

Common Mistakes By SMSF Trustees

The ATO has recently announced that it will be stepping up its compliance program for trustees of self managed superannuation funds (SMSF's).

Accordingly trustees should check their policies and procedures to make sure they are not inadvertently in breach of the rules.

Trustees that are found to be in breach may be fined or the fund could lose its favourable tax status and be taxed at the top marginal rate.

75% of all SMSF contraventions fall into the following six categories:

Loans to members or relatives (19%)

SMSF's are prohibited from lending money or providing any financial assistance using the fund's resources to a member or a member's associate. For example, payment of personal expenses by the fund.

Breaches of in-house asset rules (16%)

The fund cannot acquire or hold in-house assets that are valued at more than 5% of the market value of total assets.

In simple terms, an in-house asset is a loan, investment, or lease arrangement with a related party.

If a fund has in-house assets, a review is required on a yearly basis to determine if the assets remain below the 5% level.

Assets not in the name of the trustee (14%)

The fund's assets cannot be held in the name of individual or corporate trustees in their own capacity, but must be held in their capacity as the trustee of the fund.

If the assets are not in the correct name, the fund's assets are placed at risk as they are not identified as being owned on behalf of the fund.

Documents requested by auditor not provided (11%)

If the auditor requests a document in writing from the trustees, each trustee must ensure that the document is given to the auditor within 14 days of the request being made.

This applies only to documents that are relevant to the preparation of the audit report.

Breaches of sole purpose test (8%)

A SMSF must be maintained solely for the purpose of:

- each member on or after their retirement; or
- a member's legal personal representative or the member's dependants after the death of the member.

The fund is not permitted to provide any benefits to a member or their associate (e.g. renting a residential property owned by the fund to a member, or hanging artwork owned by the fund on the member's wall).

Unauthorised borrowings (7%)

A SMSF is generally prohibited from borrowing money or maintaining an existing borrowing of money.

An exception is instalment warrants, and even with these, trustees must ensure they comply with the very strict rules.

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