

# Running a self-managed super fund



## Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this publication and it turns out to be incorrect or misleading, and you fail to comply with the law as a result, we must still apply the law correctly. However, we will take the fact that you followed our information into account when deciding what action, if any, we should take.

If you make an honest mistake in trying to follow our information in this publication and you fail to comply with the law as a result, we will take the reason for the mistake into account in deciding what action to take.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

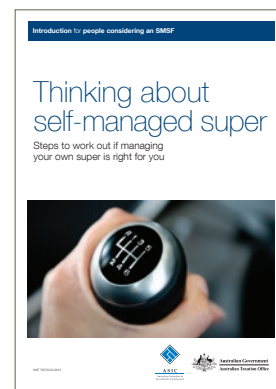
We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at [ato.gov.au/smsf](http://ato.gov.au/smsf) or contact us.

This publication was current at **November 2013**

## Finding the right information for you

If you need more information about self-managed super funds (SMSFs), refer to our other products:

**Thinking about self-managed super (NAT 72579)** provides you with the steps you need to consider before setting up an SMSF.



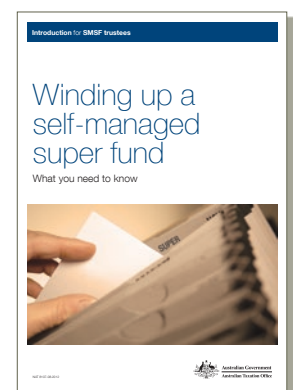
**Setting up a self-managed super fund (NAT 71923)** provides basic information about how to set up an SMSF.



**Paying benefits from a self-managed super fund (NAT 74124)** is designed to assist trustees who are required to make payments out of an SMSF.



**Winding up a self-managed super fund (NAT 8107)** details the process you need to follow to wind up an SMSF.



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## Commissioner's foreword

Self-managed super funds (SMSFs) are now the largest and fastest growing segment of the super industry.

For trustees of SMSFs, managing your own fund and getting it right is very important. There are many rules and regulations in the various laws that govern superannuation (super) that are designed to protect your retirement income. As a trustee, you need to adhere to the rules and know that you are ultimately responsible for the running of the fund, even if you use tax, financial and super professionals to help manage it.

Regulating SMSFs is an important responsibility entrusted to the ATO. We provide products and advice to support you and help you to comply with the rules and regulations. But not everyone does the right thing and we have a significant compliance program to address these risks.

You and the other members of your SMSF have now taken responsibility for managing your retirement savings and complying with super and tax laws. This publication should help you do this.



A handwritten signature in black ink, which appears to read "Chris Jordan". The signature is stylized and fluid.

**Chris Jordan**  
Commissioner of Taxation

# Finding what you need to know

Finding the right information for you	ii	In-house assets	17
Commissioners Foreword	1	Special investment rules	18
<b>Self-managed super and you</b>	<b>3</b>	Investments must be at arm's length	18
Super reform measures	4	Investing in business real property	18
		Check you are managing your fund's investments	18
<b>Running an SMSF</b>	<b>5</b>	<b>Access to member benefits</b>	<b>19</b>
Single member funds	6	Cashing of benefits	19
Legal personal representatives	6	Preservation age	20
Members who are overseas	6	Conditions of release	20
Your obligations	6	Early access to benefits	22
Relationship breakdown	7	<b>Reporting and administration obligations</b>	<b>23</b>
Save only for your retirement	7	SMSF annual return	23
Understand the rules	8	Member contributions information	23
		Rollover benefits statement	24
<b>Accepting contributions and rollovers</b>	<b>9</b>	Trustee declaration	24
Contributions	9	Supervisory levy	24
Types of contributions	9	Tax	24
Contribution caps	10	Appointing an auditor	25
Rollovers and transfers	11	Record-keeping requirements	25
		Notifying us of a change	26
<b>Tax and contributions</b>	<b>12</b>	Winding up an SMSF	26
Recording your member's TFN	12	Check you have met your reporting and administration obligations	27
Additional income tax and offsets	12	<b>Understanding compliance and penalties</b>	<b>28</b>
Excess contributions tax	13	Our compliance approach	28
Deductions for personal contributions	13	Compliance program	29
Check you can accept your member's contribution	14	What we expect during compliance activity	29
		Check you are complying	29
<b>Managing your fund's investments</b>	<b>15</b>	Penalties	29
Sole purpose test	15	<b>Super terms explained</b>	<b>31</b>
Your investment strategy	15	<b>More information</b>	inside back cover
Restrictions	16		
Securing the assets of your fund	16		
Valuation of assets	16		
Loans or financial help to members or relatives	16		
Borrowings	16		
Related party acquisition of assets	17		

# Self-managed super and you

Like other super funds, SMSFs are a way of saving for your retirement. Generally, the main difference between an SMSF and other types of funds is that members of an SMSF are the trustees. This means the members of the SMSF run it for their own benefit.

SMSFs are not suitable for everyone and you should think carefully before deciding to set one up. It is a major financial decision and you need to have the time and skills to do it. There may be other, better options for your super savings. If you are considering an SMSF for your super savings, the publication, *Thinking about self-managed super* (NAT 72579) provides you with some practical information. Licensed financial advisers, tax agents and accountants can also help you understand what is involved.

If you decide that an SMSF is the appropriate vehicle for your super savings, you need to ensure the fund is set up and maintained correctly so that it is eligible for tax concessions, can pay benefits and is as easy as possible to administer. *Setting up a self-managed super fund* (NAT 71923) provides some basic information on this and the steps you need to follow to set up the fund correctly.

Once your SMSF is established you, as trustee, control the investment of the contributions and fund earnings. Your SMSF must have a trust deed that forms part of the governing rules for operating the fund. You must also prepare and implement an investment strategy and ensure it is reviewed regularly. There are rules and regulations you must follow to ensure the fund's assets are protected to provide benefits in retirement.

While contributions are being made to the fund it is considered to be in the accumulation phase. This publication explains the responsibilities and obligations of trustees operating an SMSF.

When one or more members retire, you as trustee need to understand and follow the requirements of the law and regulations governing the payment of benefits. The payment standards contained in the legislation and regulations, the sole purpose test and the preservation rules ensure that money in the fund is paid to members in the appropriate manner.

*Paying benefits from a self-managed super fund* (NAT 74124) is designed to assist trustees who are required to make payments out of their SMSF. It also provides information for funds that have members in both the accumulation and retirement phase. It is important to note that the rules and regulations that apply to funds in the accumulation phase continue when one or more members retire; however, additional rules apply to the retirement phase.




You should continually reassess the circumstances of the fund and each individual member to determine whether an SMSF is still the most appropriate option for your retirement savings. In some cases, you may find that you no longer have the capacity to deal with the complexity or the time required to manage your SMSF. You may decide that it is not cost-effective to continue to run your own fund. Depending on the circumstances it may be necessary to transfer member benefits to another complying super fund.

Other reasons why you might wind up your SMSF include when all the members have left the SMSF (for example, they have rolled over their benefits to another fund or have died) or all the benefits have been paid out. *Winding up a self-managed super fund* (NAT 8107) details the process you need to follow to wind up your fund.

## Super reform measures

The government has supported many of the Super System Review's recommendations to reform super, including the self-managed super fund sector.

