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Australian Government
Australian Taxation Office

SELF MANAGED SUPERANNUATION FUNDS

Role and responsibilities of trustees

This guide:

- introduces new trustees of self managed superannuation funds to the rules governing the operations of these funds
- outlines their responsibilities as trustees, and
- explains how the Tax Office ensures self managed superannuation funds comply with the law.

It is illegal to establish or use a self managed superannuation fund to gain improper early access to superannuation.

Self managed superannuation funds must be maintained for the purpose of providing benefits to members upon their retirement, or to their dependants in the case of a member's death before retirement.

This guide is not a substitute for seeking advice on your particular circumstances.

OUR COMMITMENT TO YOU

The information in this publication is current at June 2004 and we have made every effort to ensure it is accurate. However, if something in the publication is wrong or misleading and you make a mistake as a result, you will not be charged a penalty. You may have to pay interest, depending on the circumstances of your case.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser. Since we regularly revise our publications to take account of any changes to the law, you should make sure this edition is the latest. The easiest way to do this is by checking for a more recent version on our website at **www.ato.gov.au**

YOUR RIGHTS

It's important that you're aware of your rights and obligations when dealing with the Tax Office. These are explained in the Taxpayers' Charter, along with the service and other standards you can expect from us.

When we make a decision about your tax affairs, we will tell you about your rights and obligations in relation to that decision. We'll also give you contact details in case you have any queries or need more information.

If you're still not satisfied, you have a right to complain. You can phone our complaints line on **13 28 70**.

THE COMMONWEALTH OMBUDSMAN

If you are not satisfied with the Tax Office's decisions or actions, you can raise the matter with the Commonwealth Ombudsman's Special Tax Adviser. Before looking into a matter, the Special Tax Adviser may request that a complainant approach the Tax Office's complaints area. The Commonwealth Ombudsman's office can investigate most complaints relating to tax administration and may recommend that the Tax Office provides a solution or remedy to your problem. Investigations are independent, private, informal and free of charge.

Phone the Commonwealth Ombudsman's office on the National Complaints Line **1300 362 072** or visit your nearest Commonwealth Ombudsman's office. You can also visit the Commonwealth Ombudsman's website at **www.ombudsman.gov.au** or write to:

The Special Tax Adviser
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

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FOREWORD

The decision to become a trustee of a self managed superannuation fund should not be taken lightly. As a trustee, you are responsible for ensuring your fund complies with the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and other relevant legislative and administrative requirements.

We recommend that you read this guide and familiarise yourself with the administrative responsibilities and the legislative compliance requirements of running a self managed fund before setting up a fund. It is also a good idea to consult a qualified professional such as a financial adviser, accountant, superannuation fund administrator or tax agent to discuss whether a self managed fund is the best retirement saving option for you.

Your responsibilities as a trustee include:

- lodging an annual income tax return and superannuation fund annual return
- lodging Superannuation member contributions statements (MCS)
- reporting payments of member benefits
- appointing an approved auditor to complete the annual audit
- maintaining records for up to 10 years, and
- complying with investment restrictions.

Some of the key restrictions under the SIS Act include:

- meeting the sole purpose test
- not accessing your money without meeting a specific condition of release
- not providing loans or financial assistance to members or relatives, and
- not borrowing money to invest.

Severe penalties may apply if you contravene these and any other requirements set out in the legislation.

If your fund has already been established and you feel that you cannot meet your responsibilities or have reconsidered your decision, please refer to the section on page 25, dealing with 'Wind up a self managed superannuation fund' or phone the Tax Office on **13 10 20** for assistance.

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There are numerous trust law and legislative requirements involved in setting up a self managed superannuation fund.
This section outlines these and provides a detailed explanation as to what is a self managed superannuation fund.

WHAT IS SUPERANNUATION?

Superannuation is part of the government's plan to ensure an adequate income for Australians when they retire by encouraging them to save for their retirement.

Superannuation is a long-term savings arrangement whereby employers, self-employed people and employees, and family members (on behalf of others such as a spouse or children), contribute to a superannuation fund over a long period. The superannuation fund holds the contributions in trust for members and invests these contributions to increase the fund's assets. These assets are then used to provide benefits to members when they retire or suffer a serious disability, or to a member's dependants if a member dies.

The government taxes superannuation savings at a lower rate than normal savings if the superannuation fund complies with certain conditions. This gives superannuation funds the opportunity to provide increased retirement benefits.

