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SMSFs warned of risky retirement planning

The ATO is warning self-managed super fund (SMSF) trustees about the risks of some emerging retirement planning arrangements.

Retirees or SMSF trustees who are involved in any illegal arrangement, even by accident, may face severe penalties, risk losing their retirement savings, and potentially, their rights as a trustee to manage their own fund.

The Tax Office has released additional information through its Super Scheme Smart Program to help educate retirees and trustees of these complex tax avoidance schemes and arrangements.

Super Scheme Smart provides case studies and information packs to ensure taxpayers are informed about illegal arrangements including what warning signs to look for and where to go for help.

Many of the arrangements are cleverly designed to look legitimate, give a taxpayer a minimal or zero amount of tax or tax refund or concession and involve a fair amount of paper shuffling.

Some arrangements may be structured in a way which appears to satisfy certain regulatory rules, however, these arrangements are often 'too good to be true' and are in fact illegal.

Among the ATO's previous concerns about dividend stripping arrangements and contrived arrangements involving diversion of personal services income to an SMSF, there are some new situations on the Tax Office's radar, including:

- Artificial arrangements involving SMSFs and related-party property development ventures.
- Individuals or a related entity grant a legal life interest over a commercial property to an SMSF. This results in the rental income from the property being diverted to the SMSF and taxed at lower rates whilst the individual or related entity retains legal ownership of the property.
- Arrangements where individuals (including SMSF members) deliberately exceed their non-concessional contributions cap to manipulate the taxable component and non-taxable component of their fund balance upon refund of the excess.

The ATO is also targeting engagements related to the new super caps and restrictions that came into operation as of 1 July 2017. These include:

- The deliberate use of multiple SMSFs to manipulate tax outcomes. For example, switching each of the respective funds between accumulation and retirement phase.
- The use of reserves to circumvent the restrictions and limits which apply as a result of the total super balance and transfer balance cap measures. The establishment or maintenance of reserves by SMSFS beyond very limited circumstances may indicate an inappropriate use as part of a broader strategy to circumvent the new limits and restrictions under the recent super changes.

If you are concerned about your involvement with such arrangements, you can contact the Tax Office early to work towards a resolution.

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CHARTERED ACCOUNTANTS AUSTRALIA + NEW ZEALAND

Liability limited by a scheme approved under Professional Standards Legislation.

SUITE 604
99 BATHURST ST
SYDNEY, NSW 2000

TEL 02 9229 8200
FAX 02 9229 8248

ABN 37 136 424 112

EMAIL
office@shorrock.com.au

WEBSITE
www.shorrock.com.au

DIRECTORS
Bill Shorrock
Rohit Gupta
Will McDougall
Caitlin Rowe

Accounting & Taxation
Self Managed Super Funds
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Keeping your SMSF compliant while overseas

Travelling overseas for an extended period of time is an exciting adventure. What isn't so exciting is the prospect of breaking compliance laws in relation to your SMSF while enjoying your trip.

There are specific conditions that must be met to deem the self-managed super fund ATO compliant. They are as follows:

Fund recognised as an Australian fund

The SMSF will be recognised as an Australian super fund provided that the setup of and initial contributions are likely to have been made and accepted by the trustee(s) in Australia or at least one of its assets is located in Australia.

Management and control of the fund carried out in Australia

The central management and control of the fund must ordinarily be in Australia. This means the SMSF's strategic decisions are regularly made, and high-level duties and activities are performed in Australia. Some examples include formulating the investment strategy, reviewing the performance of the fund's investments and determining how assets are to be used for member benefits.