A number of these measures are aimed at improving the operation, efficiency and integrity of the SMSF sector and are relevant to the way you run your SMSF. Some of the changes have been implemented and are included in this publication. Others await legislative change and will be introduced in the future.

-  **For more information about the changes, refer to 'News' on the self-managed super funds homepage available on our website [ato.gov.au/smsf](https://ato.gov.au/smsf)**
-  **We recommend you seek independent financial advice from a qualified SMSF professional before making any decisions.**

# Running an SMSF

Generally, as an Australian resident, you can choose to direct your super guarantee payments and your personal super contributions either to an independently managed super fund or to your own SMSF.

SMSFs have the same role as other regulated super funds; the difference is, generally, that the members of an SMSF are also the trustees. They control the investments of their SMSF and the payment of their benefits.

For your fund to be an SMSF it must meet several requirements under super law.

The requirements differ depending on whether your fund has:

- individual trustees
- a corporate trustee (company)
- a single member.

If your fund has individual trustees, it is an SMSF if **all** of the following apply:

- it has four or fewer members
- each member is a trustee
- each trustee is a member
- no member is an employee of another member, unless they are related
- no trustee is paid for their duties or services as a trustee.

If your fund has a corporate trustee, it is an SMSF if **all** of the following apply:

- it has four or fewer members
- each member of the fund is a director of the corporate trustee
- each director of the corporate trustee is a member of the fund
- no member is an employee of another member, unless they are related
- the corporate trustee is not paid for its services as a trustee
- no director of the corporate trustee is paid for their duties or services as director of the trustee of the fund.

## Single member funds

It is possible for you to set up your fund with only one member. The trustee of an SMSF can be either a corporate trustee or two individuals.

If your single member fund has a corporate trustee, the member must be one of the following:

- the sole director of the corporate trustee
- one of only two directors, that is either of the following
  - related to the other director
  - not an employee of the other director.

If you have two individuals as trustees, one trustee must be the member and the other trustee must be one of the following:

- a person related to the member
- any other person who does not employ them.

A trustee or director cannot be paid for their services as a trustee or director of the trustee of the fund.

## Legal personal representatives

A legal personal representative can be:

- the executor of the will or the administrator of the estate of a deceased person
- the trustee of the estate of a person under a legal disability
- a person who holds an enduring power of attorney to act on behalf of another person.

A legal personal representative can act as a trustee, or director of a corporate trustee, on behalf of:

- a deceased member, until the death benefit becomes payable
- a member under a legal disability (mental incapacity)
- a minor (a parent or guardian can also act as a trustee on behalf of a minor).

A legal personal representative cannot act as a trustee on behalf of a disqualified person, such as an undischarged bankrupt. A legal personal representative who holds an enduring power of attorney granted by a member may be a trustee of the SMSF or a director of a corporate trustee in place of the member.

➤ For more information, visit our website at [ato.gov.au](http://ato.gov.au) and search for 'legal database', and then search for 'SMSFR 2010/2'.

⚠ A legal personal representative does not include a registered tax agent or accountant unless they meet the definition above.

## Members who are overseas

Your SMSF must meet the definition of a super fund as outlined in super law. Part of that definition requires your SMSF to be a resident super fund.

It is important for you to review your management and contribution arrangements before you or any member of your fund leaves Australia. This is required to ensure your SMSF continues to be a complying fund.

If you or any of the members of your SMSF are planning to travel outside Australia, you will need to know current rules around the definition of an Australian super fund to make sure your SMSF maintains its complying status.

➤ For more information about residency requirements, visit our website at [ato.gov.au](http://ato.gov.au) and search for 'Residency of self-managed super funds'.

## Your obligations

As an SMSF trustee, you are ultimately responsible for running your SMSF. It is important you understand your duties, responsibilities and obligations.

As a trustee of an SMSF, you need to act according to the following:

- your fund's trust deed
- the provisions of super law, including
  - *Superannuation Industry (Supervision) Act 1993* (SISA)
  - *Superannuation Industry (Supervision) Regulations 1994* (SISR)
- the *Income Tax Assessment Act 1997* (ITAA 1997)
- the *Tax Administration Act 1953* (TAA 1953)
- the *Corporations Act 2001*
- other general rules, such as those imposed under other tax and trust law.



If there is a conflict between super law and the trust deed, the law overrides the trust deed. If you fail to perform your duties according to the law, you may incur penalties.

If you are a new trustee or newly appointed director of a corporate trustee, you need to sign the Trustee declaration within 21 days of your appointment to show that you understand your duties as a trustee of an SMSF. If you do not sign and keep the declaration for at least 10 years, it is an offence and penalties may apply.

➤ **To download the *Trustee declaration* (NAT 71089), visit our website at [ato.gov.au](http://ato.gov.au) and search for 'Trustee declaration'.**

As an SMSF trustee you should always consider if an SMSF continues to meet the needs of all members. It is the trustees' duty to protect the assets of the SMSF.

You should also be aware that under existing super law, members of an SMSF are not covered by a government or industry compensation scheme for losses caused by fraud or theft. However, you do have certain rights and options available if your fund suffers a financial loss due to fraudulent conduct or theft. Legal options are available under corporations law if you received advice or services from an Australian financial services licensee who was involved in the fraudulent conduct or theft. You should seek legal advice about taking action against a person who engaged in fraudulent conduct.

## Relationship breakdown

The breakdown of a relationship between members of an SMSF can occur at any time and for many reasons, such as irreconcilable differences or domestic violence. If such a breakdown occurs you must continue to act in accordance with super law and the trust deed of your fund.

Despite any difficulties you may have with an individual on a personal level you must continue to act in the best interests of all members at all times. You cannot:

- exclude another trustee from the decision making process
- ignore requests to redeem assets and rollover money to another regulated complying super fund
- take any action that is not allowed under the SISA or the SMSF's trust deed.

## Save only for your retirement

Your SMSF must meet the sole purpose test. This means your fund must be maintained for the sole purpose of providing retirement benefits to your members, or to their dependants if a member dies before retirement. As a trustee, you need to maintain your SMSF so that it complies with the sole purpose test at all times while your SMSF exists, including when investing fund assets and paying benefits upon retirement of members.

Your fund must comply with the sole purpose test to be eligible for the tax concessions available to a complying super fund.

The sole purpose test is divided into core and ancillary purposes. Your fund must be maintained solely for either of the following:

- one or more core purposes
- one or more core purposes and one or more ancillary purposes.

### Core purposes

Generally, core purposes are for the provision of benefits for each member of your fund, on or after the member's:

- retirement from gainful employment
- reaching the prescribed age
- death – if they die before they retired from gainful employment or before they attained a prescribed age and the benefits are provided to their dependants or legal personal representative.

### Ancillary purposes

Generally, ancillary purposes are for the provision of benefits for members in the following circumstances:

- termination of a member's employment with an employer who made contributions to your fund for that member
- stopping employment due to physical or mental ill health
- death of a member after retirement, or after reaching the prescribed age where the benefits are paid to their dependants or legal personal representative
- other ancillary purposes approved in writing by the regulator.

Ancillary purposes also allow an SMSF to provide benefits where there is severe financial hardship or compassionate grounds, subject to super law, the governing rules of your fund and the approval of the Department of Human Services (for applications on compassionate grounds).

