an exempt document or statement; and**
  - (b) the person advised is, or is likely to become:
    - (i) a trustee; or
    - (ii) a director of a trustee; or
    - (iii) an employer sponsor; or
    - (iv) a person who controls the management; of the superannuation fund; **and**
  - (c) except for **advice that is given for the sole purpose, and only to the extent reasonably necessary for the purpose, of ensuring compliance by the person advised with the SIS Act** (other than paragraph 52(2)(f)), the SIS Regulations (other than regulation 4.09) or the [Superannuation Guarantee \(Administration\) Act 1992](#) --the advice:
    - (i) **does not relate** to the acquisition or disposal by the superannuation fund of specific financial products or classes of financial products; and
    - (ii) **does not include** a recommendation that a person acquire or dispose of a superannuation product; and
    - (iii) **does not include** a recommendation in relation to a person's existing holding in a superannuation product to modify an investment strategy or a contribution level; and
  - (d) if the advice constitutes **financial product advice provided to a retail client**--the advice includes, or is accompanied by, a written statement that:
    - (i) the person **providing the advice is not licensed** to provide financial product advice under the Act; and
    - (ii) the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.

# Explanation

## CORPORATIONS REGULATIONS 2001 - REG 7.1.29 (5)

### ***Accountants can provide advice and factual information about SIS Act***

- *investment restrictions*
- *in-house assets,*
- *collectables and personal use, etc.*

### ***Accountant cannot recommend SMSF trustees***

- *buying or selling or particular assets in the SMSFs investment portfolio,*
- *a particular investment strategy,*
- *make a certain level of contribution to the SMSF in preference to another super fund, or*
- *take lump sum withdrawals or*
- *pension payments from the SMSF in preference to another super fund, or*
- *roll over from another super fund to the SMSF.*

*If the advice provided regarding administrative issues is financial product advice then provide a disclaimer in the form of the required para 7.1.29 (5) (d) statements.*

### Allocation of funds available for investment

For paragraph 766A(2)(b) of the Act, a circumstance in which a person is taken not to provide a financial service within the meaning of paragraph 766A(1)(a) of the Act is the provision of a service that consists only of a recommendation or statement of opinion provided to a person about the allocation of the person's funds that are available for investment among 1 or more of the following:

- (a) shares;
- (b) debentures;
- (c) debentures, stocks or bonds issued, or proposed to be issued, by a government;
- (d) deposit products;
- (e) managed investment products;
- (f) investment life insurance products;
- (g) superannuation products;
- (h) other types of asset.

Note: This regulation **does not apply** to a recommendation or statement of opinion **that relates to specific financial products or classes of financial products**.

# Explanation

## CORPORATIONS REGULATIONS 2001 - REG 7.1.33A

### **Accountants can advice on 'Broad asset class'**

- *cash, bonds*
- *shares*
- *Property*

*their risk/return characteristics, and the types of investments which a client can use to access these asset classes such as term deposits, managed funds, shares, superannuation etc.*

### **Accountants advice to client**

- *must be clearly identifiable as information only and not advice on any particular product that might form part of that asset class*
- *must not be construed as a recommendation of a particular asset class or a particular investment, whether for their SMSF or in any other context*
- *must not assist or provide an SMSF investment Strategy of the SMSF*

**Certain general advice that does not attract remuneration etc.**

For subsection 766A(2) of the Act, **a person (the *advisor*) is taken not to provide a financial service** if:

- (a) the advisor gives advice to another person; and
- (b) the advice:
  - (i) is **not about a particular financial product** or an interest in a particular financial product; and
  - (ii) **is not personal advice**; and
- (c) the advice:
  - (i) is **not intended to influence the other person** in making a decision in relation to a particular financial product or an interest in a particular financial product; or
  - (ii) could not reasonably be regarded as being intended to have such an influence; and
- (d) by giving the advice neither the advisor, **nor an associate of the advisor, receives any remuneration (including commission) or other benefit** that is related to the advice given apart from remuneration (including commission) or other benefit that the advisor or the associate would have received if the advice was not given.

# Explanation

## CORPORATIONS REGULATIONS 2001 - REG 7.1.33G

### Discuss Superannuation Options

Accountants *can* advise clients generally about the characteristics of

- public offer and
- defined benefit funds and
- SMSFs

including the differences, advantages & disadvantages of each.

Accountants *can't* talk about

- fund performance or
- which the client might infer to be a recommendation about one type of fund over another or
- about a particular fund.

Accountants *cannot give any personal advice* – in other words you can't make a recommendation taking into account the clients' personal circumstances (such as their existing super fund)

When providing any general advice *Accountants cannot receive any remuneration* or other benefit that is related to the advice apart from what you would have received if the advice wasn't given.



