

TAX MATTERS

Tax strategies for you and your business



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Compliance bar lifted for SMSFs

Following an announcement made by the Government in the 2012-2013 Mid-Year Economic and Fiscal Outlook (MYEFO) report, penalties for non compliance by SMSF trustees will increase by 55%.

There were also a number of new rules and regulations which trustees should be aware of in order to avoid incurring the harsher penalties.

Review investment strategy regularly

Trustees will now be required to review the fund's investment strategy on a regular basis. Previously, it was only a requirement to formulate an investment strategy and review it on an ad hoc basis.

It is now part of the regulations, and as a result the ATO will be enforcing compliance.

The ATO have stated that these reviews "should occur on a regular basis and could be evidenced by documenting decisions made in the minutes of meetings held during the income year."

Consider the merits of life insurance

It will now be necessary for SMSFs to consider insurance for fund members as a part of their investment strategy.

The ATO found that less than 13% of fund members had insurance, and have updated their regulations to address this.

Value SMSF assets at market value

SMSF funds will need to be assessed at market value when preparing financial accounts and statements for the 2012-2013 income year. The ATO has produced valuation guidelines for SMSF trustees and advisers.

Keep personal assets from SMSF assets or get fined

Trustees are required to keep their personal assets and money separate from the money and assets held by the fund.

This requirement has always been in place however, it has now become operating standard and this change to the legal status means that trustees can be hit with a fine of up to \$11,000 for non compliance.

The ATO has also composed an SMSF compliance hit list and will be targeting:

- top 100 richest SMSFs
- excess contribution tax (ECT)
- non-arm's length income
- exempt current pension income
- losses incurred by an SMSF

PREDA

LEVEL 7
63 EXHIBITION STREET
MELBOURNE VIC 3000

TEL: (03) 8663 5100
FAX: (03) 8663 5199

EMAIL
info@preda.com.au

WEBSITE
www.preda.com.au

DIRECTOR
John Lazzarini

Taxation
Planning
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SMSFs and 'business-like' activity

The ATO has recently raised issues with SMSF investments, in particular outlining areas where SMSFs are at risk of non-compliance because their business activities are deemed unacceptable.

Most regular arm's-length trading of assets, such as shares, units and similar other passive investments are seen as appropriate by the regulators. However, there are a few business-like activities that would need to be reviewed on a case to case basis to see if

they are allowed under the regulations.

Activities that may be at risk are those that breach the sole purpose test, that is, ensuring that the primary function of the business activity is to fund the retirement benefits of trustees, and not to provide immediate capital.

The ATO will be looking closely at SMSFs that:

- Employ a family member in the business. The ATO will be analysing the rationale behind this appointment and scrutinising the salary or wages paid to the employee.

- The business is part of a hobby or pastime that the trustee engages with.
- The business has links to associated trading entities.
- There are reasons to suspect that the super fund assets are being used as private funds and to the benefit of the trustees and related parties.

The ATO will be carefully inspecting how the business uses SMSF assets, and the actions of the trustees will be assessed against the responsibilities and duties as stated in the SMSF covenant.

TAX FOCUS:

NEW RULES TO THE GST REFUND PROCESS

The Federal Government has proposed legislation which aims to limit the ability of businesses to claim refunds of GST from the ATO in circumstances where they have overstated the net amount of profit in their Business Activity Statement.

This raises a myriad of issues with suppliers who are now put in a position where they are required to pay an excess amount of GST to the ATO but are unable to recover this amount from their customers, such as in industries where the GST margin is already built into their pricing structure.

Some of the issues will be:

- Suppliers in some industries will be disadvantaged as the new GST law will assume that the excess GST is being passed on automatically to the recipient of the supply.
- Businesses who discover errors in their BAS which result in an overpayment of GST to the ATO will find it difficult to recover the amount, under the assumption it has been passed on to their clients.

Businesses should look to carefully self managing their entitlements to overpaid GST, as the ATO no longer has a requirement to automatically refund overpaid GST.

Concessional contributions cap update

The Federal Government recently changed the concessional contributions cap to \$25,000, which applies to everyone regardless of age or super balance. This amount has been halved from the \$50,000 cap introduced in the 2007 Budget.

What the changes mean

As a result, those who make concessional (before tax) contributions in excess of the \$25,000 cap face a penalty tax of 31.5%, in addition to the 15% contributions tax. Furthermore, the excess contributions will count towards the \$150,000 non-



concessional (after tax) contributions tax. Likewise, if you make non-concessional (after tax) contributions in excess of the \$150,000 cap (or bring forward cap of \$450,000) then the excess contributions will be subject to a penalty tax of 46.5%.

What to do

Although the non-concessional contributions cap is \$150,000, individuals

can roll forward up to two years of contributions, making a possible total contribution of up to \$450,000 in one year. However, only those under the age of 65 can take advantage of this option.

For individuals over the age of 65, non-concessional contributions in excess of \$150,000 will unfortunately be subject to the penalty tax.