**— Remember, the purpose of setting up your SMSF is to provide for your retirement. It is illegal to set up an SMSF to gain early access to your funds. If benefits are unlawfully released, significant penalties including fines and jail terms of up to five years can apply to you, your fund and the recipient of the early release.**

## Understand the rules

The rules you need to follow as a trustee of an SMSF, include the following:

- Act honestly in all matters concerning your fund.
- Exercise skill and diligence in managing your fund.
- Act in the best interest of all members at all times.
- Keep the money and assets of your fund separate from other money and assets (for example, your personal assets).
- Retain control over your fund.
- Develop, implement and regularly review an investment strategy.
- Consider if the fund should hold insurance cover for its members.
- Do not enter into contracts or behave in a way that hinders you or other trustees from performing or exercising functions or powers.
- Do not access or allow others to access funds early.

The SISA contains rules that impose minimum requirements on trustees and are deemed to be included in the trust deed of every regulated fund. These rules reflect the duties imposed on all trustees under trust law in general.

**! If you do not follow the rules, you risk one or more of the following:**

- your fund being deemed non-compliant and losing its tax concessions
- being disqualified as a trustee
- prosecution
- penalties.

**If you fail to act according to the trust deed, other members of your fund may take legal action against you.**

**➤ For more information, see ‘Understanding compliance and penalties’ on page 28.**

You can appoint other people to help you or provide services to your fund (for example, an accountant, super fund administrator, tax agent or financial planner). However, the ultimate responsibility and accountability for running the fund in a sensible manner lies with you as the trustee of the SMSF.

Money belonging to your SMSF cannot be used for personal or business purposes under any circumstances. Your SMSF’s assets are not a form of credit or emergency fund when you are faced with a sudden need and must never be used in this way.

# Accepting contributions and rollovers

## Contributions

There are minimum standards for accepting contributions. This ensures that contributions are made for retirement purposes only. However, these are minimum standards, and the trust deed of your fund may have more rules around accepting contributions.

You need to allocate contributions to a member's account within 28 days after the end of the month in which you received them.

## Types of contributions

### Mandated employer contributions

These are contributions made by an employer under a law or an industrial agreement for the benefit of a fund member. They can include any of the following:

- super guarantee contributions
- super guarantee shortfall components
- award-related contributions
- some payments from the superannuation holding accounts (SHA) special account.

You can accept mandated employer contributions for members at any time. This means you may accept mandated employer contributions for a person regardless of the age of the person or the number of hours they are working at that time.

**!** In response to Australia's future tax system review, the government announced the following changes to the super guarantee:

- gradual rate increase from 9% to 12%, between 1 July 2013 and 1 July 2019
- age limit of 70 to be abolished from 1 July 2013

## Non-mandated contributions

These include contributions made by employers over and above their *Superannuation Guarantee (Administration) Act 1992* or award obligations and member contributions such as:

- personal contributions made by the member (these include contributions made by employees and self-employed people)
- personal contributions made on behalf of the member
- spouse contributions
- government co-contributions.

You can only accept non-mandated contributions in the following circumstances:

- **For members under 65 years old**, you may accept employer contributions and all types of member contributions. However, you can only accept personal contributions made by the member if the member's tax file number (TFN) has been quoted.
- **For members 65 or over but under 70 years old**, you may accept employer contributions and all types of member contributions if the member has quoted their TFN and is gainfully employed on at least a part-time basis.
- **For members 70 or over but under 75 years old**, you may only accept employer contributions and personal contributions made by the member. The member must quote their TFN and be gainfully employed on at least a part-time basis and the contribution must be received on or before the day that is 28 days after the end of the month that the member turns 75.
- **For members 75 and over**, you cannot accept non-mandated contributions at all.

**! Member contributions made by, or on behalf of a member do not include employer contributions made for the member.**

## Contribution caps

### Concessional contributions

Concessional contributions are contributions made into your SMSF that are included in the SMSF's assessable income. These contributions are taxed in your SMSF at a 'concessional' rate of 15%, which is often referred to as 'contributions tax'. The most common types of concessional contributions are employer contributions which include super guarantee contributions and salary sacrifice contributions and personal contributions made by the member for which the member claims an income tax deduction.

Concessional contributions are subject to a yearly cap. From 1 July 2012, the concessional cap is \$25,000 per financial year.

Concessional contributions that exceed the cap are subject to excess concessional contributions tax of 31.5% in addition to the 15% contributions tax payable by your SMSF. Your member will be personally liable for this tax but can ask the super fund to release money to pay it.

### Non-concessional contributions

Generally, non-concessional contributions are contributions made into your SMSF that are not included in the SMSF's assessable income. The most common type is personal contributions made by the member for which no income tax deduction is claimed.

Non-concessional contributions are subject to a yearly cap of \$150,000 for members 65 or over but under 75, or \$450,000 over a three-year period for members under 65. The caps are indexed annually.

If a member's non-concessional contributions exceed the cap, a tax of 46.5% is levied on the excess contributions. Individual members are personally liable for this tax and must have their super fund release an amount of money equal to the tax.

Non-concessional contributions also include excess concessional contributions for the financial year. They do not include super co-contributions, structured settlements, orders for personal injury and capital gains tax (CGT) related payments which the member has validly elected to exclude from their non-concessional contributions.

## Fund-capped contributions

Fund-capped contributions are the maximum amount your fund can accept of any single fund-capped contribution.

If the member is 65 years old or over but under 75 on 1 July of the financial year, the fund-capped contribution limit is the non-concessional contributions cap for that financial year.

If the member is 64 years old or under on 1 July of the financial year, the fund-capped contribution limit is three times the non-concessional contributions cap for that financial year.

## Fund-capped contributions do not include

- contributions that your member advises they intend to claim an income tax deduction for
- contributions from a structured settlement or personal injury payment (the member, or a legal personal representative should have notified you before indicating they would make this contribution)
- super co-contributions.

Your fund must return the excess amount within 30 days.

**!** Special acceptance rules apply for fund-capped contributions for all age groups.

## Rollovers and transfers

A member's super benefits can generally be rolled over or transferred within the super system with their consent.

If you accept a rollover of benefits from another super fund, that fund can ask you to show that your fund is a complying fund before processing your request.

Most employment termination payments (previously known as eligible termination payments) can no longer be rolled over into super. However, some transitional arrangements apply. Generally, transitional termination payments are employment termination payments received after 1 July 2007 that an employee was entitled to receive under an employment contract that existed before 10 May 2006. Transitional termination payments need to be made before July 2012 and can be contributed or rolled over into a super fund.

**➤ For a current listing of regulated complying super funds, visit [superfundlookup.gov.au](http://superfundlookup.gov.au)**



# Tax and contributions

## Recording your member's TFN

If you do not have a member's TFN:

- you will have to pay additional income tax on some contributions (generally employer contributions)
- you may not be able to accept member contributions.

If you have accepted member contributions and the member's TFN has not been quoted, you need to return the contribution within 30 days of becoming aware that you received the contribution. If your member's TFN is quoted to you within 30 days of receiving the contribution, you do not have to return the amount.

If you receive employer contributions on behalf of a member and you pay additional income tax because you did not have your member's TFN, you can claim a tax offset in a later financial year if the member later gives you their TFN.

## Additional income tax and offsets

Not quoting a TFN means you will pay additional income tax on contributions that are assessable income of your fund. The contributions taxed in this way include:

- contributions made by an employer on behalf of a member, including salary sacrifice contributions
- any part of a transfer from a foreign super fund that is assessable income of your fund.

