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STAYING BELOW THE ATO'S RADAR

With the ATO now using technology to keep an eye on SMSF trustees, it is important to ensure that your SMSF complies with the superannuation rules.

In this article, we discuss how the ATO monitors the behaviour of SMSF trustees. We also review one of the more serious consequences facing trustees who break the rules – disqualification.

Did you know?

- the ATO uses risk management techniques to help it maintain the integrity of the superannuation system;
- as part of this process, the ATO keep a profile about your level of risk to the SMSF system; and
- this profile draws from over 40 different risk attributes (such as whether you lodge and pay your tax on time).

What does the ATO check?

If you are establishing an SMSF, the ATO runs initial risk checks, such as reviewing whether you have met your personal taxation obligations. The ATO may also contact you to assess your knowledge of the superannuation rules.

If you are already operating an SMSF, the ATO will review the tax and regulatory history of the SMSF. It mainly uses your fund's tax return and audit contravention report for this purpose.

Disqualifying SMSF trustees

One penalty the ATO can impose on trustees who break the law is disqualification. This action is serious because it can lead to you being banned from being an SMSF member for life.

Typically, disqualification occurs when a trustee commits serious, multiple breaches of the superannuation

rules. Such breaches could include misappropriating or illegally accessing fund money (e.g., to pay personal debts or prop up an ailing business).

WARNING—You are automatically disqualified if you are an undischarged bankrupt, or you have been convicted of an offence involving dishonesty.

What happens if I am disqualified?

You must remove yourself as trustee immediately, and advise the ATO of the change within 28 days. You will then need to either:

- transfer your superannuation balance to a large fund (such as a retail fund); or
- appoint an independent, approved trustee to run your SMSF (you can't simply appoint a friend or relative as trustee in your place). Your SMSF will then become a 'small APRA fund'.

Generally, your fund has a six-month window to restructure following your resignation as trustee.

TIP—The ATO will normally provide you with the opportunity to state your case as to why you should not be disqualified. You can also appeal against the ATO's decision.

Tips to keep a low risk profile

Key tips for SMSF trustees include:

- keep up to date with your tax and payment obligations, not only for your SMSF but also personally;
- ensure that you correct any contraventions identified by the ATO; and
- check with us if you are unsure about whether a superannuation transaction complies with the law.



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SUPERSTREAM DEADLINE EXTENDED

The ATO has advised that it will provide small businesses with an extended deadline of 28 October 2016 to implement SuperStream.

The SuperStream rules generally require employers to make superannuation contributions for their employees electronically.

In addition, the rules require employers to submit information about the contribution using a specific data format.

SuperStream and family businesses

An exclusion from SuperStream applies to family businesses that contribute to a related SMSF. This means that:

- contributions from a family

business to a related SMSF are generally exempt from SuperStream;

- the family business must comply with SuperStream for employees who are not members of the SMSF (e.g., non-family employees); and
- SMSFs who receive contributions from both family and unrelated employers must comply with SuperStream for the contributions received from an unrelated employer.

TIP– Small businesses with less than 20 employees or less than \$2m turnover can use the Small Business Clearing House Service to comply with their SuperStream requirements.

TIPS ON YOUR UPCOMING SMSF AUDIT

With the current reporting season now well underway, we remind you that it is compulsory for your SMSF to be audited each year.

This annual obligation arises even though your SMSF may only have minimal activity (e.g. no contributions being received by your SMSF).

Here are some tips to ensure that your audit runs smoothly:

- let us know up front of any major changes that have occurred over the last year (e.g. asset sales or member changes);

- advise us about any transactions your SMSF may have undertaken with yourself, any relatives or family businesses; and
- deal with any requests from the SMSF auditor promptly – by law, information sought by the auditor must be provided within 14 days of the request being made.

WARNING–Once the audit is underway, the auditor must still report any identified contraventions to the ATO – even if you terminate the audit prior to completion.

Q & A – SMSF BORROWING TO REDEVELOP LAND

“My SMSF owns a house. The fund would like to borrow to construct a new house on the back block and rent it out. Is this possible?”

Unfortunately, no. Although your SMSF is generally unable to borrow, the rules do permit an SMSF to use borrowings to buy an asset, where strict requirements are met.

The ATO takes the view that your SMSF can only borrow to ‘**acquire**’ an asset – your SMSF is not permitted to borrow for the purpose of redeveloping an asset it already owns.

Some alternative options to fund the redevelopment include:

- using existing cash reserves to fund construction of the house; or
- increasing contributions to boost the SMSF’s cash reserves. You need to check your contributions caps before undertaking this strategy.

Note, you should also review the SMSF’s governing rules and investment strategy to ensure that redevelopment of the back block is permitted.

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