POP UP WEBINAR – ACCOUNTANTS EXEMPTIONS FOR SMSF SET UPS, PENSIONS, INVESTMENT STRATEGIES AND CONTRIBUTIONS

With Grant Abbott

"The introduction of the Financial Services Reform Act in 2001 heralded a new era of financial advice reforms that, whether by design or otherwise, included a member's superannuation interest as a "financial product". For large superannuation funds that makes sense as a member is turning over their hard earned SGC to a completely independent and faceless super trustee (and behind the scenes fund manager) to look after their life savings.

But what were they thinking with SMSFs? Did they try a one size fits all approach so that a SMSF member was also caught, although by law they are required to sign off on all investments of the fund. I don't know but it never really made sense to me. Luckily there was an exemption for accountants to establish and wind up SMSFs but that "across the board" exemption was replaced with much fanfare by the limited license for accountants.

<u>BUT – did you know there still is a whole raft of exemptions for accountants and tax agents in terms of SMSF advice</u>. ***Unfortunately, these exemptions are not available for limited license accountants nor AFSL licensees***."

KEYS TO SMSF ADVICE FOR ACCOUNTANTS AND TAX AGENTS…

- Know what is a SMSF financial product
- Know the law
- Know ASICs guidelines – **they are the Regulator!!!!**
- Know how LightYear Docs has been tailored to meet the ASIC guidelines
- What to do if you are limited license?
- Where to from here

KNOW THE CORPORATIONS ACT 2001

Section 764A of the CA includes specific investments or products as “financial products” for the purposes of CA.

From a SMSF perspective, Section 764A(1)(g) provides that a superannuation interest within the meaning of the Superannuation Industry Supervision Act 1993 is a financial product.

Turning to Section 10(1) of the SIS Act, the definition of a superannuation interest means a beneficial interest in a regulated superannuation fund. As such, any interest in a SMSF is deemed to be a financial product for the purposes of CA.

This includes: contributions – lump sums – pensions – rollovers – (BDBN?)

THE CORE ASIC GUIDELINES

- **Licensed Accountants** – Cannot take advantage of the Licensing Exemptions
- **Accountants** – Investment strategies are okay as they are not advice to consumers. Setting up SMSF – only if client asks and then must provide an exemption letter
- **Tax Agents** – Exempt for any advice is in the "ordinary course of tax agent's business" and the same as a lawyers – review of the ASIC guides
- **SMSF Advisers and Administrators** – Caught under the current regime and need to limit SMSF advice touchpoints

ASIC ON CONTRIBUTIONS FOR TAX AGENTS

"Under the exemption, a registered tax agent may provide advice on any tax implications of contributions into an SMSF (or other superannuation fund), such as a client's eligibility to make concessional and non-concessional contributions and the tax treatment of those contributions. For instance, a tax agent can use a client's total superannuation balance to advise the client on their eligibility for:

1. the unused concessional contributions cap carry-forward

2. the non-concessional contributions cap and the two-year or three- year bring-forward period.

However, they cannot recommend that a client make a particular level of contributions (although they can advise on the maximum level of contributions a client can make). This is because the decision to make a particular level of contributions involves considerations other than tax.

As another example, a tax agent can advise a client that they will be eligible for a tax offset if they make a spousal contribution. The tax agent cannot recommend the amount of the spousal contribution. However, they may provide factual information about the spousal contribution eligibility criteria that is relevant to calculating the amount of the tax offset. This may include, but is not limited to, the spouse's income and the amount of the non-concessional contribution to superannuation."

ASIC ON SMSF ESTABLISHMENTS FOR ACCOUNTANTS

"You may provide advice on establishing, operating, structuring or valuing an SMSF without an AFS licence: regulation 7.1.29(5) ..... Where you are relying on this exemption, if your client is a 'retail' client (as opposed to a 'wholesale' client – see section 761G and related regulations for the definition of this term), under regulation 7.1.29(5)(d) you must provide a written statement to your client that:

1. you are not licensed to provide financial product advice under the Corporations Act

2. they should consider taking advice from an AFS licensee before making a decision about a product.

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, after they have made the decision to establish an SMSF."

WHERE TO NOW

- Are you a tax agent or accountant?
- Print and keep ASIC guidelines on your desk and handy
- Remember if you are exempt, you do not need to do a Statement of Advice but a Product Disclosure Statement is a legal requirement from the trustee of the superannuation fund
- Use the LightYear Docs solution for accountants and tax agents exemptions

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