

Common Mistakes When Running a Self-Managed Superannuation Fund

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This information sheet has been prepared for trustees of self-managed superannuation funds. It covers common issues that arise when we perform our audit procedures. We recommend you read this document and become familiar with your responsibilities as a trustee.

Sole Purpose Test

	SIS Act	
Sole purpose test	s62	Superannuation funds are required to be maintained for the sole purpose of providing benefits to each member on retirement or upon reaching preservation age, or to a member's dependants if the member dies.

Investments

Breach	SIS Act	Consequences	Action/Comment
Inappropriate investment strategy	s52(2)(f)	Breach the sole purpose test and risk the fund being deemed 'non-complying'.	Trustees of the fund must prepare and implement an investment strategy. The investment strategy should be reviewed either, when new investments are made or on an annual basis. Failure to abide by the investment restrictions may lead to the trustee being disqualified, removed and/or prosecuted. A disqualified person can no longer act as trustee.
Inappropriate investments	s62	Breach the sole purpose test and risk the fund being deemed 'non-complying'.	Investments must be held inline with the provisions detailed in the Sole Purpose Test and an adequate investment strategy.
Incorrect name on investments	s52(2)(d)	Can affect title to assets.	The correct name on investments must be the trustee's name/s as trustee for (ATF) the super fund name, e.g. <i>John Smith and Jill Smith ATF The Smith Superannuation Fund</i> .
Acquiring investments from related parties	s66	An SMSF cannot acquire assets from members or related parties except under limited conditions.	The exceptions are listed securities and business real property. These assets must be acquired at market value.

Contributions

Breach	SIS Act	Consequences	Action/Comment
Members exceeding contribution caps	s55	Penalty tax is payable on amount over the relevant contribution caps.	If the concessional cap is breached, the excess is taxed at a further 31.5%. If the non-concessional cap is breached, the excess is taxed at 46.5%. If both caps are breached, the excess is taxed at 93%.

Income Streams

Breach	SIS Act	Consequences	Action/Comment
Under and overdrawing income streams/pension	sub-s(1.06)	Fund can lose the exempt pension income status resulting in fund earnings being taxed.	It is important that benefits withdrawn for any financial year are within the minimum and maximum pension withdrawal amounts.

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Inappropriate use of funds assets

Breach	SIS Act	Consequences	Action/Comment
Personal use of funds assets including early access to superannuation benefits	s65/s202	Breach the sole purpose test and risk the fund being deemed 'non-complying'. Breach civil penalty provisions.	Personal use of fund assets is prohibited and is considered to be accessing benefits without meeting a condition of release. Penalties include risk of imprisonment and/or fines.
Lending money to members	s65	Breach the sole purpose test and risk the fund being deemed 'non-complying'.	A person cannot access their superannuation benefits unless they meet a condition of release.
Bank account in overdraft	s67(1)	Breaches borrowing rules.	A fund can only borrow money in very limited circumstances: <ul style="list-style-type: none"> Borrowing money for a maximum of 90 days to meet benefit payments to members. Borrowing money for a maximum of 7 days to cover the settlement of a security transaction, if the borrowing does not exceed 10% of the fund's total assets. Borrowing under a Limited Recourse arrangement that meets specific conditions.

Other

Breach	SIS Act	Consequences	Action/Comment
Trust deed is out of date		The most recent legislation will not be affected.	Trust deed needs to be regularly updated to ensure compliance with relative legislation.
Death benefit binding nominations, nomination non-dependants	r 6.22	Binding nominations can only be valid when a dependant or Legal Personal Representative is nominated. Failing to do so brings the risk that benefits will not be paid to the intended beneficiary.	Members must nominate a dependant or Legal Personal Representative in order for the binding nomination to be valid.

Upon being deemed non-complying, the fund is taxed at 45% of its value. A non-complying fund also loses its tax concessions and is taxed at the maximum rate of 45% on earnings.

Relevant Publications from the Australian Tax Office

- Thinking about self-managed super (NAT 72579)
- Setting up a self-managed super fund (NAT 71923)
- Running a self-managed super fund (NAT 11032)

Relevant Publications from GTH Superannuation Solutions

- Borrowing within a self-managed superannuation fund.
- Accessing your superannuation benefits.
- Contributing to your self-managed superannuation fund.

If you have any questions regarding the information outlined in this publication, please call GTH Accounting Group and ask to speak to a member of GTH Superannuation Solutions.

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