Superannuation Newsletter June 2014

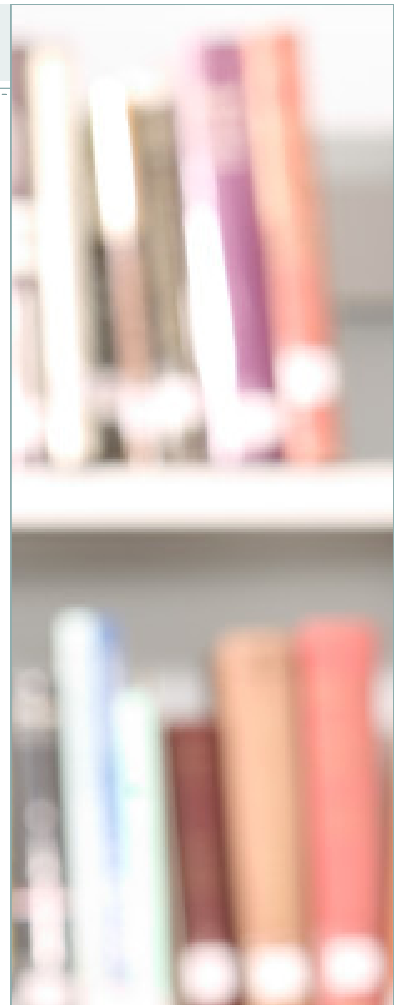
BWR Accountants & Advisers

MAKE YOUR SMSF EOFY READY

The end of financial year (EOFY) is fast approaching, now is the time to get your self managed super fund's (SMSF) records in order. As a trustee of a SMSF one of your responsibilities is to keep proper and accurate fund records. You need to keep certain records under the super and tax laws and others in order to meet your tax and audit obligations and ensure your fund is operating efficiently.

The following is some of the information needed to make your life and ours easier when it comes to preparing your SMSF for the end of financial year.

- A portfolio valuation from your broker as at 30 June.
- For property, a valuation of the market value as at 30 June.
- Ensure your lease agreements are current, the rent is at market value and the terms are on a commercial basis.
- Ensure your investment strategy is current and that it makes reference to insurance for fund members.
- Ensure all banking has been transacted before 30 June e.g. that all relevant withdrawals and deposits including contributions have cleared the bank account by this date.
- Ensure fund members who are in pension phase have withdrawn their minimum pension entitlement before 30 June.
- If you think you are eligible to claim a tax deduction for a personal contribution beware of the 10% rule, where by, if you earn more than 10% of your total income from wages, then you can't claim a tax deduction.
- Collate all of your contracts for share purchases and sales conducted for the year (these are required to be kept by you for a period of 7 years after the transaction occurred).
- For all meetings held during the year collate minutes of these meetings, it is a requirement that minutes be retained for 10 years.
- Records of any income and expenditure for the year should also be compiled for year end reporting and audit purposes.
- Assets must be held in the super fund's correct legal name.



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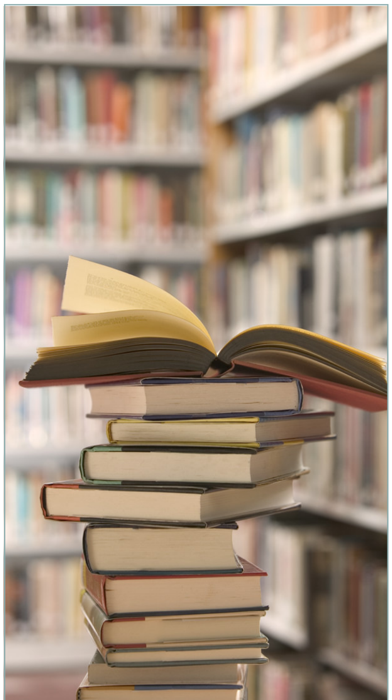


SMSF PENALTIES

Administrative Penalties

If a trustee or a director of a trustee company contravenes a section of the SIS Act specified in section 166 of the act , they are liable to an administrative penalty. The administrative penalty regime works through penalty units. A penalty unit currently equates to $170.

Rectification direction

A written direction requiring a trustee or director of the trustee company to take specified action to rectify the contravention and provide the ATO with evidence of their compliance with the direction

Education direction

An education direction is a written direction requiring a trustee or a director of the trustee company to undertake a specified course of education and to provide the Taxation Office with evidence of completion of the course.

NEW PENALTY POWER FOR ATO COMMENCING 1 JULY 2014

On 14 December 2013 the government announced that it would proceed with legislative changes that give the ATO greater powers in dealing with SMSF trustees who breach super law, and is now law.

These new powers will apply to contraventions occurring from 1 July 2014 and cover:

- Rectification directions
- Education directions
- Administrative penalties

They will also apply to contraventions that were made prior to 1 July 2014 and continue after that date.

