

SPECIAL POINTS OF INTEREST:

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TAKING AN ACTIVE INTEREST IN YOUR SMSF

SMSFs are unique in that all SMSF members must also be trustee of the fund. In this article, we discuss some of the key reasons to be engaged as trustee in the management of your fund, even though you may not be the main 'decision-maker'.

Your responsibility as trustee

The requirement for all SMSF members to be trustee ensures that members have the opportunity to participate in the decision making processes of the fund. However, as trustee you also have a shared responsibility to ensure actions of the fund (including actions taken by other members) are within the bounds of law.

Both the courts and the ATO have rejected the idea that a 'dominant' SMSF member absolves other trustees of accountability for actions of the fund. All trustees are equally responsible for the sound operation of an SMSF. The new trustee penalty regime is also generally based on shared responsibility and culpability.

EXAMPLE—Nick and Sue are members and individual trustees of an SMSF. Nick makes a unilateral decision to withdraw funds from their SMSF to prop up his ailing business and is unable to repay the debt. Although Sue was not actively involved in providing the money to Nick, she may still be liable as fund trustee for Nick's actions.

Protecting retirement savings

Another benefit of being actively engaged is to ensure your retirement savings are protected. We have seen situations arise whereby an innocent party loses retirement savings in a SMSF due to the dishonest or reckless actions of another fund member. No statutory compensation is available in these circumstances. You can put suitable measures in place to help mitigate the risk of loss, and prevent unauthorised withdrawals.

EXAMPLE—Jim and Lee are members of an SMSF, with a single bank account. Either party can withdraw money without authority of the other. Jim is a gambler, and withdraws all savings from the fund (including Lee's superannuation savings). In addition to losing her savings, Lee may be culpable as trustee for Jim's actions.

Compliance obligations

The ATO requires all fund trustees to be aware of their duties and obligations. Often, one particular SMSF member takes the lead role in ensuring that the fund's legal obligations are complied with. However, all trustees are equally responsible for operating the fund and ensuring its legal obligations are met. Hence, if the trustee managing the fund falls ill, the other trustee/s need to step up and ensure the fund satisfies its regulatory requirements.

EXAMPLE—Mary and Ian are members of an SMSF. Mary receives a pension, but falls seriously ill resulting in the fund not satisfying its annual pension payment obligation. In asking the ATO for concessional treatment on the basis that Mary's illness was outside of his control, Ian states he does not look after the day-to-day operations of the fund. In this situation, although it may be a difficult time personally for the trustees, the ATO is likely to say that Ian is equally responsible for operating the fund, and should have ensured that the payment was made.

ACTION—Ensure you maintain an active involvement in managing the fund by:

- being aware of your fund responsibilities;
- ensuring you are up-to-date with your fund's investments;
- checking that appropriate controls are in place to protect your retirement savings; and
- seeking advice where needed.



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PAYING A PENSION AND ACTUARIAL CERTIFICATES

An important feature of SMSFs paying a pension is that SMSF income derived from the underlying pension assets is exempt from tax. In this article we discuss how to calculate this tax exemption, and provide details of a recent ATO update on pensions.

INFO—Concessional contributions made to your fund (e.g. from your employer) are always assessable to your SMSF – even if the fund is completely in pension phase.

Exempt pension income

Your SMSF can generally commence paying a pension in the following circumstances:

- **account-based pension**—you satisfy the ‘retirement’ condition of release, reach age 65 or commence the pension from unrestricted non-preserved benefits.
- **transition to retirement income stream**—you attain ‘preservation age’ (between 55 and 60, depending on your date of birth).

Once commenced, income derived from assets supporting the pension is exempt from tax. In this regard, superannuation law provides your SMSF with two methods of determining the amount of exempt income.

Method 1—Segregation method

Under this method, certain SMSF assets are specifically earmarked to support the pension. This means that:

- income derived from specific ‘segregated’ assets supporting a pension payable by the fund is exempt from tax;
- income from other SMSF assets not supporting a pension is usually taxable (generally at 15%); and
- an actuary is not required to certify that the pension exemption has been calculated correctly.

EXAMPLE—Fred starts a pension on 1 July with \$450,000. Wilma is in accumulation phase with \$500,000. ASX stocks and a small bank account support Fred’s pension, whilst Wilma’s assets are in term deposits.

The trustees have identified specific assets supporting Fred’s pension (i.e. ‘segregated assets’). Income derived from these segregated assets is exempt from tax. The SMSF does not need to obtain an actuarial certificate.

Method 2—Unsegregated method

In this situation, an SMSF’s assets are not specifically set aside to support the pension. Therefore, if your SMSF contains members that are in both pension phase and accumulation phase, only a proportion of the fund income will be exempt from tax. To ensure the exemption is calculated in a fair and reasonable manner, an actuary must certify the exempt proportion of fund income. This certification is referred to as an ‘actuarial certificate’.

INFO—The actuarial certificate must be obtained before the lodgment date of your SMSF tax return.

What did the ATO clarify?

Some SMSF members start a pension part-way during the income year, such as when they reach preservation age. The ATO previously held the view that a superannuation fund could not adopt the **segregated method**, unless a pension was payable for the full year. Under this view, an SMSF commencing a new pension after 1 July was compelled to obtain an actuarial certificate (i.e. because it had to use the unsegregated method).

Following consultation with industry, the ATO has reconsidered its position and now accepts that an actuarial certificate is not required in situations where:

- an SMSF commences a pension part-way during the income year (e.g. when the member reaches preservation age); and
- the fund chooses the segregated method to calculate exempt pension income.

This change applies retrospectively.

INFO—In terms of which method is better, segregation can be useful, but it has a higher administration cost. It is a complex area that depends on your personal situation, so consider seeking specialist advice.

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Ph: (03) 54438888
1 Somerville Street
Bendigo VIC 3550
www.mgr.com.au

Our SMSF Specialist Adviser
Robert Black



invest@mgr.com.au