If your member has not quoted their TFN by the end of the financial year, all the assessable contributions made during the financial year will be taxed an extra 31.5%. You have to work out your liability for the additional tax at the end of the financial year that the contributions are made.

If you pay the additional tax and, at a later stage, your member gives you their TFN, you may be able to claim back the additional tax as a no-TFN income tax offset in your SMSF annual return. You can only claim this offset within three years from the end of the financial year that the contributions subject to the additional tax were made.

If you have debited the amount of additional tax from your member's account and you claim the tax offset in a later year, you need to re-credit this money back to their account.

## Excess contributions tax

An excess contributions tax is imposed when a member's concessional or non-concessional contributions exceed the annual cap in a particular financial year.

➤ For more information about excess contributions tax, visit [ato.gov.au/supercaps](https://ato.gov.au/supercaps)

## Deductions for personal contributions

Eligible people, including self-employed people, can claim a full income tax deduction for super contributions they make for their own benefit.

When deciding to claim a tax deduction, your members should consider the contribution caps. Deducted personal contributions are counted against the concessional contributions cap, with amounts over the concessional cap also counting against the non-concessional cap.

A member who intends to claim a deduction must notify you of this intent. The notice is required to be given by the earlier of the following:

- the time the member lodges their personal income tax return for the income year during which the contribution is made
- the end of the financial year following the year the contribution was made.

The notice is invalid when any of the following occurs:

- a notice is given to you but the person is no longer a member of your SMSF
- you no longer hold the contribution because of a partial rollover that includes the contribution
- you have paid a lump sum or you have started to pay a super income stream that includes the contribution.

In these circumstances, the member will not be able to claim a deduction for the personal contribution made.

## Acknowledging valid notices

You must acknowledge your member's valid notice, unless the value of the relevant super interest on the day you received the notice is less than the tax that would be payable by you for the contribution. To avoid disadvantaging your member, we recommend that your acknowledgment includes:

- a statement that you received their notice of intention to claim a deduction
- the date your fund received the notice
- any subsequent variations that your fund received
- member account and fund details
- the total amount of personal contributions that the notice covers
  - the amount the member currently has notified you of their intention to claim as a deduction
  - the dates the contributions were made or the income year they were made in.

This will ensure that your members are able to claim the deductions they are entitled to and that the correct super co-contributions and excess contributions tax outcomes apply.

## Additional requests for acknowledgment

If your members have lost, or failed to receive your acknowledgment, they may request a new acknowledgment. You can:

- provide them with a copy or duplicate of the original acknowledgment
- confirm their original notice is valid and provide them with a new acknowledgment.

If the member claiming the deduction has made an error with their notice of intent to claim a deduction, the notice can be varied (including varied to nil) by the earlier of the:

- time the member lodges their personal income tax return for the income year in which the contribution was made
- end of the financial year following the year the contribution was made.

After this time the notice cannot be varied unless:

- a deduction for the contributions is not allowable (that is, the member was ineligible to claim a deduction)
- the variation reduces the amount shown on the original notice by the amount that is not allowable as a deduction.

## Check you can accept your member's contribution

- Make sure the member is entitled to make a contribution to your SMSF.
- Make sure your SMSF meets the definition of an Australian super fund.
- Make sure you have the TFN of all members.
- Make sure the member gives you a notice if they claim a deduction for their contributions.
- If you are accepting an asset as a contribution (for example an in specie contribution), make sure it is valued at market value.

# Managing your fund's investments

One of your key areas of responsibility is to manage your fund's investments. You have certain duties and responsibilities when making investment decisions. They are designed to protect and increase your member's benefits for retirement.

## Sole purpose test

If you, or any party, directly or indirectly obtain a financial benefit when making investment decisions and entering into arrangements it is likely your fund will not meet the sole purpose test.

One of the main ways we work out if an SMSF has contravened the sole purpose test is to look at the character and purpose of your investments. Working out the purpose for which an SMSF is being maintained requires looking at all of the events and circumstances relating to the SMSF's maintenance.

When investing in collectables such as art or wine, you need to take care to make sure that SMSF members are not granted use of or access to the assets of the SMSF in contravention of the sole purpose test. The most common breaches of the sole purpose test are:

- making investments that offer a pre-retirement benefit to a member or associate
- providing financial help or a pre-retirement benefit to someone at a financial detriment to your fund.

Contravening the sole purpose test is very serious and may lead to trustees facing civil and criminal penalties.

⚠ From 1 July 2011, rules were introduced into the SISA for SMSF investments in collectables and personal-use assets.

➤ For more information, visit our website at [ato.gov.au](http://ato.gov.au) and search for 'Collectables and personal use assets'.

## Your investment strategy

You need to prepare and implement an investment strategy for your fund, and review it regularly. The strategy needs to reflect the purpose and circumstances of your fund and consider the following:

- investing in a way to maximise member returns taking into account the risk associated with the investment
- diversification and the benefits of investing across a number of asset classes (for example, shares, property and fixed deposit) in a long-term investment strategy
- the ability of your fund to pay benefits as members retire and pay other costs incurred by your fund
- whether to hold insurance cover for one or more members of your SMSF
- the circumstances of members (for example, age, income level, employment pattern and retirement needs).

The investment strategy should set out your investment objectives and detail the investment methods you will adopt to achieve these objectives. It must be reviewed regularly and whenever there is a change to the fund – for example, a new member joins.

You need to make sure all investment decisions are made according to the investment strategy of your fund. If in any doubt, you should seek independent investment advice from a suitably qualified professional.

## Restrictions

Super law places restrictions on the types of entities your fund can invest in or with, and the entities that your fund can acquire assets from.

Investment restrictions exist because they protect fund members by making sure fund assets are not exposed to undue risks, like a business failing.

**— The investment rules are one of the most important requirements of super law. Failure to comply with the rules can result in your fund losing its complying status and you as trustee of the fund being either:**

- disqualified
- removed
- prosecuted, which may result in you being fined or imprisoned.

## Securing the assets of your fund

You need to ensure that your fund's ownership of its investments is secure. Your fund's assets should be held in legally recognised ownership arrangement. We prefer the assets to be in either the:

- names of all of the individual trustees as trustees for your fund
- name of the company as trustee for your fund in the case of a corporate trustee.

**! In certain states, legislation may prevent you from holding assets using your fund's name at all. In these circumstances, you are encouraged to execute a caveat, instrument or declaration of trust for the asset. For more information, refer to the relevant state or territory titles office.**

## Valuation of assets

Super law requires that your fund's assets must be valued at market value. The market value of assets should be used when preparing your fund's accounts, statements and the SMSF annual return.

**➤ For more information about valuing your fund's assets, visit our website at [ato.gov.au](http://ato.gov.au) and search for 'SMSF valuation guidelines'.**

## Loans or financial help to members or relatives

You cannot lend money or provide direct or indirect financial help (including the provision of credit) from your fund to a member, or a member's relative. For example, using fund assets to guarantee a personal loan of a member.

A member or a member's relative means any of the following:

- a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that individual or of their spouse
- a spouse of that individual or of any individual specified above.



