



## Monthly Information Newsletter – Tax & Super

December 2022

### SMSF compliance: what's on the ATO's radar?

In a recent speech, ATO assistant Commissioner Justin Micale outlined the ATO's latest compliance issues for those who operate an SMSF.

#### ID fraud and investment scams

While ID fraud and investment scams are still quite rare in the SMSF sector, they are becoming more prevalent.

In the 2022 financial year, the ATO identified increasing numbers of individuals who were victims of identity fraud where SMSFs were registered without their knowledge or consent. Luckily for most victims the ATO detected the fraud early so it could protect their super, but not for all.

These scammers are becoming increasingly sophisticated, impersonating well-known Australian companies and using personal details to gain trust.

They use various methods to contact people such as email or cold calling, pretending to be financial advisers and encouraging them to transfer their superannuation into a new SMSF or investment product. The investor is often promised high returns.

Once they have their personal information, they seek to use it to establish an SMSF, rollover money into the fund and steal retirement savings.

This reinforces the need for individuals to treat contact from any third parties in relation to their investment and superannuation choices with an abundance of caution.

#### Illegal early access

Early access is the most common risk in the sector.

It occurs when individuals access their retirement savings before meeting a condition of release. Not only is this illegal, but money taken out of superannuation early has a detrimental impact on an individual's retirement nest egg.

There are only limited circumstances where a member can legally withdraw their super early, such as where a member reaches their preservation age and retires, is 65 years old (even if not retired) or has died.

#### Non-lodgment of SMSF annual returns

The lodgment of an SMSF annual return is a fundamental obligation for all trustees/members including those in retirement phase.

There are around 24,000 funds who haven't lodged their first return and a further 80,000 lapsed lodgers with one or more outstanding returns.

Lodgment is vital to ensure your SMSF retains its complying status on [SuperFund LookUp](#) as funds which have overdue returns by more than two weeks may have their regulation details removed. This restricts the SMSF from receiving rollovers and employer contributions.

#### Regulatory contraventions

In the 2022 financial year, the ATO received contravention reports for 13,558 funds with 39,997 contraventions being reported. This is an increase of nearly 3.5% in the number of SMSFs with contravention reports lodged and an increase of nearly 6.3% in the number of contraventions reported compared to the 2021 financial year.

The most common contravention relates to members having accessed their retirement savings early, which is often reported as a loan to a member or a payment standards breach.

The main drivers of regulatory contraventions are financial stress, poor record keeping and a lack of understanding of the rules.

## Audits

Adequacy and independence were two key issues identified.

Key to a robust audit is the SMSF documentation. Trustees and their advisors must provide their nominated auditor with all the relevant documentation for the SMSF's accounts and financial transactions for the year.

Record keeping is key. Documentation of an SMSF audit itself is also necessary to determine that the audit has been properly conducted. This is the case even if there were no contraventions.

Trustees also need to appoint auditors who are genuinely independent.

## Director IDs

All existing directors, including directors of a corporate trustee of an SMSF, are now required by law to have a director ID by 30 November 2022. It's not too late to comply, as the ATO is taking a softly-softly approach to compliance in this area.

If you have any questions around SMSF compliance, we're here to help.

### DISCLAIMER

All information provided in this article is of a general nature only and is not personal financial or investment advice. Also, changes in legislation may occur frequently. We recommend that our formal advice be obtained before acting on the basis of this information.

***Our liability may be limited by a scheme approved under Professional Standards Legislation.***