

BE PREPARED – THE ATO IS CALLING

When the ATO calls SMSF trustees, it is not always bad news - but it can be. If trustees are forewarned and understand why the ATO may call them, a reasonable outcome may follow.

This paper considers some of the reasons why the ATO may call trustees of an SMSF, and how they may be 'forearmed'.

We are from the Government ...

Sometimes they are calling to help but mostly when the ATO calls, it is to ask questions which will assist them in determining a particular course of action to take as a result of an application or report.

The most common reasons the ATO may call are following the lodgement of:

- an application to register the Fund as an SMSF and obtain an Australian Business Number¹ (ABN); or
- an Auditor Contravention Report by the auditor of the Fund.

Registration & ABN Application

When establishing an SMSF, one of the initial actions of trustees is the application to the ATO for:

- an ABN;
- a Tax File Number (TFN); and
- registration as a regulated superannuation fund, enabling access to concessional tax rates (15% or 0%).

For a new SMSF, the issue of an ABN is extremely important and, if not issued within a reasonable time, it can significantly disrupt the plans trustees had when establishing the SMSF.

Effectively, the ABN is a 'gateway' which indicates the good standing of the fund to those dealing with, or transferring money to, the SMSF.

The provision of the ABN usually occurs after some review by the ATO of the parties involved with the SMSF - i.e., the members and trustees or directors of the corporate trustee.

Although the ABN will generally issue within the ATO standard service period of 28 days from the date of lodgement, the process can be delayed if the trustees or directors fail a 'test' being applied by the ATO.

This in turn can create serious timing issues for the Fund, most especially if it is involved in a limited recourse borrowing arrangement with a short settlement timeframe.

ATO Calling

As part of its review of SMSF applicants, the ATO may contact **each** proposed director/trustee of the SMSF, to test understanding of their responsibilities as trustees of an SMSF.

Examples have arisen where the ATO has refused to issue the ABN

because at least one director/trustee failed the test.

On other occasions, the ATO has registered an ABN for the Fund, but not placed the 'failed' director/trustee as a member of the Fund in the ATO business portal.

As this portal is the access point for super funds to determine if an individual is a member of the Fund for the purposes of rolling over their superannuation benefits, this in turn has restricted the member's ability to rollover their benefits into the SMSF.

Preparing potential trustees

Education of potential trustees is vital when establishing an SMSF, not only to ensure they pass the ATO test but so they understand their ongoing compliance obligations.

“

.. the ATO has refused to issue the ABN because at least one director/trustee failed the test.

”

Current as at 25 November 2014.

Please note this article is for information purposes only and does not constitute legal or financial advice.

BE PREPARED – THE ATO IS CALLING

In fact, the ATO is a very good source of educational material for potential (and existing) trustees, including:

- [printed material](#) ranging from 'Thinking about self-managed super' through to 'Winding up an SMSF'; and
- [short videos](#) designed to educate trustees on a range of relevant topics.

In our opinion, any client looking to set up an SMSF would greatly benefit from reviewing these materials.

Auditor Contravention Report

With the introduction of monetary penalties applied to trustees of SMSFs for certain breaches of the SIS Act, the ATO also announced a different process for dealing with contraventions when notified by Auditors.

Initially, the ATO proposes to contact directors/trustees to discuss the contravention, unless the contravention is considered to be of such seriousness that a detailed ATO audit is required.

Speaking at a recent seminar, the ATO Director for SMSF Regulatory and Income Tax Products, Nathan Burgess, stated that one of the primary reasons behind the calls to directors/trustees is "... to make sure they are taking it seriously".

Incidentally, the ATO has, on occasion, discovered that directors/trustees have not been informed by their adviser of the breach and/or of steps to rectify what has occurred.

How the directors/trustees respond to the call from the ATO will determine what further action may be taken as a result of the contravention, which could include:

- no further action;
- correspondence following the discussion outlining action to be taken to ensure compliance in future, or
- a detailed audit undertaken by officers of the ATO, which could result in:
 - directions that directors/trustees undertake training;
 - financial penalties imposed on directors/trustees;
 - disqualification of directors/trustees; or
 - making the fund non-complying.

One aspect which officers of the ATO have stressed is that, when called², directors/trustees should be polite - instances where ATO officers have been abused has immediately resulted in a detailed ATO audit which, if nothing else, will result in significant time and cost to the SMSF and its directors/trustees.

Conclusion

Educating clients is the key.

Whether at establishment of the SMSF, or following the lodgement of an Auditor Contravention Report, clients should be prepared for a call from the ATO.

All Potential directors/trustees of SMSFs need to be aware of their responsibilities of their role and be

able to clearly convey their understanding to the ATO.

Confirming to the ATO they have watched the videos and/or read the literature will help.

Directors/trustees of SMSFs which have breached the SIS Act provisions need to be aware of the issue, action required to rectify the problem, what not to do in future and how to impart that to the caller from the ATO.

More information

Should you have any queries or require more information, please contact the team at Topdocs on 1300 659 242.

Notes:

- ¹ The ABN is accepted as proof the SMSF is a regulated super fund under the SIS Act, providing a degree of comfort to employers, who have been requested by their employees to forward contributions to an SMSF, and also to other superannuation funds requested by members to transfer benefits to their SMSF.
- ² The ATO recognises that people can be suspicious of unexpected callers, particularly when calling to speak of financial related matters. The recommended course of action is to alert the caller to their concerns and they should be provided with the option of calling the ATO with a specific reference number, so they can ensure the call is legitimate.

Current as at 25 November 2014.

Please note this article is for information purposes only and does not constitute legal or financial advice.