

Assisting clients to establish an SMSF

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Since the removal of the 'accountants' exemption' and the introduction of the limited Australian financial services (AFS) licence, accountants who provide SMSF services have taken a range of steps to adapt to the changes. However, we are aware that there still may be certain areas of confusion, particularly around providing SMSF establishment services.

In particular, there seems to be some uncertainty in the industry about whether unlicensed accountants can still assist their clients to establish an SMSF.

Unlicensed accountants providing SMSF establishment services

The 'accountants' exemption' which previously allowed recognised accountants without an AFS licence to give financial product advice about acquiring or disposing of an SMSF, was repealed on 1 July 2016. This means that an accountant without an AFS licence can no longer recommend that a client establish an SMSF, acquire an interest in an SMSF or wind up an SMSF.

However, this does not mean that unlicensed accountants can never assist a client to establish an SMSF. Unlicensed accountants can still provide SMSF establishment services, as long as they don't:

- recommend that a client establish, an SMSF, or acquire or dispose of an interest in an SMSF (or other superannuation product); or

- provide advice about the client's SMSF investment strategy or contribution levels.

Moreover, although unlicensed accountants generally cannot provide advice about a client's SMSF investment strategy, they can still provide broad asset allocation advice. This means that they can provide advice about what proportion of funds should be allocated across broad categories such as shares, debentures, managed investment products etc.

Example

A client may approach their accountant who is unlicensed having already made a decision to establish an SMSF and only request assistance with the practical steps required to establish it. In these circumstances, the accountant can help to establish the SMSF on the client's instructions, but should make it clear that they are not providing advice about the appropriateness of an SMSF for the client.

If the client is a retail client, the accountant is generally required to provide a written warning that:

- the accountant is not licensed to provide financial product advice; and
- the client should consider seeking advice from an AFS licensee before making a decision about an SMSF.

Accountants should also keep in mind that trust is an important element of any professional relationship. Establishing an SMSF is one of the most significant decisions a client can make in relation to their retirement savings and the client may expect an accountant not to just go along with their decision if the accountant thinks they may be making a mistake.

Therefore, if an unlicensed accountant is concerned that a client may not be making an informed decision, the accountant may wish to refer the client to a licensed financial adviser or direct them to some educational material about SMSFs. For example, there is a [dedicated page](#) on ASIC's MoneySmart website about SMSFs, including an [SMSF fact sheet](#). In addition, the ATO website also contains [helpful information](#) about SMSFs. The accountant also has the option to refuse to provide the service.

Finally, accountants should keep good records of their discussions with clients when providing SMSF services. These records will help to show that the accountant has not unlawfully provided unlicensed financial services.

Licensed accountants providing SMSF establishment services

Some accountants who have obtained limited AFS licences or become representatives of other AFS licensees (licensed accountants) may be wondering whether there are circumstances in which they can help a client to set up an SMSF without providing a financial service.

When is a licensed accountant providing financial product advice about an SMSF?

Licensed accountants who are authorised to provide financial product advice about SMSFs are able to have much broader discussions with their clients about SMSFs under their licence. For example, they can give personal advice to their client which recommends or discourages them from establishing or winding up an SMSF.

While it is possible that an accountant operating under a licence could assist a client to establish an SMSF without providing financial product advice, we think that these circumstances will be rare.

We expect that, in most cases, a client who approaches a licensed accountant for SMSF establishment services will be receiving financial product advice. This is because:

- certain exemptions that are available for unlicensed accountants cannot be relied upon when operating under an AFS licence; and
- the definition of financial product advice is broad enough to cover a wide range of discussions about SMSFs (not just discussions about whether the client should establish an SMSF).

Financial product advice about an SMSF includes any statement of opinion or recommendation that is intended to influence a client to make a decision relating to an SMSF. For example, giving advice about who should be the members of an SMSF would constitute financial product advice.

On the rare occasions where a licensed accountant can assist a client to establish an SMSF without providing financial product advice, the accountant should make it very clear that they are not providing financial product advice.

We also encourage licensed accountants to direct their clients to relevant educational material if it does not appear that the client is adequately aware of the risks and challenges of running an SMSF. The accountant can also refuse to provide the service.

A licensed accountant should also keep good records of the discussions they have with clients when providing SMSF services.

When is a licensed accountant arranging to deal in an interest in an SMSF?

Even if no financial product advice is provided, the various steps an accountant might take to help a client establish an SMSF (e.g. sourcing a trust deed, applying for an ABN and Tax File Number etc) would constitute arranging to deal in an interest in an SMSF, if this service is provided in a licensed capacity.¹

As a result, an accountant operating under a licence who provides these services would generally need to be authorised to arrange to deal in an interest in an SMSF. They will generally also need to provide their client with a Financial Services Guide before assisting them to establish an SMSF.

¹ This is because the exemption in regulation 7.1.29(3) of the Corporations Regulations 2001 which enables unlicensed accountants to undertake these tasks without providing a financial service does not apply to accountants operating under a licence.