The ATO's website gives an example of a fund that has lent money to a member or relative and the loan still exists on or after 1 July 2014 then the trustee will be liable for a penalty. The loan should immediately be repaid to the fund with appropriate commercial interest.

Penalties will vary according to the type of breach. In the example above, **each individual trustee will be personally liable for a penalty of $10,200. If the** SMSF had a corporate trustee **each director will be jointly and severally liable for a penalty of $10,200.**

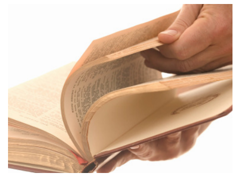
The penalty cannot be paid using the resources of the SMSF and doing so would be considered a serious breach likely to be subject to more significant penalties from the ATO.

Under the proposed administrative penalties the ATO must impose the penalty when they become aware of a relevant breach from 1 July 2014. Thus to avoid these penalties make sure your SMSF is fully compliant with the super laws.

If trustees are making progress in resolving contravention(s) by 1 July 2014 the ATO would consider these circumstances in any request to remit any imposed administrative penalties. See the last page of our newsletter for a list of some of the major areas that you must make sure you don't breach.

Provision of SISA	Details	Administrative Penalty	Penalty
Subsection 34 (1)	Contravene a prescribe standard: e.g. the requirement to formulate, review regularly & give effect to an investment strategy (includes consideration of insurance)	20 penalty units	$3,400
Section 35B	Fail to have the fund's financial statements prepared, signed and retained for at least 5 years	10 penalty units	$1,700
Subsection 67 (1)	Contravene borrowing prohibition	60 penalty units	$10,200
Subsection 65 (1)	Lend or give financial assistance to a member or relative of a member	60 penalty units	$10,200
Subsection 103	Fail to keep minutes & records	10 penalty units	$1,700
Subsection 84 (1)	In house assets	60 penalty units	$10,200
Subsection 160 (4)	Fail to comply with education direction	5 penalty units	$850

SUPERANNUATION CONTRIBUTION CAPS



Concessional (taxable) contribution limits	2013-14
Under the age of 60 years	$25,000
Between the ages of 60 to 64 years	$35,000
Between the ages of 65 to 74 years—however the work test must first be met (see below)	$35,000

Concessional (taxable) contribution limits	2014-15
Under the age of 50 years	$25,000
Between the ages of 50 to 64 years	$35,000
Between the ages of 65 to 74 years—however the work test must first be met (see below)	$35,000

Concessional contributions include amounts made as salary sacrifice, Superannuation Guarantee or other personal deductible contributions.

For members older than 65, you will need to first meet the **work test** to contribute personally to super in most cases. You will need to work for at least 40 hours during 30 consecutive days at any time during the financial year prior to making tax deductible and non deductible contributions to super.

If you are over 75 years you can not make personal contributions.

Making after tax contributions

This financial year the maximum personal after tax contribution is $150,000, however if you are under 65 you can contribute up to $450,000 over a 3 year period.

Tip: From 1 July 2014 the after tax contribution cap increases to $180,000 which means if the bring forward rule is triggered then a total of $540,000 can be contributed over the fixed 3 year period (if you are under 65).

Trap: If you trigger the bring forward rule before 30 June, the maximum amount will be $450,000 for the fixed 3 year period.

INSURANCE INSIDE A SMSF

From 1 July 2014, new insurance policies within a SMSF must be consistent with the death, terminal illness, and permanent and temporary incapacity conditions of release in the Superannuation Industry (Supervision) Act.

BEWARE EXCESS CONTRIBUTIONS TAX

Trustees making large superannuation contributions should exercise extreme caution for any type of contributions to avoid excess contributions penalties. This can apply to any tax deductible and non tax deductible contributions made to super. The maximum amount of tax payable can be up to the maximum tax rate of 46.5% plus additional penalties.

CENTRELINK AND YOUR SUPER

Once the Abbot Government's budget changes are legislated many retirees with reasonable super balances will have significantly reduced opportunities for government support.

From January 2015 retirees super will be assessed differently, with tax free super pension income given greater weight in the Centrelink income tests.

These changes will make it less favorable for those receiving tax free super pensions.

For Health Care Card recipients from 1 July 2015, Centrelink will change the calculation of the income test to include tax free super pensions.

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SMSF & PROPERTY

You can buy both residential and commercial property through your SMSF, but the purchase must comply with SMSF legislated rules. The property must:

- meet the sole purpose test of solely providing retirement benefits to fund members
- not be acquired from a fund member or a related party of a fund member
- not be lived in by a fund member or any fund members' related parties
- not be rented by a fund member or any fund members' related parties

You must also justify the investment as being designed to protect and increase the fund members' benefits for retirement. As such investment in property should have an income stream, that is reliable (preferably high) and realistic prospects for capital growth.