## Borrowings

You can only borrow money in very limited circumstances. These circumstances include:

- borrowing money for a maximum of 90 days to meet benefit payments due to members or to meet an outstanding surcharge liability (the borrowings cannot exceed 10% of your fund's total assets)
- borrowing money for a maximum of seven days to cover the settlement of security transactions if the borrowing does not exceed 10% of your fund's total assets (you can only borrow to settle security transactions if, at the time the transaction was entered into, it was likely that the borrowing would not be needed)
- borrowing using instalment warrants or limited recourse borrowing arrangements that meet certain conditions.

➤ For more information, visit [ato.gov.au/smsf](https://ato.gov.au/smsf) and search for:

- 'Borrowing money or maintaining an existing borrowing of money'
- 'Limited recourse borrowing arrangements by self-managed super funds – questions and answers'.

## Related party acquisition of assets

You cannot acquire assets from your fund from a related party of your fund. However, there are limited exceptions to this rule if the asset is:

- a listed security (for example, shares, units or bonds listed on an approved stock exchange) acquired at market value
- business real property acquired at market value
- an in-house asset, but the level of your fund's in-house assets does not exceed the threshold for SMSFs of a maximum 5% of total fund assets, or is an asset specifically excluded from being an in-house asset.

A related party of a fund includes all members of your fund and associates, and all standard employer-sponsors of your fund and their associates.

An associate of a particular member of an SMSF includes the following:

- every other member of your fund
- the relatives of each member

- the business partners of each member
- any spouse or child of those business partners, any company a member (or the members or their associates) controls or influences and any trust the member (or the members or their associates) controls.

Associates of standard employer-sponsors include:

- business partners and companies or trusts the employer controls (either alone or with their other associates)
- companies and trusts that control the employer.

A standard employer-sponsor is an employer who contributes to a super fund for the benefit of a member, under an arrangement between the employer and the trustee of a fund.

Business real property generally relates to land and buildings used wholly and exclusively in a business.

If business real property is used in a primary production business, such as a farm, it can still meet the test of being used wholly and exclusively in a business, if an area of land, no more than two hectares, contains a dwelling that is used for private or domestic purposes. However, the main use of the whole property cannot be for domestic or private purposes.

## In-house assets

An in-house asset is any of the following:

- a loan to, or an investment in a related party of your fund
- an investment in a related trust of your fund
- an asset of your fund that is leased to a related party.

In general, as a trustee you are restricted from lending to, investing in or leasing to a related party of your fund more than 5% of your fund's total assets.

There are some exceptions, including:

- business real property that is subject to a lease between your fund and a related party of your fund
- some investments in related non-g geared trusts or companies.

Loans to related parties are treated as in-house assets, however, the lending of money or provision of financial assistance to a member or a member's relative remains prohibited under super laws.

## Special investment rules

Special investment rules may apply to investments made by funds before 11 August 1999. However, the transition period for in-house asset rules applying to such investments expired on 30 June 2009. If your fund was established before this date and has assets acquired under the rules applying before then, contact us or your adviser for more information.

- For more information, visit our website at [ato.gov.au](http://ato.gov.au) and search for 'In-house assets and transitional rules'

## Investments must be at arm's length

Your SMSF's investments must be made and maintained on a strict commercial basis. This is referred to as an investment at arm's length. The purchase and sale price of fund assets should always reflect a true market value for the asset.

Income from assets held by your fund should always reflect a true market rate of return.

## Investing in business real property

You need to ensure the level of investment in business real property still meets the investment strategy of your fund, including diversification of assets, liquidity and maximisation of member returns in your fund.

As with other super fund investments, there cannot be a loan or covenant (charge) over an asset.

## Check you are managing your fund's investments

- Make sure your SMSF complies with the sole purpose test at all times including when investing fund assets and paying benefits upon retirement of members.
- Make sure you regularly review your investment strategy to ensure it takes into account the retirement goals of members.
- Consider the risks involved in investments.
- Consider what bills your SMSF has to pay and allow enough cash to meet these expenses.
- Consider when benefits will need to be paid.
- Consider diversifying your SMSF's investments.
- Have a separate bank account for your SMSF and pay the expenses of your fund from that bank account only.
- Make sure that your fund's ownership of its investments is assured.
- Value assets at market value.
- Make investment decisions that will provide for your retirement.
- Do not invest without considering your strategy and your overall goals for retirement.
- Keep the money and assets of your SMSF separate from any other money or assets.
- Do not have the assets of your SMSF in another entity's name.
- Do not provide financial assistance to members or relatives of members.
- Do not use any of the assets of your SMSF for your own personal use or allow members or related parties to use those assets, including privately showing objects of art and wearing jewellery.
- Document decisions about storage of collectables and personal-use assets, for example in your SMSF meeting minutes.
- Do not store collectables and personal-use assets (for example, artwork) in the private residence of any related party of the fund.

# Access to member benefits

You need to know the rules for accessing and paying benefits from your SMSF.

The payment standards contained in the super laws, the sole purpose test and the preservation rules, ensure money in your SMSF is paid to members only when they are legally allowed to have it. Penalties apply if you do not meet these requirements.

## Cashing of benefits

There are two forms of cashing of benefits – compulsory and voluntary.

### Compulsory cashing of benefits

Compulsory cashing of benefits is only required when a member dies. Your member's benefits need to be paid out as soon as possible after the member's death.

There is no compulsory cashing out rule for super payments because a member has reached a particular age.

### Voluntary cashing of benefits

Your member's benefits will be classified as one or more of the following:

- preserved benefits
- restricted non-preserved benefits
- unrestricted non-preserved benefits.

Regardless of their source, all contributions made by, or on behalf of a member and all earnings for the period after 30 June 1999 are preserved benefits. Employer eligible termination payments (before 1 July 2007) rolled over into a super fund, are also preserved benefits.

**Preserved benefits** may only be cashed voluntarily if a condition of release is met and then subject to any cashing restrictions imposed by super law. Cashing restrictions tell you in what form the benefits can be paid out.

**Restricted non-preserved benefits** cannot be cashed until the member meets a condition of release. They are subject to the same cashing restrictions as preserved benefits, with one exception (see 'Terminating gainful employment' on page 21).

**Unrestricted non-preserved benefits** do not require a condition of release to be met, and may be paid upon demand by the member. For example, where a member has previously satisfied a condition of release and decided to keep the money in the super fund.

## Preservation age

Preservation age is generally the age that your member can access their super benefits, unless other extenuating circumstances occur that allow the member to legally access their benefits early.

A person's preservation age depends on their date of birth, as set out in the following table.

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

## Conditions of release

Conditions of release are the events your member must satisfy to withdraw benefits from their super fund. The conditions of release are also subject to the rules of your SMSF (as set out in the trust deed). It is possible that a benefit may be payable under super law, but cannot be paid under the rules of your SMSF.

Generally, rollovers or transfers to other super funds do not require a condition of release to be satisfied, subject to the governing rules of your SMSF.

As a trustee, you have very important responsibilities in working out if (and when) a member can receive their benefits. If you release super without meeting a condition of release you may be subject to significant penalties.

Preserved benefits and restricted non-preserved benefits may be paid out for the following reasons:

## Retirement

Actual retirement depends on a person's age and, for those under 60 years, their future employment intentions. A retired member cannot access their preserved benefits before they reach their preservation age.