Australians can choose to contribute their personal superannuation contributions to an independently managed superannuation fund or to a self managed superannuation fund. Some employers may also give their employees a choice regarding where the employer contributions will be made. New legislation has been introduced to give most employees the right to choose the fund into which their employer superannuation contributions are to be paid from 1 July 2005.This guide explains the administrative responsibilities and the legislative compliance requirements of running a self managed fund.

There are 3 different organisations that administer the SIS Act:

- Australian Prudential Regulation Authority (APRA) – regulation and administration of all superannuation funds apart from self managed superannuation funds. APRA also approve the release of benefits on compassionate grounds from self managed superannuation funds.
- Australian Securities & Investments Commission (ASIC) – corporation enforcement and action against companies.
- Australian Taxation Office (Tax Office) – regulation of self managed superannuation funds.

WHAT IS A SELF MANAGED SUPERANNUATION FUND?

For a self managed superannuation fund to be considered a complying superannuation fund for the purposes of the *Income Tax Assessment Act 1936*, it must first elect to be a regulated superannuation fund and abide by the rules of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). A complying superannuation fund's income is taxed at a rate of 15%, while a non-complying fund's income is taxed at 47%.

The SIS Act sets out a number of requirements that a self managed fund must meet to be a regulated fund.

Generally a superannuation fund is a self managed superannuation fund if (with a few exceptions):

- it has a trust deed that meets the requirements of the SIS Act
- it has four or less members
- each member of the fund is a trustee
- no member of the fund is an employee of another member of the fund, unless they are related, and
- no trustee of the fund receives any remuneration for their services as a trustee.

or

A self managed superannuation fund can have a company as a trustee (known as a corporate trustee) if:

- the fund has four or less members
- each director of the company is a member of the fund
- each member of the fund is a director of the company
- no member is an employee of another member, unless they are related, and
- the corporate trustee does not receive any remuneration for its services as a trustee.

The requirement that all members be trustees ensures that each member is fully involved and has the opportunity to participate in making decisions about the fund. This promotes true self-management.

Employees cannot be in the same self managed superannuation fund as an employer member, *unless they are related*.

SINGLE MEMBER FUNDS

It is possible to have a self managed superannuation fund with only one member. A single member fund may have a corporate trustee, but the member must:

- be the sole director of the trustee company, or
- be related to the other director of the trustee company and there are only two directors of that company, or
- not be an **employee** of the other director of the trustee company and there are only two directors of that company.

A single member fund may alternatively have two individuals as trustees. The member must be one trustee and the other trustee must be:

- a person who is related to the member, or
- any other person, provided the member is not an employee of that person.

The Tax Office regulates funds that meet the definition of a self managed superannuation fund. All other superannuation funds are regulated by the Australian Prudential Regulation Authority (APRA).

WHO CAN BE A TRUSTEE?

Essentially, anyone over the age of 18 can be a trustee of a superannuation fund unless they are a disqualified person. An individual is a disqualified person if they:

- have ever been convicted of an offence involving dishonesty
- have ever been subject to a civil penalty order under the SIS Act
- are an undischarged bankrupt, or
- have been disqualified by a regulator.

A company would not be permitted to act as trustee if:

- a responsible officer of that company is a disqualified person (a responsible person includes a director, secretary or executive officer)
- a receiver, official manager or provisional liquidator has been appointed to the company, or
- action has commenced to wind up the company.

Under the SIS Act, an **employee** generally includes a person who is engaged to perform services for salary or wages, is working under a contract wholly or principally for their labour, or is a paid company director, and certain sportspeople, artists and performers.

Where a trustee becomes bankrupt, they are required to immediately notify the Tax Office in writing. The Tax Office will then work with the individual to ensure the fund retains its complying status.

EXAMPLE

A person who was bankrupt set up a self managed superannuation fund. Bankrupts are not allowed to act as a trustee of a fund. The Tax Office wrote to the trustee requesting further information and requesting that they resign as trustee.

The Tax Office subsequently removed the trustee of the fund and appointed an acting trustee. The Tax Office then required the acting trustee to wind up the fund and roll the remaining superannuation benefits into the public offer superannuation fund.

Legal personal representative

A legal personal representative can be a trustee (or director of a corporate trustee) for:

- a member who is under a legal disability (but not if the member is an undischarged bankrupt)
- a member for whom the representative holds an enduring power of attorney, or
- a deceased member, up until the time death benefits are paid from the fund.

A disqualified person cannot have a legal personal representative acting as a trustee on their behalf.

Minors

Members under 18 years of age are considered to be under a legal disability and cannot be trustees of a superannuation fund. A parent or guardian can be a trustee for a member who is under 18 and does not have a legal personal representative.