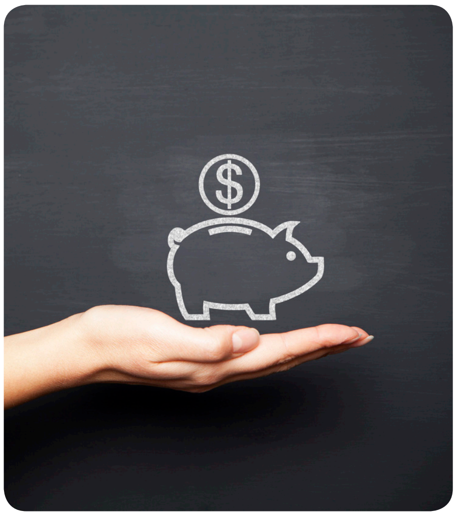
Generally, fund's will meet this condition even if its central management and control is temporarily outside Australia for up to two years. If central management and control of the fund is permanently outside Australia for any period, it will not meet this requirement.

Active member test

An "active member" is a contributor to the fund or contributions to the fund have been made on their behalf.

To satisfy the "active member test" trustees should ensure the fund has no active members, or it has active members who are Australian residents and who hold at least 50 per cent of the total market value of the fund's assets attributable super interests, or the sum of the amounts that would be payable to active members if they decided to leave the fund.

If a member of the fund becomes a non-resident but still wishes to make or receive contributions, they should do this outside of their SMSF, i.e., through a retail or industry super fund. When they return as an Australian resident, they can then rollover the contributions to their SMSF.



Getting super payments correct

Paying super is compulsory for all employers, regardless of whether their staff are employed part-time, full-time or contracted.

With regular changes being introduced in regards to super contributions, it can become overwhelming for employers to remain compliant. Employers are required by law to pay all employees super, provided their employees meet certain conditions. To ensure you are meeting your obligations, consider the following tips for paying super.

Paying the right people

Investigate who of your employees are eligible to earn super. Most employees and contractors will be eligible, so hiring individuals under certain employment terms to avoid paying super can see you end up facing severe fines. You must pay super to contractors if you have a verbal or written contact that is wholly or principally for their labour and if they are carrying out the work themselves. You will also need to pay casual employees super, provided they earn at least $450 per calendar month.

Paying on time

Super payments need to be made, at the very least, quarterly. Quarters are broken up as follows:

- Quarter one: 1 July - 30 September, due by 28 October
- Quarter two: 1 October - 31 December, due by 28 January
- Quarter three: 1 January - 31 March, due by 28 April
- Quarter four: 1 April - 30 June, due by 28 July

Paying in the right manner

To follow laws and regulations, employers must pay super contributions using the SuperStream. The Government created SuperStream as a measure to improve efficiency. It requires employers to send employees' information regarding their super entitlements electronically through one channel. It is designed to make the task of paying super easier and more time-resourceful.

Paying to the right place

Most employers allow for employees to choose the super fund in which contributions will be paid to. Since the Government introduced the SuperStream reform, it should not make any difference to employers what funds their employees elect to be paid into. The only stipulation is that the fund must be a complying super fund or retirement savings account.

Paying the correct amount

All employers are legally required to pay all eligible employees 9.5 per cent of their total wage, regardless of how much they earn or their type of employment. Failure to do so will leave an employer susceptible to auditing and heavy fines from the ATO.

SMSF preparations for 2018

As the New Year fast approaches, there are a number of considerations SMSF trustees should be aware of leading into 2018.

Before the end of the year, take time to address the following:

- **Assess your investment strategy** - consider the risk, diversity, liquidity and your foreseeable personal financial circumstances for the following year.
- **SMSF compliance** - fund investments all comply with super laws, proper and accurate records maintained for required timeframes, all fund money and assets are held separately from money and assets held by trustees personally or by a related employer.
- **Annual obligations** - have you prepared the fund's end of year financial accounts and statements, documented the review of the investment strategy, paid minimum annual income stream payments required under super laws.
- **Income stream** - if you are starting to pay an income stream, decide whether you will seek advice from a professional, confirm member has met a condition of release, obtain an actuarial certificate, determine the minimum annual payment required under super law, register for PAYG withholding, have the assets that support the income stream valued at market value.