



ACCOUNTANTS  
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# SELF MANAGED SUPERANNUATION NEWSLETTER

December 2012

## New Obligations

The new regulations for Self Managed Superannuation Funds (SMSF) under the SIS Amendment Regulation 2012 (No.2) took effect on the 7th August 2012.

These obligations require trustees to:

- **Value assets at market value for reporting purposes**
- Regularly review the fund's investment strategy
- Consider insurance for members as part of their fund's investment strategy

During each income year you should review your fund's investment strategy to ensure that it continues to reflect the purpose & circumstances of your fund and its members. These reviews should occur on a regular basis, some trust deeds require a review of your investment strategy at least annually, or twice a year. A review could be evidenced by documenting decisions made in the minutes of the meetings held during the income year.

From the 2012-13 financial year and later years it is required all SMSF assets are valued at their market value. Businesses in Australia typically define market value as the price that would be negotiated in an open and unrestricted market between a knowledgeable, willing but not anxious buyer and a knowledgeable, willing but not anxious seller acting at arms length.

In addition, trustees of SMSF have always been obliged to keep the money and assets of the fund separate from those held personally, this was previously a covenant deemed to be part of the governing rules of the fund, not an operating standard. With the introduction of the SIS Amendment Regulation 2012 (No. 2) the ATO now has the power to enforce compliance of this requirement.

## SMSFs and the ATOs 2012/13 Compliance Program

This year the focus of the ATO compliance program includes:

- ◆ New trustees, to ensure they can operate their SMSF and are not seeking to illegally access their retirement benefits.
- ◆ Lodgment of fund annual returns on a timely basis.
- ◆ Irregularities in non arms length transactions and exempt current pension income.
- ◆ Breaches of trustee obligations reported to the ATO by approved auditors.

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## Record Keeping Tips for Trustees

One of the responsibilities as trustee of a SMSF 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 operated efficiently.

Trustees should aim to have good compliance procedures in place from the start. Forward planning ensures deadlines are always met. Good reporting practices flow on from understanding compliance, keeping up with compliance procedures and good administration. Keeping accurate accounting records, lodging returns and forms on time and obtaining SMSF audits are all essential features of good reporting practice.

Keeping accurate and complete records of your SMSF dealings will allow you to provide an accurate and detailed history of your Fund, help you to make decisions for the Fund and demonstrate to the ATO and auditors whether you've complied with superannuation laws and regulations.

Generally, financial records need to be retained for a minimum of 5 years, however non financial records such as purchase of assets, minutes, trustee declarations etc. must be kept for a period of 10 years.

Some of the records you need to keep as a trustee include:

### Administrative records

- ◆ Minutes of trustee meetings & decisions
- ◆ Records of the change in fund details
- ◆ Trustee declarations
- ◆ Written consent to act as trustee
- ◆ Audit reports
- ◆ Trust deed
- ◆ Investment strategy
- ◆ Registration documents for ABN, TFN etc.
- ◆ Notice of compliance (received after lodging first year tax return)
- ◆ Death Benefit Nominations
- ◆ Letter of engagement & management letter appointing an approved auditor



### Financial and tax records

- ◆ Annual operating statement
- ◆ Tax Returns
- ◆ Statement of financial position
- ◆ ASIC Annual Returns
- ◆ Documents proving asset and investment ownership
- ◆ Bank account statements
- ◆ Records about employer contributions
- ◆ Records on each member's individual account
- ◆ Receipts
- ◆ Contracts for the purchase and sale of assets e.g. buy & sell notes
- ◆ Share purchase plan and demerger information

As previously mentioned, under the new obligations effective of 7th August 2012, funds are required to update their investment strategies regularly. By their nature SMSFs will tend to incorporate longer term investment strategies, although this can vary depending on the individual circumstances of each fund and its members. A good starting point for developing a strategy (a key to accurate record keeping) is to clearly set out investment objectives, ensuring they are realistic. Appropriate diversification, whether to invest across a number of asset classes, meeting the cost of running the fund and individual needs of members should also be taken into account.

Knowing when to get professional advice is important if you are running a SMSF. Changing laws and regulations, as well as the complexity of tax law means it is often a good idea for SMSF trustees to get regular advice and assistance from SMSF professionals. This can help with not just compliance and the day to day administration issues, but also investing and tax strategies. In the event you have any doubts, we urge you to consult with one of our friendly professionals at BWR Accountants & Advisers.