### Members under 60 years

A member who is under 60 years and has reached their preservation age, retires when:

- the arrangement under which they were gainfully employed ceases
- the trustee is reasonably satisfied that the member does not intend to be gainfully employed for at least 10 hours a week in the future.

### Members 60 or over

When the member has reached 60 years, their retirement occurs when an arrangement under which they were gainfully employed ceased and either of the following apply:

- the person reached aged 60 on or before ending the employment
- the trustee is reasonably satisfied that the member does not intend to be gainfully employed for at least 10 hours a week in the future.

If a member who is 60 or over gives up one employment arrangement but continues in another employment relationship, they may:

- cash all preserved and restricted non-preserved benefits accumulated up until that time
- not cash any preserved or restricted non-preserved benefits accumulated after that condition of release occurs.

They cannot cash those benefits until a fresh condition of release occurs. If a member 60 or over starts a new employment arrangement after satisfying a condition of release, such as retirement from a previous employment arrangement at or after age 60, benefits related to the new employment remain preserved until a further condition of release is satisfied.

There are no 'cashing restrictions' for retirement.

## Attaining age 65

If a member has reached age 65, they may cash their benefits at any time. There are no cashing restrictions once the member is 65 or over.

## Terminating gainful employment – benefits less than \$200

A member may voluntarily cash their benefits where they have terminated employment with a standard employer-sponsor of your fund and their preserved benefits are less than \$200. There are no cashing restrictions on payment of these benefits.

## Terminating gainful employment – benefits of \$200 or more

Subject to the governing rules of your fund, where a member has terminated employment with an employer who had contributed to the member's fund, preserved benefits may be paid. However, the benefits need to be taken as a non-commutable lifetime pension or annuity. On termination, all restricted non-preserved benefits become unrestricted non-preserved benefits and therefore can be cashed out on request from the member (no cashing restrictions).

## Permanent incapacity

A member's benefits may be cashed if they cease gainful employment and you are satisfied that the member is unlikely, because of ill health, to engage in gainful employment that they are reasonably qualified for by education, training or experience. There are no cashing restrictions on payment of benefits.

## Temporary incapacity

A member's benefits may be paid where you are satisfied that the member has temporarily ceased work due to physical or mental ill health that does not constitute permanent incapacity. In general, temporary incapacity benefits may be paid only from the insured benefits or voluntary employer funded benefits.

It is not necessary for the member's employment to fully cease but, generally, a member would not be eligible for temporary incapacity benefits if they were receiving sick leave benefits. The cashing restriction is that the benefit needs to be paid as a non-commutable income stream for the period of the incapacity.

## Severe financial hardship

To release benefits under severe financial hardship you need to be satisfied that the member:

- cannot meet reasonable and immediate family living expenses
- has been receiving relevant government income support payments for a continuous period of 26 weeks and was receiving that support at the time they applied to the trustees.

The cashing restriction is that the payment needs to be a single gross lump sum of no more than \$10,000 and no less than \$1,000 (or a lesser amount if the member's benefits are less than \$1,000). Only one payment is permitted in any 12-month period.

Alternatively, if the member has reached their preservation age plus 39 weeks, you need to be satisfied that the member:

- has been receiving government income support payments for a cumulative period of 39 weeks since reaching their preservation age
- was not gainfully employed on a full-time or part-time basis at the time of applying to the trustees.

If you release benefits under these circumstances, there are no cashing restrictions.

## Compassionate grounds

Benefits may be released on specified compassionate grounds when:

- a member does not have the financial capacity to meet an expense
- release is allowable under the governing rules of your fund
- the Department of Human Services (DHS) determines, in writing, that the release is permitted.

There are specific grounds for release and, once DHS has approved the release, the final decision to release the benefits lies with you and your fellow trustees.



## Temporary residents departing Australia

People who have entered Australia on an eligible temporary resident's visa and who permanently depart Australia can be paid any super they have accumulated. The member must prove their eligibility under this condition of release.

- For more information, visit our website at **ato.gov.au** and search for 'Superannuation information for temporary residents departing Australia'.

## Attaining preservation age (transition to retirement)

Members who have reached preservation age, but remain gainfully employed on a full-time or part-time basis, may access their preserved benefits and restricted non-preserved benefits as a non-commutable income stream.

- For more information, refer to *Paying benefits from a self-managed super fund* (NAT 74124).

## Terminal medical condition

If a member has a terminal medical condition and two medical professionals certify that the condition is likely to result in the member's death in the next 12 months, you may pay them a lump sum benefit.

- For more information, visit our website at **ato.gov.au** and search for 'Access to super for members with a terminal medical condition'.

- ⚠ Conditions of release are subject to your fund's rules. You need to make sure the trust deed of your fund allows members to be paid benefits in the above circumstances.

## Early access to benefits

Early access or release of preserved benefits and restricted non-preserved benefits is only permitted in the following cases:

- severe financial hardship
- terminal medical condition
- on tightly restricted compassionate grounds
- permanent incapacity.

These situations only occur in very limited circumstances.

Setting up or using an SMSF to gain improper early access to super is illegal. If a benefit is unlawfully released, we will apply significant penalties to you, your SMSF and the recipient of the early release.

- ⊖ Beware of promoters who claim they can help you access your retirement benefits for such things as buying a house, car or a holiday or for solving your financial problems. These schemes are illegal. If you access your super before you are legally entitled to do so, there are severe penalties.
- For information about paying benefits, including types of pension benefits and reporting and administration obligations, refer to *Paying benefits from a self-managed super fund* (NAT 74124).

# Reporting and administration obligations

## SMSF annual return

All SMSFs need to lodge an SMSF annual return with us each year to:

- report income tax
- report super regulatory information
- report member contributions
- pay the supervisory levy.

The lodgment and payment date for all SMSFs that are not new registrants and prepare their own SMSF annual return is 31 October each year. For all new registrants the lodgment date for their first SMSF annual return is 28 February.

The lodgment and payment dates for all tax agents who prepare the annual return for SMSFs are according to the tax agent lodgment program.

All SMSFs are required to have the financial accounts and statements audited by an SMSF auditor, see 'Appointing an auditor' on page 25. You cannot lodge the SMSF annual return until the audit of your SMSF is finalised.

- For more information about the SMSF annual return, visit our website at [ato.gov.au](http://ato.gov.au) and search for:
  - *Self-managed super fund annual return instructions (NAT 71606)*
  - *Self-managed super fund annual return (NAT 71226)*.
- ⊖ If you do not lodge your SMSF annual return by the due date, penalties and/or the loss of your SMSF's tax concessions may apply.

## Member contributions information

For every financial year that your SMSF operates, you need to report all contributions you receive for each member in the SMSF annual return. You need to include contributions rolled into the SMSF and reported to you on the *Rollover benefits statement (NAT 70944)*. You need to be able to categorise contributions correctly in your SMSF annual return.

Member contributions information is used to:

- work out if your members are entitled to a super co-contribution and where to pay any entitlements
- work out if your members have exceeded their contributions caps and, if so, assess their excess contributions tax liability
- check employer compliance with super guarantee.

The contributions caps limit the amount that can be contributed for each member each financial year.

