Perspective

This is one of a series of articles where experts in assurance, reporting and regulatory matters discuss recent technical and policy developments in these areas.

SMSF Auditor Independence - ongoing regulator concerns and actions

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October 2016

Over 1.1 million Australians are involved in Self Managed Super Funds.

At June 2015 there was approximately $590 billion invested in these super funds – this is largest segment in the super industry. Roughly 50 per cent of SMSF Auditors are public practising members of Chartered Accountants Australia and New Zealand.

CA ANZ members are responsible for checking the financial and superannuation regulatory compliance of more SMSFs with approximately $282 billion in assets under management.

Clearly the integrity of a significant portion of the super system depends upon the professionalism of CA ANZ members who are SMSF auditors.

As a professional organization CA ANZ has to be vigilant in making our members aware of issues involving their work. We want to provide members with sufficient information and knowledge to perform their work with the high degree of competence that CAs have always been renowned. We also want to protect the associated reputation of all CAs including those not involved in the superannuation sector.

Regulator Concern and Action

For some time now the Australian Taxation Office and the SMSF auditor regulator, the Australian Securities and Investments Commission, have been expressing concern about SMSF auditor compliance with auditor independence obligations.

Their concern can be simply put – they have identified that some SMSF auditors are simply ignoring, or at best paying lip-service to, their independence obligations.

As has been detailed in various speeches and industry discussions, to date the regulators have predominantly concentrated on addressing obvious and clear breaches of the independence requirements. For example auditors:

- reviewing their own super fund
- reviewing a fund in which a relative is a member.

When the ATO identifies a breach of the independence requirements, its initial tactic is likely to be to approach the auditor, point out the breach and ask them to cease and desist otherwise the ATO may be forced to report the auditor to ASIC.

Once an auditor is reported to the ASIC it must make a decision as to whether an auditor should retain their SMSF Auditor registration. Thus far ASIC has removed very few SMSF auditors.

ASIC's decision to remove an auditor's registration is reviewable by the Administrative Appeals Tribunal and Courts. To date we have had several AAT cases about this issue.

Interaction of accounting standards and independence obligations

How the accounting standards are brought into the superannuation legislation

Before issuing a SMSF Auditor Number – or SAN – ASIC is required to be satisfied that an auditor is unlikely to contravene of obligations of approved auditors.

These obligations – found in Section 128F of the *Superannuation Industry (Supervision) Act* – are worth reproducing in full:

> An approved SMSF auditor must:
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> (a) complete the continuing professional development requirements prescribed by the regulations; and
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> (b) hold a current policy of professional indemnity insurance, of a level prescribed by the regulations, for claims that may be made against the auditor in connection with audits of self managed superannuation funds; and
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> (c) comply with:
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>> (i) any competency standards that the Regulator determines under section 128Q; and
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>> (ii) any auditing standards, made by the Auditing and Assurance Standards Board under section 336 of the Corporations Act 2001, that are applicable to the duties of an approved SMSF auditor under this Act; and
>>
>> (iii) any auditing and assurance standards, formulated by the Auditing and Assurance Standards Board under section 227B of the Australian Securities and Investments Commission Act 2001, that are applicable to those duties; and
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> (d) **comply with the auditor independence requirements prescribed by the regulations**. (Our emphasis)

What independence requirements are prescribed by the SIS Regulations?

This is the auditor independence requirements produced by the Accounting Professional and Ethical Standards Board Limited and set out in the APES 110 Code of Ethics for Professional Accountants are prescribed for all approved SMSF auditors. (Refer to Regulation 9A.06.)

APES 110 applies to the auditing of Self-Managed Super Funds

Section 290 of APES 110 specifically details that auditors must be independent in all assignments that they accept.

Note: For a more complete discussion of the independence requirements as detailed in the accounting standards, please refer to the Independence Guide published in February 2014.[1] In particular Chapter 9 of this document specifically deals with Self Managed Super Funds.

Guidance Statement 009 (GS 009) – Auditing Self Managed Superannuation Fund

At the outset it's important to state that at the commencement GS 009, published by the Auditing and Assurance Standards Board, it says specifically that it does not prescribe or create any specific requirements on those who audit SMSFs.

Under the *Australian Securities and Investments Commission Act 2001*, the AUASB has the power to formulate guidance for auditing and assurance matters and these documents are given the force of law by the *Corporations Act 2001*.

Appendix 5 of this document (which can be found at this link - http://membershandbook.charteredaccountants.com.au/static/icamh/images/144/COMM.ICA~GS009.APP6.doc) contains a number of scenarios where there may be threats to SMSF auditor independence.

Delivering a quality SMSF audit is vitally important but it isn't the only issue

From time to time we hear of situations where an SMSF auditor has clearly breached the independence requirements and their response has sometimes been, "In my defence, I believe, the quality of my audit is excellent and thorough."

We acknowledge that all CA ANZ SMSF auditors have to deliver the highest quality work feasibly possible. However the requirement to satisfy that an SMSF auditor is independent is a firm and clear requirement of the accounting standards and the superannuation legislation and must be satisfied before any other SMSF audit task can be completed.

Common auditor misconceptions about independence

According to the ATO other common responses or misconceptions from auditors asked to explain why they're not following the independence requirements have been:

- it's a judgment call – a belief that it's up to the accountant to judge their ability to be independent and that they know right from wrong
- good service – an auditor may believe they they're offering a good service to their clients who then won't have to engage with an additional SMSF professional
- it's only a small fund – the accounts are small and it isn't worth having someone else prepare the accounts or conduct the audit
- the competition – they don't want to lose out on business to a competitor (this is particularly common in small country towns)
- it's my friend – they have a close personal relationship with their client that they don't want to jeopardise by not accepting the audit of their fund.

Some common independence scenarios

A few common independence situations that need clarification are:

1. An accounting practise has established a separate entity. The new entity performs all audits required by the practise including all the SMSFs. A former employee of the practise is now

[1] Published by Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants

employed full-time by this new entity. The new entity is wholly or majority owned by the practise's partners or entities that they control.

This gives rise to a self-review threat. The significance of the threat should be evaluated and safeguards applied to reduce the threat to an acceptable level. Examples of such safeguards include ensuring the two teams are distinct.

2. As per case study one however a partner of the practise has now moved to work for the separate entity full-time. The plan is that overtime other practises may refer their audit work to the new entity including SMSF audits. In some cases the new entity is wholly owned by the practise's partners including the former partner. In other situations the entity is wholly owned by the former partner or his/her related entities.

   Same as 1

3. Two practises – both with up to 5 partners but probably no more than 3 partners – send all their SMSF audit work to each other including the SMSFs of the respective partners

   This sounds like a common business arrangement and as long as it is done on an arm's length basis it should cause no problem. However, the receipt or payment of referral fees, commissions or other similar benefits in connection with an assurance engagement creates a self-interest threat. The significance of the threat should be evaluated and safeguards applied to reduce the threat to an acceptable level. Examples of such safeguards include ensuring full disclosure to the client.

4. A three partner accounting practise offers clients a comprehensive service – accounting and tax, financial planning and audit. The financial planning is conducted via a separate entity. The audit is conducted via a separate entity again.

   Same as 1.