

Penalty Regime for SMSFs



The Australian Taxation Office (ATO) has a number of powers for dealing with contraventions made by self-managed super fund (SMSF) trustees.

The powers apply to contraventions occurring from 1 July 2014 including unrectified contraventions

made prior to that date.

These powers provide the ATO, as the Regulator of SMSFs, with greater flexibility when dealing with a fund's non-compliance with the law, and include:

- Education directions
- Rectification directions
- Administrative penalties

Education Direction

An education direction requires a trustee to undertake a specified course of education within a set time frame and provide the ATO with evidence of successful completion.

The course may be:

- A free online course through an approved provider
- An online SMSF webinar provided by the ATO

Rectification Direction

A rectification direction requires a trustee to undertake a specified action to rectify the contravention within a set time frame and provide the ATO with evidence of compliance with the direction.

Administrative Penalties

Administrative penalties are imposed on the trustee and not the fund.

If there are two individual trustees, they will both receive a penalty. Where there is a corporate trustee only one penalty will be issued.

Each individual trustee will be personally liable for the penalty related to the breach. For an SMSF with a corporate trustee, each director will be jointly and severally liable for the penalty.

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

The table on the next page details the sections of the Superannuation Industry (Supervision) Act 1993 (SISA) and the associated penalty that applies to each breach.

If a contravention occurs, it should be rectified as soon as you become aware of it.

Along with these new measures the ATO is also still able to apply the following measures:

- Instigate prosecution proceedings
- Make the fund non-complying
- Disqualify the trustee
- Suspend or remove one or all of the trustees
- Enter into agreements with trustees about a plan to rectify the problem without sanctions

focus

Published November 2024

Provisions which will attract administrative penalties are as follows effective from 7 November 2024:

SISA Section	Rule	Penalty
s34(1)	Failure to comply with the prescribed operating standards	\$6,600
s35B(1)	Failure to prepare Financial Statements	\$3,300
s65(1)	Lending or providing financial assistance to members & their relatives	\$19,800
s67(1)	Super fund borrowings, outside the permitted exemptions (e.g. limited recourse borrowing arrangements)	\$19,800
s84(1)	Failure to take reasonable steps to comply with the In House Asset rules	\$19,800
s.103(1) & (2)	Failure to keep trustee minutes and records of decisions for at least 10 years	\$3,300
s.103(2A)	Failure to maintain a s.71E election, where applicable, in relation to a fund with an investment in a pre-11/8/99 related unit trust	\$3,300
s.104(1)	Failure to keep records of change of trustees for at least 10 years	\$3,300
s.104A(2)	Failure to sign the Trustee Declaration within 21 days of appointment and keeping it for at least 10 years	\$3,300
s.105(1)	Failure to keep member reports for 10 years	\$3,300
s.106(1)	Failure to notify ATO of an event that has a significant adverse effect on the fund's financial position	\$19,800
s.106A(1)	Failure to notify ATO of change of status of SMSF, eg fund ceasing to be a SMSF	\$6,600
s.124(1)	Where an Investment Manager is appointed, failure to make the appointment in writing	\$1,650
s.160(4)	Failure to comply with an ATO Education directive	\$1,650
s.254(1)	Failure to provide the Regulator with information in the approved form within the prescribed time upon establishment of the fund	\$1,650
s.347A(5)	Failure to complete a form with requested information provided by the Regulator as part of the Regulator's Statistical Program	\$1,650

Further information

For further information please contact the following staff member:

Marie Ickeringill

marie.ickeringill@sawarddawson.com.au

Joyce Guo

joyce.guo@sawarddawson.com.au

Peter Shields

peter.shields@sawarddawson.com.au

Or call our office on (03) 9894 2500

Liability limited by a scheme approved under Professional Standards Legislation

Disclaimer: This publication has been prepared on the basis of information available at the date of preparation. The information provided is purely factual in nature and does not take account of personal objectives, situation or needs. The information is objectively ascertainable and, therefore, does not constitute financial product advice. If personal advice is required, please contact us and we will introduce you to one of our authorised financial advisers.

Copyright © 2024 [Saward Dawson]. All Rights Reserved.