A potential benefit for business owners is the ability to purchase a commercial property to lease back to your own business. You must pay a commercial rate of rent, but this can be a great strategy to both build your wealth and maximize your superannuation contributions. However remember you need to make sure you structure the purchase correctly. Penalties are severe if you get it wrong.

Purchasing residential property within your SMSF can be an effective way to increase the value of your retirement savings. It also provides means for access to investment market that may not have been accessible by the member outside the super fund environment. Maximum tax payable on rental income is 15%. If you hold the property more than 12 months any capital gain on the sale will be taxed at a maximum of 10%. If you are in pension phase all income (including the capital gain will be tax free).

Borrowing or gearing your super into property must be done under very strict borrowing conditions called a "limited recourse borrowing arrangement". This arrangement can only be used to purchase a single asset, for example a residential or commercial property.

There are greater risks in gearing the property such as higher costs, SMSF property loans tend to be more costly than other property loans, cash flow loan repayments must be made from your SMSF, so it must always have sufficient liquidity to make these repayments. If your SMSF property loan documentation and contract are not set up properly, it may be hard to cancel the arrangement, meaning you may be required to sell the property, which could cause substantial losses. You cannot borrow to improve the property, borrowings can only be used to maintain the property. Given these issues you should consider whether it would be better invested outside of super.

Investing in property within superannuation is not as straight forward as investing outside the superannuation environment, and each situation is different. It is a topic that sparks a lot of interest for many investors. If you are thinking about this as an option for your SMSF, we recommend you call us to make an appointment to discuss your plans.

Extract from 2013 SMSF Audit Report

This extract is included to assist with the meaning of the legislation and regulations.

Section or Regulation	Explanation
S17A	The fund must meet the definition of an SMSF
S35A	The trustees must keep and maintain accounting records for a minimum of five years
S35B	The trustees must prepare and maintain proper accounting records
S35C(2)	The trustees must provide the auditor with the necessary documents to complete the audit in a timely and professional manner; and within 14 days of a written request from the auditor
S52(2)(d) or Reg 4.09A	The assets of the SMSF must be held separately from any assets held by the trustee personally or by a standard employer sponsor or an associate of the standard employer sponsor
S52 (2)(e)	The trustee must not enter into a contract that would prevent/hinder them from exercising the powers of a trustee
S62	The fund must be maintained for the sole purpose of providing benefits to any or all of the following: • fund members upon their retirement • fund members upon reaching a prescribed age • the dependants of a fund member in the case of the member's death before retirement
S65	The trustees must not loan monies or provide financial assistance to any member or relative at any time during the financial year
S66	The trustees must not acquire any assets (not listed as an exemption) from any member or related party of the fund
S67	The trustees of the fund must not borrow any money or maintain an existing borrowing (not listed as an exemption)
S67A-67B	Limited-recourse borrowing arrangements
S69-71E	Outline of the in-house asset rules that trustees must follow (these relate to transactions of any kind with a related party of the fund)
S73-75	Outline of the manner in which in-house assets must be valued by trustees (arms-length market value)

S80-85	The trustees must comply with the in-house asset rules
S103	The trustees must keep minutes of all meetings and retain the minutes for a minimum of 10 years
S104A	Trustees who became a trustee on or after 1 July 2007 must sign and retain a trustee declaration
S109	All investment transactions must be made and maintained at arms- length – that is, purchase, sale price and income from an asset reflects a true market value/rate of return
S126K	A disqualified person cannot be a trustee, investment manager or custodian of a superannuation fund
Sub Reg 1.06 (9A)	Pension payments must be made at least annually, and must be at least the amount calculated under clause 2 of Schedule 7
Reg 4.09	Trustees must formulate, regularly review and give effect to an investment strategy for the fund
Reg 5.03	Investment returns must be allocated to members in a manner that is fair and reasonable
Reg 5.08	Member benefits must be maintained in the fund until transferred, rolled over, allotted (to the member's spouse) or cashed in a permitted fashion
Reg 6.17	Payments of member benefits must be made in accordance with Part 6 or Part 7A of the regulations and be permitted by the trust deed
Reg 7.04	Contributions can only be accepted in accordance with the applicable rules for the year being audited
Reg 8.02B	When preparing accounts and statements required by subsection 35B(1) of the Act, an asset must be valued at its market value
Reg 13.12	Trustees must not recognise an assignment of a super interest of a member or beneficiary
Reg 13.13	Trustees must not recognise a charge over or in relation to a member's benefits
Reg 13.14	Trustees must not give a charge over, or in relation to, an asset of the fund

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