- **For more information about how to report, visit our website at [ato.gov.au/smsf](https://ato.gov.au/smsf) and search for ‘Completing the self-managed super fund annual return’.**

## Rollover benefits statement

When rolling over benefits and current year contributions, you must complete a *Rollover benefits statement* (NAT 70944) and pass this form, along with the benefits being rolled over, to the receiving fund(s) within seven days of paying the rollover. A copy of the statement must be given to the member whose benefits are being rolled over within 30 days of making the payment.

The rollover benefits statement allows the receiving fund to:

- apply the correct income tax treatment to the components rolled over
- maintain the preservation status of the benefits rolled over
- report correctly to us, on the member contributions statement or SMSF annual return, any contributions included in the rollover that were made in the same financial year as the payment occurred.

- **For information, visit our website at [ato.gov.au](https://ato.gov.au) and search for *How to complete a Rollover benefits statement* (NAT 70945).**

The trustee must make sure the rollover is to a complying fund.

- **For a current list of regulated complying super funds, visit [superfundlookup.gov.au](https://superfundlookup.gov.au)**

## Trustee declaration

If you are a new trustee or new director of a corporate trustee, you need to complete and sign the Trustee declaration within 21 days of becoming a trustee, or a director of the corporate trustee.

If you are an existing trustee (appointed before 1 July 2007), you need to ensure that new trustees complete the declaration.

Once you have done this, keep it with your records. You do not need to send it to us.

- **To download a copy of the *Trustee declaration* (NAT 71089), visit [ato.gov.au/smsf](https://ato.gov.au/smsf) and search for ‘Trustee declaration’.**

## Supervisory levy

SMSFs need to pay the supervisory levy with their SMSF annual return. The amount payable is included on the return for the relevant financial year.

## Tax

You need to understand SMSF tax requirements. Your tax responsibilities should not be left solely with any of the following:

- tax agents
- accountants
- super fund administrators
- financial planners.

We want to make sure all trustees are aware of how tax law may affect their SMSF and the consequences of non-compliance.

- **For more information about SMSF taxation requirements, visit [ato.gov.au/smsf](https://ato.gov.au/smsf) and search for:**
  - *Self managed superannuation fund annual return instructions* (NAT 71606)
  - ‘Completing the self-managed super fund annual return’.

## Appointing an auditor

As a trustee of an SMSF, you are required to appoint an auditor to audit your fund each year, at least 31 days before the due date of the SMSF annual return.

**! You should appoint your auditor early to allow enough time to do the audit, and lodge the SMSF annual return on time. A change has been proposed to extend the period to 45 days.**

Your auditor must form an opinion as to whether both of the following apply:

- your financial statements are a fair representation of the financial position of the fund
- your fund has complied with the relevant super law.

You can do everything to meet your obligations except audit your fund. You need to appoint an independent auditor to do this.

Generally, an auditor may be either:

- a registered company auditor
- a member or fellow of one of the following professional organisations

Professional organisation	Manner of association
CPA Australia Ltd	Member
The Institute of Chartered Accountants in Australia	Member
Institute of Public Accountants (formerly National Institute of Accountants)	Member
Association of Taxation and Management Accountants	Member or Fellow
National Tax and Accountants Association Ltd	Fellow
SMSF Professionals' Association of Australia Ltd	SMSF specialist auditor

**! From 31 January 2013, auditors of SMSFs can register with the Australian Securities and Investments Commission (ASIC). Registered SMSF auditors will be issued with an SMSF Auditor Number (SAN). Existing approved auditors will be able to continue to audit SMSFs until registration becomes mandatory from 1 July 2013.**

Before an auditor can start the audit, you or your SMSF professional need to prepare information about your accounts and transactions for the previous financial year. This information is then sent to the auditor.

Your auditor needs to:

- provide you with an audit report before the due date of the SMSF return
- bring to our attention and the attention of trustees, any concerns about your fund's financial position or its compliance with super law
- report to us certain contraventions of super law that they identify during an audit.

If your auditor identifies a contravention, you must take immediate steps to rectify the contravention.

## Record-keeping requirements

You must keep the following records for a minimum of five years:

- accurate and accessible accounting records that explain the transactions and financial position of your SMSF
- an annual operating statement and an annual statement of your SMSF's financial position
- copies of all SMSF annual returns lodged
- copies of any other statements you are required to lodge with us, or provide to other super funds.

You need to keep the following records for a minimum of 10 years:

- minutes of trustee meetings and decisions affecting your fund
- records of all changes of trustees
- trustee declarations recognising the obligations and responsibilities for any trustee, or director of a corporate trustee, appointed after 30 June 2007
- members' written consent to be appointed as trustees
- copies of all reports given to members
- documented decisions about storage of collectables and personal-use assets.

Once you have established your fund, you are legally required to:

- have an audit report prepared
- lodge an SMSF annual return
- pay the supervisory levy.

You have to do this each financial year, including the year you establish your SMSF.

- ! **Remember that income tax record-keeping requirements also need to be met, especially in relation to deductions, CGT and losses.**
- **For more information about record-keeping requirements, visit our website at [ato.gov.au](http://ato.gov.au) and search for *Self managed superannuation fund annual return instructions* (NAT 71606).**

## Notifying us of a change

As a trustee of an SMSF, you need to notify us within **28 days** if there is a change in the following:

- trustees
- directors of the corporate trustee
- members
- contact details (contact person, phone and fax numbers)
- address (postal, registered or address for service of fund notices).

Changing the structure of your SMSF may result in your fund no longer meeting the definition of an SMSF. This may occur if you:

- admit a new member, increasing membership of your SMSF to more than four
- admit a new member without that member being an appointed trustee.

To tell us about changes to your SMSF, you can:

- use our online service at [abr.gov.au](http://abr.gov.au) if you have an AUSKey (for more information on using our online services, go to [ato.gov.au](http://ato.gov.au) and select 'About online services' in the right-hand menu)
- phone us on **13 10 20**
- lodge a *Change of details for superannuation entities* (NAT 3036) form.

- ! **You cannot tell us about a change in the structure of an SMSF by lodging the SMSF annual return.**

## Winding up an SMSF

There are many reasons why you might need to wind up your SMSF, including when all the members have left or all the benefits have been paid out.

In some cases you may find that you no longer have the capacity to deal with the complexity or the time required to manage an SMSF. You may find the costs of running the fund are significant compared to the annual income your SMSF earns.

If you decide to wind up your SMSF you must deal with all of the fund's assets so that none remain, and complete all of the reporting and other administrative obligations as a trustee.

- **Once your SMSF is wound up, it cannot be reactivated.**
- **For more information, refer to *Winding up a self-managed super fund* (NAT 8107).**

## Check you have met your reporting and administration obligations

- Appoint an auditor to audit your SMSF.
- Lodge your SMSF annual return each year by the due date – providing all the required information, including a valuation of assets at market value and payment of the supervisory levy.
- If you are having trouble lodging by the due date, seek an extension of time to lodge.
- Lodge accurate *Rollover benefits statements* (NAT 70944) when rolling over benefits into other funds.
- Keep minutes outlining investment decisions and how decisions are made including those made on storage of collectables and personal-use assets.
- Keep records to explain the transactions of your SMSF.
- Keep annual operating statements and annual statements of the SMSF's financial position.
- Keep records to show who the trustees of your SMSF are as well as copies of their consent to act as trustees.
- Keep copies of returns and any information provided to members.
- Keep required income tax and deduction documentation.
- Notify us of any change of details for the SMSF (for example, changes of trustees or members).
- Keep original Trustee declarations.
- Keep any actuarial certificates.



