

## **MEDIA RELEASE**

*February 2007*

# **SMSFs in breach of ATO rules**

AS many as one in twenty self managed superannuation funds are violating superannuation fund rules, according to a survey by SMSF specialist, Partners Superannuation Services.

An SMSF administrator, Partners also provides an annual audit service to self managed superannuation funds in Australia. The research is based on the 500 audited funds.

Currently there are over 330,000 SMSFs in Australia, with the number set to grow as changes to superannuation make it increasingly attractive for investment. From 1 July people aged 60 or more will no longer be taxed on the income they receive from super.

The four key transgressions to emerge from the research involved:

- Loaning against the fund for personal and business reasons
- Not keeping fund and personal assets separate.
- Not having investments in the name of the trustee.
- Not appointing all fund members as trustees or directors

Commenting on the problem of loans, Partners' director, Martin Murden, says these usually involved trustees making personal loans to members or to businesses they were associated with.

In some instances the size of the loan increased on each occasion – with the highest loan being as much as 23% of the fund's assets.

Says Mr Murden: "The rules are very clear here - personal loans to members are not permitted and loans to their associated businesses are restricted to 5% of assets."

The Partners' audit also revealed that the inability to keep fund and personal assets separate usually occurred when members and the fund used the same account to buy shares.

Says Mr Murden: "This contravenes one of the basic tenets of trusts – that trust's assets must be kept separate from other assets."

He says this inability to separate the two, raises questions about the security of fund investments and where dividends were going. "We established that what often happened was that dividends paid by cheque to fund members were being deposited

into personal bank accounts and similarly, if shares were sold, these payments were not automatically made to the trustee.

"This is an absolute no, no," he says.

Mr Murden says the third problem unearthed by the audit - not having investments in the name of the trustee - generally occurred following a change in trustee.

"By way of example, a fund may change from having an individual trustee to a corporate trustee or vice versa. What usually happens in this instance is that documents indicating the change in trustee are formerly drawn up and signed. However, no action is taken to record the change in asset or investment ownership."

The final key transgression involved not appointing members as trustees in specific instances.

Says Mr Murden: "According to SMSF rules, where a fund has more than one member, they must all be trustees or directors. Similarly, all trustees or directors must be members. What we are finding is that this requirement was not always being met.

"At face value this may not seem like a serious transgression. However, it is a breach of one of the fundamental requirements of being an SMSF."

Mr Murden says that while the ATO has treated SMSF breaches leniently to date, this could change with the tax office set to triple the number of compliance officers to investigate SMSFs – from 140 to 500.

He says trustees whose funds breach legislation could be subjected to financial penalties with the ultimate penalty - being declared non compliant. "Being non compliant will triple the fund's tax, taking it from 15% to 45%.

"As far as the ATO is concerned, superannuation funds receive very attractive concessional tax treatment and if they want to retain these benefits, they need to toe the line."

Mr Murden says the findings of the Partners' research are representative of the 330,000 SMSFs across Australia.

He says that SMSF trustees concerned they may have, or are about to breach legislation or the deed governing the fund, should ensure they obtain appropriate advice. "If you have a tax problem, you speak to your accountant. Why not apply the same principle with your superannuation fund? After all, it is you and your family's retirement savings we're talking about!"

*More about Martin Murden .....*

*He is one of Australia's leading authorities on self managed superannuation funds (SMSFs) with over 35 years experience in financial services. A CPA, he has specialized in the area of providing superannuation advice. He is also a director of Partners Superannuation Services.*

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