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SMSF Administrative Penalties – Exposure Draft

The Self Managed Super Fund (SMSF) administrative penalties draft regulation gives the Australian Taxation Office (ATO) the power to issue administrative directions (rectification direction or trustee education directions) and impose penalties for contraventions of the *Superannuation Industry (Supervision) Act 1993 (Cwlth)* by SMSF trustees.

Previously the regulator had limited options to address non-compliance however under the new regime they will be able to issue the following:

- **Rectification Direction**
A 'rectification direction' will require a person to undertake specified action to rectify the contravention within a specified time and provide the Regulator with evidence of the person's compliance with the direction. For example, the Regulator may issue a rectification direction where the SMSF trustee has:
 - borrowed money or maintained an existing borrowing in contravention of section 67(1)(a) or section 67(1)(b) of the Act;
 - lent money to a member or relative of a member of a fund in

- contravention of section 65(1)(a) of the Act; or
- permitted the fund's in-house assets to exceed 5% of the fund's market value at the end of an income year and has failed to carry out the steps under the written plan as required by section 82(6) of the Act.

- **Education Direction**
An 'education direction' will require a person to undertake a specified course of education within a specified time frame and provide the Regulator with evidence of the course's completion. Such a directive may be given where the person's lack of knowledge and/or understanding of their obligations has contributed to their contravening the SIS Act or SIS Regulations. The trustee must sign a declaration within 21 days of completing course stating they understand their duties as a trustee.
- **Administrative Penalties**
An administrative penalty may be issued. The costs imposed under the proposed administrative penalty regime are payable **personally** by the person who has committed the breach and **cannot be paid or reimbursed** from assets of the SMSF. An example of some of the current penalty amounts are below:



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Provision of Act	Summary	Total
Subsection 65(1)	Lending to members	\$10.2k
Subsection 67(1)	Borrowing	\$10.2k
Subsection 84(1)	In-house assets	\$10.2k
Subsection 103(1) & (2)	Retain minutes of meetings 10 years	\$1.7k
Subsection 104A(2)	ATO trustee declaration within 21 days	\$1.7k

It is important that as a Trustee of a SMSF you ensure that you have a full understanding of your responsibilities. If you are unsure, talk to your Chartered Accountant



SMSF investment strategy requirements

Amendments to section 4.09 in the *Superannuation Industry Supervision Regulations (SIS) 2012* now require the trustees of an SMSF to 'review regularly' their fund's investment strategy. They must consider as part of their investment strategy 'whether the trustees of the fund should hold a contract of insurance that provides insurance cover for one or more members of the fund.' Annual reviews are considered a 'regular review'.

This new requirement means that if you have a self-managed superannuation fund you will need to ensure that you have updated your investment strategy for the 2012/13 financial year and provide a signed copy to your Chartered Accountant.

Clarifying minimum pension payment – ATO fact sheet

The Commissioner has issued a fact sheet stating that he will exercise his power of general administration when the minimum pension has not been paid under the following circumstances:

- An honest mistake has been made by the trustee or there was a matter outside the control of the trustee
- The result was a small underpayment (the Commissioner considers a small underpayment to be one-twelfth of the minimum payment requirement)
- The fund would otherwise have been entitled to the tax concessions as they were in pension mode
- A catch-up payment is made as soon as practicable in the current income year (within 28 days of being made aware)
- The trustees have not previously been granted this concession.

If the above conditions are met the ATO will allow the fund to continue claiming the exempt pension income. This is however, a once off exemption so take care and ensure you pay the minimum required pension.

Making superannuation contributions

In 2012, 30 June fell on a Saturday; this year it will fall on a Sunday. A number of people were caught out when they made their superannuation contributions on 30 June as it was not reflected in the bank until 1 July.

The relevant legislative provisions dealing with when a superannuation contribution is made do not 'require or allow' a contribution to be made or received by the last day of a particular year. Rather, they provide for a particular outcome if a contribution is made or received on or before the last day of a particular year.

