Dear Sirs,

I refer to your interim report issued on 15 July 2014 and issue the following response in the context of both SMSFs and Limited Recourse Borrowing Arrangements.
As noted in an earlier submission I am an accountant who also gives advice under the limited exemption for accountants due to expire on 1 July 2016.

<u>Limited Recourse Borrowing Arrangements ("LRBA")</u>
My first dealing with SMSF borrowing was about 6 years ago when a member of a SMSF, still working and with some years to go, wanted to borrow through his super fund to buy a residential investment property with the quite serious view that this was going to be for his retirement.
As he saw it, if he did not use his super fund assets and be able to borrow through his SMSF he was not going to be able to save effectively for his retirement. Variations such borrowing in his own name outside of the fund were not viable (due a lack of assets in his own name and issues of lender security). In those early years the costs of setting up a LRBA were high ($10K) given the need for a new trust, trustees and multiple lawyers in the set-up and for the lender. In the years since LRBA set-up costs have come down.

Unfortunately, also in the years since, the anecdotal evidence I am getting from fellow accountants seems to be that superannuation and LRBAs are becoming a target for property spruikers with the LRBAs being the way of obtaining a higher price for the property than it would otherwise be worth. Some of my colleagues are quite scathing about the practice in that property that wouldn't otherwise be purchased is being purchased at above market with tremendous amounts of gearing.

I concur with the direction of the Inquiry on this though I believe that if LRBAs in SMSFs were to be stopped I believe that there would have to be a grandfathering of any existing LRBA.

<u>Operating Expenses of SMSFs</u>
Traditionally the main operating costs of a SMSF was the accountant and auditor and a supervisory levy. The manual processing costs were high which is why the ATO initially brought in amounts ($200,00+) as an indicator of the balance to be held to make an SMSF worthwhile.

Over the last 10 years better computer software has been working its way into the public accounting market. We had Banklink (now owned by MYOB) and other suppliers that allow bank data to be fed directly into accounting systems reducing the manual processing. More recently, specialised superannuation provider "Class" has come onto the market allowing bank feeds, stockbroker feeds and Wrap account feeds directly into the accounting systems of accountants which can produce the necessary SMSF reports (all in a Cloud environment). This is very powerful software in terms of automated processing of transactions specifically moving out into the world of public accounting and which will likely halve the processing costs for SMSFs as the software moves outwards and downwards to smaller accounting firms. In a practical way it will (in time) bring into question the need for costly wrap accounts that so many financial planners push their clients onto. The pragmatics are that processing costs of a SMSF is coming down.

Accounting costs usually also include advice to clients on tax, SIS (Superannuation Industry Supervision) and related management aspects of the SMSF. The current legislation is that come 1 July 2016 accountants using the current limited exemption won't be able to advise clients to start a TRIS, a pension or establish or wind up a SMSF. That will become the province of financial planners, licence holders and those who spent 10 or 11 days getting a Diploma of Financial Planning and who have a licence holder review their advice. That will very significantly and dramatically increase SMSF costs for what is not much more than basic tax advice. (Does an 80 year old with $40,000 in his SMSF (and no insurance) really need specialised advice to wind up his SMSF?)

In a different aspect, recently I had the situation of a SMSF client with $5 million in his super fund. His fees for accounting, tax and audit was $3,500 (a very administratively messy job with substantial SIS and tax advice). A financial planner was involved who charged $75,000 for a Wrap account, his advice, and fund manager fees (about 1.5% of the fund's assets). Some of the tax and superannuation advice was clearly wrong in law and wasted my time having to recheck legislation. The financial planner strategy (a common approach by planners): sell 100% of the most profitable direct investments available to the member (outside the fund) and put the cash in managed funds within the SMSF and get long term tax savings in the super fund (with minimal attention to the big tax bill coming from the sale of assets outside the SMSF). The sell factor: you might lose the outside investments, but in the super fund it would be safely diversified. Unfortunately it is not legal for me to advise against any planner's advice that a client may lose most of their assets if they do not do what the planner recommends. As it turns out the outside investments now sold have gone up since 2 July 2014, but it was the client who signed up for the strategy and there is no recourse against the planner where there will be additional 1.5% fees charged per annum.

Limits on establishing SMSFs

Broadly, I don't think there should be limits on establishing SMSFs. The ATO has given a non-binding indicator and that should suffice. Funds often are started in dribs and drabs to get up to a level of say two or three hundred thousand dollars after a few years where there is a clear plan to build it up. I have advised against SMSFs and recommended retail/industry funds where there was little prospect that a client's balance was unlikely to exceed $100,000 for several years. Anyone setting up a SMSF is usually smart enough to judge its performance (and the fees he/she has to pay) in short order. When the member/trustee signs the cheques they are the best judge on this issue.

Tax Issues

There are clear tax savings using super funds. If not clients wouldn't use them and would spend their money either by some other way to save for the future or simply spend the money and rely on Centrelink in the future. The overall point of the current system is to have people lock money away for the future so they won't rely on government. Arguably tax savings are irrelevant when super contributions are forcibly extracted via the superannuation guarantee levy (SGL) system, but that is not relevant for many SMSF members who voluntarily contribute to super, particularly as they get older.

I think that the lowering of the deductible contribution limit to $35,000 per annum (for over 49's) was a reasonable move compared to the old $100K and $50K limits that used to exist. Whilst for some there is still a year-end dance of deductible contributions into super and a tax free TRIS or pension out with the member no worse off (but with a $35K tax deduction) the problem now is minimal in terms of lost tax revenue. At a $25,000 limit there were constant excess contribution problems due to the 9.25% (2014) SGL amounts and the discretion of employers to pay either three, four or five quarters of super amounts in a financial year (either before 30 June or by the following 28 July in the next financial year).

The lower contributions limits are proving to be effective in limiting the tax abuse of superannuation, though in forward manner and doesn't deal with those who have already loaded up into super. On our local radio in Sydney there is a lady ("Stephanie") who constantly bemoans that she wants to draw super out at the half rates of the GFC rather than the current rates (4% for under 65's, 5% for 65-74 etc). It is funny because she could return the fund (or part of it) back to accumulation mode where the fund would pay 15% tax on earnings without the need to pay her a pension. I think she enjoys not having to pay tax whilst in pension mode and it was never intended to be a vehicle for inter-generational wealth transfer.

One of the anomalies of the current Super Guarantee system is for persons over 65 and still working and need/want the income. SGL contributions are taxed at a flat 15% but if the taxpayer is earning less than $20,000 per year the same amount as a gross wage would have been tax free.
The SGL system is both costly and an administrative nightmare for the over 65 worker when an increased gross wage equivalent would have removed the costs.

Closure
As always, I close with the view that accountants operating under the current limited exemption should not be excluded from giving advice and recommendations on basic SMSF administration from 1 July 2016 as that will only increase administration costs of SMSFs and give greater market concentration by those in the financial planning/advice area.

Should you have any queries please do not hesitate to contact me.

Yours sincerely

Frank Rayner
Chartered Accountant

Frank Rayner & Associates ABN 20 241 650 250
Chartered Accountant, J.P. & Registered Tax Agent
Suite 3/ 138 Pittwater Road, Boronia Park NSW 2111
PO Box 2155 Boronia Park NSW 2111 **Ph (02) 9816-2033** Fax (02) 9879-6338