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SELF MANAGED SUPERANNUATION FUNDS

NEW TRUSTEE PENALTIES

COMMENCING 01 JULY 2014

Commencing on 01 July 2014 a new regime of measures and penalties is available to the ATO which is far more assertive than previously encountered.

Please do not take these warnings lightly as the financial penalties are significant and apply to trustees personally.

There will be three levels of operation:

1. The ATO can direct trustees to undertake a course of education.
 - Undertake a specified course of education within a specified time frame
 - Provide evidence of compliance with the direction
 - Costs of the education course cannot be met from the assets of the fund.
2. The ATO can direct trustees to rectify contraventions.
 - Rectify the contravention within a specified time frame
 - Provide evidence of compliance with the direction
3. The ATO will impose penalties for contraventions ranging from \$850.00 to \$10,200.00 payable by trustees personally and applicable to all trustees.
 - Directors of a corporate trustee are jointly and severally liable but with the penalty only being issued once to the trustee company, not to each director.
 - Penalty must not be reimbursed from the assets of the fund.
 - Penalties become payable when the ATO becomes aware of them.
 - **Important: If a breach exists as at 30 June 2014 it will become payable at that date.**

Some examples of fines are:

- A loan to a member will attract a fine of \$10,200.00 (per trustee)
- An in house asset will attract a fine of \$10,200.00 (per trustee). This is usually a loan to an associated company or trust.
- **Important: Investments held incorrectly by the fund will be subject to a fine of \$850.00 per investment. Typically this is an investment/bank account not correctly held in the name of the fund.**
- Refer to the attached list of potential penalties.

How will the ATO become aware of the problems:

- By way of a contravention report issued by the auditor.
- By way of a qualified audit report reported as part of Section A of the fund's tax return, in the case of smaller breaches.
- ATO data matching and internal comparison analysis of current and prior year tax returns.

What to do before 30 June 2014

- Member loans should be repaid with interest at a commercial rate.
- In-house assets need to be reduced to the 5% threshold and interest paid
- **Bank accounts, fixed interest securities, shares and properties need to have the correct owners.**
- **Review the ownership of life cover policies and ensure the fund is the owner of the policy.**

Things to be wary of

- Never use superannuation fund funds for personal purposes.
- Avoid using personal resources to pay superannuation fund accounts.
- Avoid lending money to the fund even for a short time. (7 days)

Mitigating Circumstances

- The ATO may have some discretion to wave or vary a penalty but it will be up to the trustees to convince them. It is unlikely that ignorance will be a reasonable excuse and the ATO will look at track record as well as the seriousness of the breach.

Section	Provision of the SIS Act	Penalty Units
31(1)	Prescribed operating standards	20
35B	Accounts and Statements	10
65(1)	Lending Provision	60
67(1)	Borrowing Provision	60
84(1)	In-house assets rules	60
103(1)	Duty to keep minutes - two or more trustees	10
103(2)	Duty to keep minutes - one trustee	10
103(2A)	Retention of election relating to geared investments	10
104(1)	Record keeping	10
104A(2)	Declaration relating to trustee duties	10
105(1)	Member Reports	10
106(1)	Notification of significant adverse events	60
106A(1)	Notification of a change in status of an entity	20
124	Appointment of investment manager	5
New 160(4)	Compliance with an education direction	5
254(1)	Provide information to a regulator	5
347A(5)	Participation in statistics program	5

One penalty unit is currently \$170