

***This guidance provides general information relating to referral arrangements where accountants are considering referrals for financial services. It is highly recommended that this be read in conjunction with ASIC Information Sheet 216 for specific and more detailed guidance on services that can (or cannot) be provided by accountants in relation to financial services, in particular as they apply to SMSFs.***

As outlined in *Corporations Regulations 76.01(e) & RG 36.72*, the fact of making a referral to an Australian Financial Services Licensee (AFSL) does not constitute 'financial advice' requiring an AFSL.

Essentially, accountants can make a referral to an AFSL, subject to some basic conditions being met:

- informing another person that a licensee (or one of its representatives) is able to provide a particular financial service or class of financial services;
- giving that other person contact details for the licensee or representative; and
- if relevant, disclosing any referral fees that may be received

It is accepted, as an extension of the above, that accountants can pass on the client's details to the AFSL (or their representative) PROVIDED the client provides permission to do so.

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## SMSFs and the regulatory situation

SMSFs are considered a financial product (superannuation). Insurance within the SMSF as well as the investments, other than real estate, are also considered financial products.

That said, services provided in terms of setting up a SMSF (though not the recommendation to set one up), providing accounting services to the SMSF, providing tax advice, and raising potential compliance issues within the SMSF are considered part of the traditional services provided by accountants. Some of these will require a relevant warning that the service is limited to, for example, taxation only, and does not address whether the financial product is appropriate as the accountant is not authorised to provide such advice.

ASIC Information Sheet 216 (ASIC Info 216) clearly outlines the services that can be provided and the conditions that must be met.

It should be noted, though, that the accountant can work with a financial adviser to assist the client, as long as it is made clear to the client who provides which service, and the client agrees with the collaboration.

Given this information, it is important to consider the following in working with accountantsGPS.

Referring the client to accountantsGPS, or outlining the service accountantsGPS can provide, would be considered a mere referral. Obviously, if any referral fee of any kind is received, this will need to be disclosed. If a fee is rebated to the client, e.g. to reduce the cost of a service, it is considered appropriate to provide the information to the client, though if no fee is received by the accountant then strictly speaking no disclosure is required.

## **SMSF Check Up Report**

The SMSF Check-Up Report assessed the client's SMSF situation and provides a gap analysis, outlining areas that the SMSF Trustee may need to address to meet SMSF compliance or improve the use of the SMSF. The SMSF Check-Up Report does not provide any financial product recommendations, rather it provides feedback to the Trustee.

This is effectively considered as providing factual information and not financial product advice.– assessing the SMSF against a set of criteria to determine overall where the SMSF sits in meeting compliance requirements and outlining areas that the Trustee should consider addressing. Such factual information

The SMSF Check-Up Report may include referrals to additional professionals for further advice, such as a referral to an insurance broker for further life insurance advice. The fact that a referral is made does not constitute financial product advice. In addition, this is a referral made by accountantsGPS and not the accountant themselves. The client will need to make the decision on whether they wish to pursue this referral.

**Limitations** – while the SMSF Check-Up Report does not contain financial product recommendations, accountants will need to take care not to make comments that may be considered financial product advice, even if this is general only. For example, if the Report recommends a review of the life insurance, accountants cannot state that life insurance would likely be appropriate for the client. Acceptable commentary would be, for example, that it makes sense to seek advice from a professional on insurance instead.

## **Implementation of the SMSF Check-Up Report guidance**

Whether or not the accountant can assist with the implementation will depend on the nature of the outcome from the Report. Effectively, it depends on whether the implementation will be considered a traditional accountant's service or exempt from licensing as outlined in ASIC Infor 216.

For example, if the Report identifies that the trust deed has not been updated in a number of years and may therefore not be up to date, of course the accountant can provide the service.

On the other hand, if there are concerns relating to the manner in which the SMSF is invested, and the commendation is to seek advice on putting in place an investment strategy and ensure the underlying investments match the strategy, this is an area that the accountant cannot assist with – though the accountant can work (with client agreement) with the financial adviser, e.g. in evaluating CGT impacts of any proposed changes.

## **Including the accountantsGPS or moneyGPS link on business websites**

Include third party websites links on a website.

The general rule is that you should only include links that are from trusted providers, there is a need to undertake appropriate due diligence on any links you wish to include. This may include links to ATO information, for example, but also to other service providers.

Merely including a link an AFSL does not constitute advice though as a courtesy to clients it is suggested that you include an explanation as to what services would be provided as part of this referral. And of course, if a referral fee applies, this will also need to be disclosed.

## What services can an accountant provide?

The table below provides a high-level overview of what services accountants can provide, subject to appropriate authorisation with the Tax Practitioners Board (TPB).

For more detailed information, please refer to [ASIC Information Sheet 216](#).

| Services that can be provided (some subject to meeting certain conditions)   | Services that cannot be provided  |
|--|---|
| Standard accounting services and taxation advice provided the accountant is appropriately registered as a tax agent or BAS agent.  |   |
| Providing a referral to another provider, e.g. a financial adviser or mortgage broker BUT <ul style="list-style-type: none"> <li>• if a referral fee is received or paid, this must be disclosed</li> </ul>  | The accountant cannot give their view on the appropriateness of the advice provided by a financial adviser or mortgage broker.                      |
| Taxation impact of financial products but <ul style="list-style-type: none"> <li>• the accountant cannot receive a benefit from any transaction; and</li> <li>• appropriate warnings that this is tax advice only and the accountant is not authorised to provide financial product are required.</li> </ul>   | The accountant cannot recommend the disposal and acquisition of any financial product   |
| Accountants can provide advice on establishing, operating, structuring, or valuing an SMSF, including advice provided for the sole purpose of ensuring compliance of the SMSF, or to explain the wind-up process PROVIDED: <ul style="list-style-type: none"> <li>• appropriate warnings are provided that this advice is limited to structures and that the accountant cannot provide financial product advice</li> </ul> | Accountants may not recommend that the client acquire or dispose of an interest in a SMSF or roll over other superannuation holdings into the SMSF. |
| Accountants can provide a recommendation or statement of opinion on how a client should distribute their available funds among different categories of investments in terms of asset allocation, e.g. to advise on a high-level investment strategy for a SMSF PROVIDED <ul style="list-style-type: none"> <li>• appropriate warnings are provided</li> </ul>  | Accountants may not advise clients to make particular investments in the SMSF.  |
| The accountant may provide factual information on superannuation contribution limits, including the impacts of contributions on taxation, spouse contributions, unused concessional contribution gaps, etc BUT <ul style="list-style-type: none"> <li>• care must be taken that this is factual and not considered a recommendation to make a particular contribution and should consider appropriate warnings</li> </ul>  | The accountant may not advise the client to make superannuation contributions other than denoting the tax impact.                                   |
| The accountant may explain the tax impacts of superannuation funds held in accumulation versus pension phase.  | The accountant cannot provide advise on starting a pension within the superannuation fund.  |
| The accountant may advise a client on the need to meet the requirements of a tax law (such as the transfer balance cap) and of the tax consequences of a particular transfer of assets BUT it is recommended that: <ul style="list-style-type: none"> <li>• it be made clear that tax outcomes are only one factor to consider when making such decisions.</li> </ul>  | The accountant cannot advise the client about whether or not to transfer the assets or what assets to actually transfer.                            |