RESIDENCY OF A FUND

In order to be entitled to tax concessions available to complying funds, a self managed fund must meet certain residency conditions and be considered a resident regulated fund at all times during the income year.

A fund can retain its residency status while the trustees (or directors of the trustee) of the fund are temporarily overseas, for a period of up to two years.

> A trustee temporarily returning to Australia for 28 days or less is deemed to have been outside Australia for that period. That is, short trips back to Australia cannot be used to re-trigger the two-year period by returning for 28 days or less.

Refer to 'Accepting contributions' on page 14 for more information.

CHANGING THE STRUCTURE OF A FUND

As a trustee, you have to be aware that any decision to change the structure of your fund may result in the fund no longer meeting the definition of a self managed superannuation fund. For example, if you admit a new member (increasing membership of the fund to more than four) or appoint a non-member as trustee (apart from the exceptions already listed), your fund would no longer qualify as a self managed superannuation fund. Funds that are not self managed funds are subject to different regulatory requirements and trustees should contact APRA.

WHAT IF A FUND CEASES TO BE A SELF MANAGED FUND?

If a fund no longer meets the definition of a self managed superannuation fund, it will remain a self managed fund until the earlier of:

- the appointment of an approved trustee, or
- six months from the date it no longer met the definition of a self managed superannuation fund.

This six-month period allows trustees time to restructure the fund (for example, by transferring members out of the fund) if they want it to remain a self managed fund. However, the six-month period does not apply if the reason for ceasing to be a self managed fund is that one or more new members have joined the fund.

You must notify the Tax Office within 21 days of your fund ceasing to be self managed superannuation fund. You do this by lodging a *Superannuation entities – change of details form*.

> In a year where a fund changes regulators, a regulatory return must be lodged with both the Tax Office and APRA and a levy will be required to be paid to both.

SETTING UP A SELF MANAGED SUPERANNUATION FUND

There are a number of trust law and legislative requirements involved in setting up a self managed superannuation fund. If you are thinking about setting up a fund, it may be useful to consult a professional adviser before committing to this option. Many accountants, solicitors and superannuation specialists also have packages and kits to simplify the process. Here are the major steps involved in setting up a self managed fund.

1. OBTAIN A TRUST DEED

The first thing you need to do is have a trust deed prepared. The deed (commonly referred to as the governing rules of the fund) evidences the existence of the fund and establishes the rules for operating the fund. An accountant, solicitor or legal service company may prepare the deed. Make sure the deed is correctly drafted to achieve your fund's objectives.

The deed must be dated and properly executed. A superannuation fund comes into existence after the trust deed has been signed and property has been set apart for the benefit of identified members, for example, when the fund receives its first contribution. In accordance with legal practice, this most commonly occurs on the same day as the trust deed is executed.

2. APPOINT TRUSTEES

All superannuation funds are required to appoint trustees. Trustees are responsible for ensuring the fund is properly managed and that it complies with the SIS Act and other legal obligations.

For a fund to be a self managed superannuation fund, generally all fund members must be appointed as trustees of the fund. There are some exceptions, including where a member no longer has the capacity to be an active trustee, and some limited circumstances where a trustee may not actually be a member of the fund (for example, in the case of a single member fund).

See 'Who can be a trustee?' on page 5.

The **trust deed** may set out:

- details of who can be a trustee
- how to appoint and remove trustees
- decision making powers of trustees
- who can be a fund member
- who can make contributions
- when to pay benefits to members, and
- procedures for winding up the fund.

3. ELECT TO BE REGULATED, AND OBTAIN A TAX FILE NUMBER AND AUSTRALIAN BUSINESS NUMBER

You must elect for your fund to be regulated under the SIS Act if you want it to receive tax concessions.

You can elect for the fund to be regulated and obtain a tax file number and Australian business number by completing the *Application to register for superannuation entities* form. Elections can be lodged with the Tax Office:

- electronically – complete the online form on the Australian Business Register website at **www.abr.gov.au**, or
- manually – you can obtain the application form and instructions from our website at **www.ato.gov.au/super** or by phoning **13 10 20**.

Online registration offers a number of advantages, including quicker processing of your application.

If you do not notify the Tax Office of an election to be a regulated superannuation fund within 60 days after setting up your fund, the fund may not be accepted as a regulated fund. Funds that are not regulated are not entitled to tax concessions and the employer cannot claim a deduction for their contribution.

Once you have elected for your fund to become regulated, the decision cannot be reversed (that is, the fund has to be wound up to cease to be regulated under the SIS Act).

RESPONSIBILITIES OF TRUSTEES

02

This section explains the more common rules of the SIS Act that you will confront in the day-to-day operations of your fund. However, this guide is not an exhaustive coverage of your responsibilities as a trustee. There are many other responsibilities under different laws, including numerous administrative requirements.