## SMSF the Shake Up

As part of the Stronger Super Reforms, recently the government released draft legislation aimed at further tightening the laws concerning Self Managed Superannuation Funds (SMSFs).

The Government intends to empower the Tax Office as regulator of SMSF's to directly issue fines to fund's trustees who breach the superannuation law. The fund's trustees will have to pay the fines personally as they will not be allowed to withdraw the money from the fund's assets.

The draft legislation provides for administrative penalties for SMSF trustees, which could be imposed without court action. This will give the commissioner more flexibility in dealing with fund trustees who fail to comply with superannuation law. For example the commissioner will be empowered to issue rectification & education directions to fund trustees.



For promoters of illegal schemes designed to gain early access to super savings, criminal & civil penalties could be applied. The tax law will be amended to tax unlawful early payments of super at the highest marginal rate instead of the recipient's marginal rate.

Superfund's transferring benefits to SMSFs will have to comply with provisions under the Anti- Money Laundering & Counter Terrorism Financing Act in regard to reporting certain transactions.

For very serious breaches, the tax office has the power to strip a SMSF of its complying status. Which will result in the fund's assets less non concessional contributions being taxed at 45%. The Cooper Review referred to this as the "nuclear option" as it is devastating for a fund with up to almost half of the fund's assets being eroded by tax.

Under the proposed changes the tax office will take what is described in the Cooper Review as the "speeding ticket" approach. The regulator will issue what are effectively demerit points to the fund trustees that will reflect the seriousness of an offence.

Each point is currently worth \$110 and the greater the offence the more points will be issued. A hierarchy of points will be issued for various offences ranging upwards from a minimum of 5 points (\$550 in penalties) for not providing the tax office with requested information to a maximum of 60 points (leading to \$6,600 in penalties) for such breaches as lending money to fund members or their relatives.

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## Statistics

As at June 2012 there were over 478,000 SMSF's holding \$439 billion in assets.

The ATO has estimated at the current growth rate one million Australians will manage their super within a SMSF within the next two years.

For the entire Superannuation sector SMSFs still hold just over 30% of total assets. About 40% of all approved SMSF auditors are members of the ICAA.

From March 2011 to March 2012, SMSFs were only behind public sector funds in terms of percentage increase in assets for the year.



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## Contribution Caps

Income Year	Concessional Cap	Non Concessional Cap
2012-13	\$25,000	\$150,000
2013-14	\$25,000	\$150,000

There are two types of contributions:

- ⇒ **Concessional contributions** are also referred to as before tax contributions and can include employer contributions, salary sacrifice payments and other amounts paid from your pre tax income (a tax deduction is claimed for these payments).
- ⇒ **Non concessional contributions** are personal contributions to a superannuation fund for which a tax deduction has not been claimed (formerly known as undeducted contributions).

The taxable contributions limit was effectively reduced for all members to \$25,000 from 1 July 2012. Taxable contributions contributed into your fund include personal taxable contributions, employer contributions and any salary sacrifice amounts paid into super. The non concessional contributions limit still remains at \$150,000 with the option to take advantage of the 3 year bring forward rule for members under 65 years of age.

If you are 64 years old or less on 1 July of the financial year and you make an excess non concessional contribution, the system will automatically bring forward the next two years' non concessional contributions cap, but certain conditions apply. This means you can contribute up to \$450,000 over a 3 year period. You cannot use the bring forward provision if you are 65 years or older).

The bring forward is automatically triggered when your after-tax contributions are more than \$150,000 in a particular year. Once this happens the normal non concessional contributions cap doesn't apply to the next two years, instead your total contributions over the 3 years cannot exceed \$450,000.

To make sure you don't accidentally trigger the bring forward, take into account all contributions made to all your superfunds. Remember that excess concessional contributions count towards the non concessional contributions cap and can trigger the bring forward provisions.

We have seen harsh penalties handed down to fund members for making excess contributions. We can't stress enough that your contributions to the fund must not exceed the caps. Please keep good records to ensure you don't make excess contributions. Contributing more than the caps will result in paying extra tax.

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## Pension Drawdown Relief

The prescribed minimum payment amount for 2012/13 is reduced by 25% for account based pensions and annuities and for other market linked annuities and pensions. Currently no drawdown relief has been advised for the 2013-14 year.

