



COMMENTS ON ASIC INFO SHEET 216

APS licensing requirements for accountants who provide SMSF services

ASIC Info Sheet 216 seeks to clarify the position taken by ASIC with respect to accountants who provide services relating to SMSFs. Refer to:

<http://asic.gov.au/for-finance-professionals/afs-licensees/applying-for-and-managing-an-afs-licence/limited-financial-services/afs-licensing-requirements-for-accountants-who-provide-smsf-services/>

Law prior to 1 July 2016

Under the Corporations Regulations 2001, Reg 7.1.29A, accountants had an exemption from requiring a financial services licence to provide advice on establishing or winding up an interest in an SMSF.

Law after 1 July 2016

The exemption relating to SMSFs was removed, meaning that accountants now need to be appropriately licensed to provide SMSF related financial advice. However, accountants can still provide specific services relating to SMSFs under existing exemptions.

What type of advice can accountants provide?

Accountants can still provide administrative, procedural, accounting and tax work relating to SMSFs (Corporations Regulations 2001, Regs 7.1.29 and 7.1.33A). It does not mean that accountants can give financial advice or make recommendations relating to SMSFs, but they can give advice to ensure the client remains compliant with the SIS Act, around the establishment, operation, structuring or valuing of an SMSF. This can include advice on:

- the practical/factual steps that need to be taken to establish or wind up an SMSF
- how to add new trustees and members to an existing SMSF
- the different ways an SMSF could be structured
- how to process transfers or rollovers of funds
- assist clients to complete paperwork (eg to acquire securities through the SMSF, as long as you do not influence the decision to acquire those securities)
- help clients to add new members and trustees to a fund or to exit a fund
- arrange to wind up an SMSF on a client's behalf (once they have made a decision which you cannot influence).

You may also provide other relevant factual and procedural information that your client should know about establishing an SMSF (eg that they are required to have the financial accounts and statements for the SMSF audited each year by an approved SMSF auditor).



You can only rely on this exemption if the advice is provided to a trustee, a director of a trustee, an employer sponsor or a person who controls the management of the SMSF. The advice must be given to the person in their capacity as a person who controls the assets owned by the trustee of the SMSF, and not in their capacity as a beneficiary (member) of the SMSF.

Financial advice is provided on a continuum which means there is a lot of scope for ambiguity and greyness. Info Sheet 216 refers to situations where an accountant may easily stray into giving financial advice during the course of providing administrative/ procedural/ accounting/ tax advice. Accountants must be alert to this possibility. Accountants are used to knowing where the financial advice line is drawn and FoFA has now changed that line.

As ASIC states in Info Sheet 216:

The advice you give about establishing, operating, structuring or valuing an SMSF must not amount to an explicit or implied recommendation to establish an SMSF, or to acquire or dispose of an interest in an SMSF (or another superannuation product). However, we recognise that advice given to a person about the establishment of an SMSF may also carry an implicit recommendation that the person acquire an interest in the SMSF. Therefore, you are more likely to be able to rely on the exemption when your client has already made a decision to establish the SMSF before seeking your assistance to take the next steps. For example, you may recommend the best structure for an SMSF to suit your client's situation, once they have made the decision to establish an SMSF.

Advice can also be provided on asset allocation in a very broad sense. This can be easily confused with advice on investment strategies which requires an AFSL. This is a particularly grey area. Accountants don't need to be licensed to provide recommendations or statements of opinion on distributing available funds among different categories of investments such as shares, debentures, bonds, deposit products etc (eg shares but not which classes of shares such as international shares or industry sectors or shares with franked dividends).

What type of advice can't accountants provide?

Accountants cannot provide advice about:

- the acquisition or disposal by a superannuation fund, including an SMSF, of specific financial products or classes of financial product
- whether a person should acquire or dispose of a superannuation product
- a person's existing holding in a superannuation product, for the purpose of modifying an investment strategy or a contribution level.

As ASIC states in Info Sheet 216:



Without an AFS licence, you may not advise your client about their retirement investment strategy, including whether your client should increase or decrease their contributions into their SMSF, what their overall investment strategy should be (eg what the target investment return should be and how to achieve this), or what contributions they should make to their SMSF relative to any other superannuation fund of which they are a member.

If your client is a retail client, under regulation 7.1.29(5)(d), you must also provide a written statement warning them that:

- you are not licensed to provide financial product advice under the Corporations Act 2001;
- they should consider taking advice from an AFS licensee before making a decision about a product.

Be wary of limits of exemptions

ASIC warns that it is important to be aware of the limits of any exemption you rely on. Even if you rely on an exemption to provide one type of SMSF service, if you also provide financial product advice (even inadvertently) recommending an SMSF or particular investments through the SMSF at the same time, this advice will trigger the requirement to be covered by an AFS licence. Operating under an exemption does not remove the requirement to be covered by a licence for other types of financial service.

Providing unlicensed financial advice is a criminal offence.

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