# Factors which need to be considered when recommending SMSF's



# Regulation 7.6.01BA "limited licence" which authorises the provision of "limited financial services"

Apply for their Own Limited License

**Advantages**  
Control  
Cost Effective  
Independence  
Branding

**Disadvantages**  
Specialist  
Infrastructure  
Brand Presence  
Marketing Own  
Compliance

What is a Limited License

**Product Advice**  
Superannuation Products Establish SMSF Contribution Advice Pension Advice Class of Product Advice Insurance Advice Life Risk Insurance Simple Managed Investment Schemes Arrange to Deal in SMSF interest

Apply for limited license After 1<sup>st</sup> July 2016

Reg 7.6.01BA(2), accountants are only required to satisfy the knowledge requirements in RG 105 and are not required to demonstrate experience, additional condition requiring that, within three years of the licence being granted, required to demonstrate to ASIC experience.

Limited licences only allow for 4 types of authorisations

- 1) Financial product advice on SMSFs
- 2) financial product advice on superannuation products in relation to a person's existing holding in a superannuation product
- 3) "class of product advice"
- 4) arrange to deal in an interest in an SMSF.

Financial product advice

Recommendation or a statement of opinion, or a report of either of those things that:  
is intended to influence a person in making a decision in relation to a particular financial product or class of financial product or an interest in a particular financial product or class of financial product; or  
could reasonably be regarded as being intended to have such an influence.

Class of product advice

Reg 7.6.04(3) financial product advice about a class of products but does not include a recommendation about a specific product in the class.  
"A financial services licensee may give a recommendation about term deposit products but must not make a specific recommendation that a person deposit their money into a term deposit product offered by a particular bank or building society."

SMSF Advice	Need a Licence
Provide advice to establish or wind up SMSFs	✓
Advice comparing SMSFs with other superannuation alternatives (Switch or Rollover in from any other type of super to SMSF)	✓
Recommend investment products <ul style="list-style-type: none"> <li>● Deposit products and cash management accounts</li> <li>● Financial product or</li> <li>● Classes of financial products</li> <li>● Recommend Limited Recourse Borrowing arrangements (LRBA)</li> </ul>	✓
Establishment <ul style="list-style-type: none"> <li>● <b>Arrange deeds, corporate trustee etc on instruction form client</b></li> <li>● Document an investment strategy for a client (Reg 7.1.29 (5)(c))</li> <li>● <b>Implement a LRBA strategy for a client - Documentation</b></li> <li>● Process roll over forms once Decision to roll over is made</li> <li>● <b>Prepare paperwork for commencing or re-booting pensions</b></li> </ul>	<div style="text-align: center;">             Reg 7.1.29 (3)(f) &amp;(g)         </div>
Advice as to Strategies relating to the fund <ul style="list-style-type: none"> <li>● Pensions and transition to retirement strategies</li> <li>● Rollouts or ad hoc lump sum withdrawals</li> <li>● Advice in relation to the nature and amount of contributions</li> <li>● Provide advice in relation to the amount of Pensions</li> </ul>	✓
Audit of SMSF Tax implication of holding an interest in an SMSF	<div style="text-align: center;">  </div>

## Advice

## Need a Licence

### Accounting Functions

- Maintenance of trustee and member records -
- Prepare rollover paperwork (Reg 7.1.29(3)(f))
- Investment record maintenance
- Monitoring pension and contribution limits
- Track member account balances and investment valuations
- Investment purchase and sale where instructed by client
- Prepare annual returns, tax returns, audit
- Review compliance with trust deed
- Review compliance with legislation
- Valuation of assets to market value



Prepare or review an investment strategy  
Provide Insurance Advice – how much and type



### Contributions

- How much to contribute to any fund
- Type of contribution (concessional and non-concessional) by client
- Employer contribute SG Contributions to SMSF or vice-versa



Provide factual information to client

- **Sole purpose is to ensure compliance with SIS Act – Trust Deed update**
- In-house asset rules
- Investment Restrictions
- Cost savings in having one single fund
- Tax consequences of investments or disinvestment in any particular type of asset



# Real Life Situation

Client knows that he wants a SMSF and orders the accountant to provide the following services

- Establish SMSF
- Assist in roll of assets into SMSF
- Provide factual information regarding various SIS Act issues
- Prepare Financial Statements
- Value SMSF assets on 30<sup>th</sup> June
- Assistance in a pro-forma investment strategy with broad class of products
- Advices on tax implications of pension strategy and prepare pension documents

Evidence of instruction – file records – correspondence with client – Accountants role and scope of engagement

## Some Concerns

- Dealing in financial product when assisting in roll over from a public offer fund to a SMSF
- Lack of Insurance in SMSF

## Solution

- Disclaimer as above that accountant has no license or provides financial product advice
- Talk about risk generally – not about type of insurance or how much insurance is required - should not receive any commissions or fees from the supply of risk product

# Let the client order a deed on your own website



## SMSF TRUST DEED ACN + ABN + TFN APPLICATION

INDIVIDUAL TRUSTEE - **\$125** (INCL. GST)

CORPORATE TRUSTEE - **\$165** (INCL. GST)

START NOW!

SCHEDULE A DEMO

Is your corporate trustee name available?

Please enter your corporate trustee name

CHECK AVAILABILITY

## WHAT WE DO?



### One Wizard form

Our one wizard form helps you complete three applications through one form saving time and money



### State of art Integration

Completes Corporate Trustee, SMSF and ABN Application in one form using integration tools with ASIC and ABN servers