When a contribution is made using cash or an equivalent the fund's bank statement is generally indicative of when a contribution is received.

To ensure you do not exceed your contribution cap and the resulting tax consequences it is important that you check what contributions have been allocated to your account by your superannuation fund. They will confirm if it has been received in this financial year. Ensure you do not wait until Sunday 30 June to make your current year contribution.



Business travel and 'Otherwise Deductable Rule'

When an employer provides accommodation to an employee while they are away on business

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the benefit would be fully exempt from Fringe Benefits Tax (FBT) under the 'Otherwise Deductable Rule'. Recently the ATO confirmed that when an employee's spouse has accompanied an employee it is still exempt under the Otherwise Deductable Rule provided no extra cost has been charged for the spouse.

As an example, if the spouse pays his/her own airfare and stays in the hotel at the company's expense with their spouse it is not considered private use of accommodation and therefore there is no FBT liability. The ATO also confirmed that where expenses are incurred, for example in a hotel room mini bar, that amount will be subject to FBT but maybe exempt under the minor and frequent benefits exemption.

Proposed changes to in-house benefits

As part of the mini Budget of November, 2012 the Government announced it would remove the concessional treatment for in-house FBT access by way of Salary Sacrifice arrangements.

This applies to employees who receive goods and services from their employer which are similar to those provided to the employer's customers in the ordinary course of business. Traditionally the taxable value of those benefits is calculated at 75% of the lowest sale price or value with a further annual \$1,000 reduction in taxable value per employee.

Under the new rules it is proposed that this will be treated as an external benefit and the taxable value of these benefits will represent the lowest price; of an identical benefit if the goods or services were sold to the

public under a transaction. There will be no reduction applied.

Examples of this have traditionally been seen in the clothing industry and travel industry.

As a result of these changes employers should review any existing employee salary sacrifice arrangement for in-house benefits. These rules were effective from 22 October 2012.

Simplified depreciation

The new rules relating to simplified depreciation have been effective from 1 July 2012 and provide significant advantages to small business enterprise taxpayers who are defined as carrying on a business and have an annual net turnover of less than \$2 million.

These rules do not apply to rental property assets, low value pool and software development assets, capital works (property) and horticultural plants.

The rules provide for an instant write-off, increasing the threshold from \$1,000 to \$6,500. It is available on an asset basis (not an aggregate of similar assets). In regard to motor vehicles, there is an instant deduction of up to \$5,000. The vehicle does not need to be primarily used for business purposes and the definition for a motor vehicle is very broad and does apply to second-hand motor vehicles.

For new and existing assets the depreciation will be claimed at a rate of 15% on the first year and the balance years will be a 30% (pool) balance. As 30 June approaches, it is important to consider whether you should be acquiring assets to take advantage of the simplified

depreciation before 30 June 2013.

It is also very important that you do confirm with your Chartered Accountant that you qualify as your business turnover needs to be less than \$2 million in aggregate.

Land Tax – check your assessment

The State Revenue Office is currently issuing Land Tax assessments. Owners of land should ensure these assessments are correct as experience has shown the assessments regularly contain errors and excessive land tax may be levied.

Land owners are encouraged to:

- Carefully check the land tax assessment
- Ensure the correct names are listed as land owners
- Ensure the principal place of residence is not included in the assessment
- Ensure land used for primary production is not included; note that the activity of agistment, on its own, does not qualify as primary production.
- Ensure that land acquired has been properly notified to the State Revenue Office by your legal adviser.
- Ensure that land owned is not assessed separately or the allowable threshold is claimed more than once, reducing the liability incorrectly.

Your Chartered Accountant will be able to assist in this review process.

The ATO's property webpage

In 2012 the ATO launched a user friendly webpage designed for home owners and investment property owners (www.ato.gov.au/property). The page covers a range of tax issues, and is a great reference tool for both new and experienced investors.

The 'need to know' section outlines common property types and details common questions and issues surrounding its uses, and investment or development activities.