# Understanding compliance and penalties

## Our compliance approach

Our compliance approach has traditionally focused on help and education. Recently we have increased our compliance activity on high-risk funds and our focus on timely lodgment. For SMSFs, compliance activities will be more extensive than in the past.

If you are a trustee of an SMSF, we expect you will:

- know, understand and meet your responsibilities and obligations
- lodge your SMSF annual return every financial year
- pay the supervisory levy.

We want to make sure trustees, auditors, tax practitioners and financial planners are aware of the rules governing SMSFs.

If you are genuinely making an effort to meet your obligations, we will work with you to rectify any breaches.

If you become aware of a problem which results in your SMSF becoming non-complying, we encourage you to contact us so we can work with you to rectify the problem.

As the regulator of SMSFs, we take all possible steps to ensure that enforcement action in relation to contraventions is appropriate and taken only after due consideration has been given to all the circumstances, including those where we think the assets of your fund are at risk.

## Compliance program

We regularly update and publish the compliance program that applies to all taxpayers, including SMSFs.

- **For a copy of our most recent compliance program, visit [ato.gov.au](http://ato.gov.au) and search for 'Compliance program' (NAT 7769).**

## What we expect during compliance activity

We expect that during a compliance review or audit you will:

- provide full and free access to all records, documents, buildings and premises
- allow us to make copies or extracts of records and documents
- provide reasonable facilities and assistance
- provide complete and accurate responses to requests for information
- be truthful and honest in your dealings with us.

## Check you are complying

- Keep and maintain accurate records of your SMSF.
- Do not set up an SMSF with the expectation of gaining early access to super.
- Do not make a false or misleading statement or fail to make a statement to avoid paying the correct income tax.
- Lodge your SMSF annual return, and pay the supervisory levy.
- Make a genuine effort to comply and do not set out to deliberately avoid meeting your legal obligations.

## Penalties

### Regulatory penalties and sanctions

To protect members' retirement incomes, we regulate SMSFs to ensure they comply with super law. Failing to comply is known as a contravention of the SISA or SISR. This will result in some type of compliance action. For example, we can:

- instigate prosecution proceedings if you have contravened super law
- make your SMSF non-complying
- disqualify you as a trustee if you have contravened super law or if you are not a fit and proper person
- suspend or remove one or all of the trustees of an SMSF (if we suspend all trustees, we will appoint a constitutional corporation or an individual to act as the trustee during the period of suspension – the appointee is called the acting trustee and we have the power to direct the acting trustee to act in a certain manner)
- by written notice given to you or the investment manager, direct you not to dispose of, or otherwise deal in a particular way, any of the assets of your fund until the notice is revoked.

For less serious matters, we may enter into agreements with trustees about a plan for them to rectify the problem, without necessarily imposing the above sanctions.


A complying fund that has been made non-complying will suffer serious tax consequences. Your fund's total assets (less any member contributions that no tax deduction has been claimed for) are subject to tax at the highest marginal rate. Any income received in a financial year in which a fund is non-complying is taxed at the highest marginal rate.

If a trustee is prosecuted and is found guilty of either a civil and/or criminal offence under a civil penalty provision, the maximum penalties that may apply under Part 21 of the SISA are \$340,000 (civil proceedings) and five years imprisonment (criminal proceedings).

In addition, offences of strict liability (such as acting as trustee while disqualified) that are punishable under the Criminal Code can also be subject to penalties and/or imprisonment.

Administrative penalties may be applied if you:

- fail to lodge returns on time
- provide false and/or misleading statements
- fail to keep and maintain records
- fail to advise us of a change of trustee or other changes in your fund.

 **Improper early access to super is illegal. Remember significant penalties can be applied to you, your SMSF and the recipient if benefits are unlawfully released.**

## Income tax penalties

An administrative penalty can be applied if you make a statement (or fail to make a statement) whether or not it results in an underpayment of tax.

If you do not lodge an SMSF annual return or if you fail to make a true and correct statement, a penalty may apply.

You are liable for an administrative penalty if you make a false or misleading statement and you do any of the following:

- take a position that is not reasonably arguable
- fail to make a statement when required
- take actions that are viewed as intentional disregard of the law or recklessness as to its operation.

Depending on your conduct regarding the shortfall, the base penalty ranges from 25% to 75% of the shortfall amount or tax related liability for failing to make a statement. This penalty range is affected by circumstances such as if you:

- voluntarily disclosed the information
- hindered our enquiries
- repeated the error.

Shortfall interest charge (SIC) will apply to amended income tax assessments, where a taxpayer's assessment is amended to increase the amount of tax payable. The SIC will apply from the due date of the original assessment to the date before the issue date of the amended assessment for the shortfall amount, and is due 21 days after the notice of the penalty is given.

The general interest charge (GIC) is a single rate of interest that applies when a payment of a taxation liability is not received by the due date. The charge applies to (but is not limited to):

- an amount of tax that remains unpaid after the due date
- an underestimation or underpayment of an instalment of tax
- late lodgment of income tax returns for certain years
- an underpayment of tax that remains unpaid after the due date of the amended assessment
- an underpayment of tax following a revision of an activity statement
- failure to lodge penalties that remain unpaid after the due date.

The GIC rate for a day is worked out by adding seven percentage points to the 90 day bond accepted bill rate for that day, and dividing that total by the number of days in the calendar year.

# Super terms explained

## Gainfully employed

Means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. Gain or reward means you receive remuneration such as wages, business income, bonuses and commissions in return for personal exertion from these activities. It does not include gaining passive income such as rent or dividends.

## Employed on a full-time basis

Means gainfully employed for at least 30 hours each week.

## Employed on a part-time basis

For the purposes of a fund accepting contributions, means the member has been gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in that financial year.

## In specie contributions

In specie contributions are contributions to your fund in the form of an asset, rather than money or cash.

Generally, you cannot intentionally acquire assets (including in specie contributions) from related parties of your fund. However, there are some exceptions to this rule, such as listed securities and business real property acquired at market value.

## Super co-contributions

The super co-contribution is a government initiative to help eligible individuals boost their super savings for the future.

We work out your members' eligibility for the super co-contribution based on information they include in their tax returns and on details of contributions you and other super funds report for them.

Your members could be eligible for the super co-contribution if the following apply:

- your member is an employee or is self-employed and makes personal super contributions for which they do not claim a deduction
- 10% or more of your member's total income (assessable income plus reportable fringe benefits plus, from 1 July 2009, reportable employer super contributions) for the financial year is from employment activities or activities from carrying on a business
- your member's total income less any business expenses is less than the higher threshold for that financial year.



# More Information

## Obtaining out publications

You can download the SMSF publications on our website at [ato.gov.au/smsf](https://ato.gov.au/smsf)

To obtain a copy of our publications or for more information:

- visit [ato.gov.au](https://ato.gov.au) and search for 'order tax office products'
- phone us on **13 10 20** between 8.00am and 6.00pm, Monday to Friday
- phone our publication ordering service on **1300 720 092**
- write to us at  
**Australian Taxation Office**  
**PO Box 3100**  
**PENRITH NSW 2740**

## Useful services

If you do not speak English well and need help from the ATO, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone the ATO through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on [relayservice.com.au](https://relayservice.com.au) and ask for the ATO number you need.