For example, the section titled 'inheriting a dwelling' explains the CGT and tax implications at the time of inheritance as well as possible implications upon subsequently selling the dwelling.

Other property types covered include residential rental properties, vacant land, subdividing, property development, building and renovating, property used in running a business and personal residence.

The 'calculators, rates and forms' section provides three useful calculation tools:

- **Property exemption tool** – helping property owners/investors (whether sole or joint) to work out what portion of their capital gain is exempt from capital gains tax on sale of the property.
- **CGT small business concessions tool** – helping determine eligibility for the capital gains tax (CGT) concessions available for small business.
- **GST property tool** – an interactive decision making tool designed to assist in understanding the GST implications for any property related transaction.

The 'in detail' section provides links to more specific and detailed information on common issues/topics. For example:

- **Rental properties** provide links to the ATO's detailed guides on treatment of rental income and expenses, including how to treat certain residential rental property items. It also includes a guide to common mistakes made by rental property owners in their tax returns and how to avoid them.
- **Goods and Services Tax (GST)** includes a guide to work out how GST applies to GST property sales and transactions. It includes links to information regarding the margin scheme and GST, GST on property adjustments and common GST errors and property.
- **Capital Gains Tax (CGT)** guides the user to more detailed information on CGT and how it works both generally and in relation to property transactions.
- **Loss through disaster** outlines whether insurance payments received due to loss or damage to properties may affect your tax liability.
- **'First home savers account'** provides guidelines to eligibility and associated benefits.
- **'Rental affordability scheme' (NRAS)** provides information encouraging large-scale investment in affordable housing.

The webpage also includes a 'news' section which provides links to the latest ATO media releases relating to property matters (i.e. purchases, sales).

While the ATO's property webpage is an excellent reference, clients should contact their Chartered Accountant for specific advice relating to their situation.



Cloud computing for small business

Cloud computing can boost your productivity, but make sure you know what you're signing up for.

Chances are your email, latest accounting software or job ordering system is based in the 'cloud'. It lets you do things previously only dreamed of by large companies with dedicated IT services. All the maintenance, development and backups are taken care of for you. You just need a computer and a connection to the internet. A great strength of cloud computing is the fact you can log in at any time from any place.

But what if your phone and data lines go down? Or if someone hacks into the data centre? Is it properly backed up? How sensitive is your information, and how many days will your business survive without access? Can you still run a local backup? Do you know where your data is being stored? Is it still in Australia, or perhaps in the US, the USSR, or spread over any number of countries all over the world? Do you trust the provider, and the standards they apply? Do you need to make sure your data stays in Australia? Will you be able to demand the return of your data, with an assurance that no copies have been retained, and will you be able to use it? Or will it be locked in a format that ties you to only one provider?

These are just a few questions you need to ask yourself before

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embracing cloud computing. Weigh up the benefits and drawbacks for yourself and your business, get some good advice from others in your industry, your Accountant and your IT provider. Do your research and read the fine print. Some of the latest cloud applications are fantastic. You might put some of your applications in the cloud, and keep some information closer to home. The area of cloud computing is still developing. Who knows where we will be doing business in the next ten years.



New order with banks

Since the Global Financial Crisis there is strong evidence to suggest the relationship between small to medium sized enterprises and banks has changed. Banks are now tougher to deal with – they are managing their risk profile more stringently. There is an increased use of covenants. Covenants set performance criteria for a business and can relate to earnings, interest ratios, liquidity ratios and the like.

To help manage this, banks now seek a higher level of reporting such as interim accounts, debtor analysis, creditor analysis and a strong focus on ATO compliance obligations – particularly in relation to Business Activity Statement lodgements and payments. Banks are also

looking for debt amortisation while the concept of long-term interest only loans appears to be coming to an end.

If you are experiencing pressure from your bank, or you are proposing to enter into a re-financing or new financial arrangement consult with your Chartered Accountant to ensure that you can meet the obligations that are placed in the borrowing documentation.

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