As a trustee, you need to be familiar with these and, when in doubt, seek professional advice.

As a trustee of a self managed superannuation fund, you are ultimately responsible for running your fund. It is imperative that each trustee of your fund understands the duties, responsibilities and obligations of being a trustee.

There are significant penalties imposed on trustees who fail to perform their duties.

As a trustee of a self managed fund, you must act in accordance with:

- the clauses of your fund trust deed (governing rules)
- the provisions of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS regulations)
- the *Corporations Act*, and
- other general rules, such as those imposed under tax and trust law.

Where the SIS Act conflicts with the trust deed, the SIS Act overrides the trust deed.

SIS ACT REQUIREMENTS

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

The rules bind you to:

- act honestly in all matters
- exercise the same degree of care, skill and diligence as an ordinary prudent person
- act in the best interest of the fund members
- keep the money and assets of the fund separate from other money and assets (for example, your personal assets)
- retain control over the fund
- develop and implement an investment strategy
- not enter into contracts or behave in a way that hinders trustees from performing or exercising their functions or powers, and
- allow members access to certain information.

While you can engage other people to do certain acts or things on your behalf as a trustee (for example, engage the services of an accountant, superannuation fund administrator, tax agent or financial planner), you are bound to retain control over the fund. Ultimate responsibility and accountability for running the fund in a prudent manner lies with the trustees.

You must keep money and other assets of the fund separate from your personal assets and any business assets. A self managed superannuation fund and any other entities are separate bodies and must be treated as such.

Money belonging to the fund must not be used for personal or business purposes under any circumstances. You should not view the fund's assets as a form of credit or contingency when faced with a sudden need.

As a trustee, if you fail to act in accordance with the SIS Act, you risk:

- your fund being deemed a non-complying fund and losing its tax concessions
- being disqualified
- being prosecuted, and/or
- having penalties imposed.

If you fail to act in accordance with the trust deed, other affected members of the fund (if they were unaware of your actions) may take legal action against you.

Refer to the 'Penalties' section on page 28 for more information.

COMPLY WITH THE SOLE PURPOSE TEST

The object of the sole purpose test is to ensure that self managed superannuation funds are maintained for the purpose of providing benefits to members upon their retirement, or their dependants if a member dies before retirement. As a trustee of a regulated superannuation fund, you must comply with the sole purpose test for the fund to be eligible for the tax concessions available to a complying superannuation fund.

The sole purpose test is divided into core and ancillary purposes. A regulated fund *must* be maintained for *at least*:

- **one core** purpose, or
- **one core** purpose and one or more ancillary purposes.

> It is unacceptable for a fund to be maintained for one or more ancillary purposes only.

CORE PURPOSE

A self managed superannuation fund must be maintained for at least one of the following core purposes.

To provide benefits for each member of the fund on or after:

- the member's retirement from gainful employment
- the member's attainment of a prescribed age
- the earlier of the member's retirement from gainful employment or attainment of a prescribed age
- the member's death, if the death occurred before they retired from gainful employment, where the benefits are provided to their dependants or legal representative, or
- the member's death, if the death occurred before they attained a prescribed age, where the benefits are provided to their dependants or legal representative.

ANCILLARY PURPOSE

Ancillary purposes for maintaining a fund are to provide benefits to members in the following circumstances:

- termination of a member's employment with an employer who had made contributions to the fund for that member
- cessation of employment due to physical or mental ill health
- death of a member after retirement where the benefits are paid to their dependants or legal representative
- death of a member after attaining a prescribed age where the benefits are paid to their dependants or legal representative, or
- other ancillary purposes approved in writing by the regulator. This purpose allows a fund to provide benefits in situations of financial hardship and/or on compassionate grounds, subject to the SIS Act, the governing rules of the fund and the approval of the Australian Prudential Regulation Authority (APRA).

CONTRAVENING THE SOLE PURPOSE TEST

One of the main ways to determine if a fund has contravened the sole purpose test is to examine the character and purpose of the fund's investments. For example, providing a direct or indirect financial benefit to any party cannot be a consideration when making investment decisions and arrangements (other than increasing the return to the fund).

A possible indication that the sole purpose test has been contravened is where a fund is running a business as part of its investment strategy. The general view is that if a superannuation fund is conducting a business, it is not administered for the sole purpose of providing benefits for the members and beneficiaries of the fund.

There are no restrictions on investing in collectables such as art or wine, however, the sole purpose test means that members cannot enjoy a benefit from the investment before they reach preservation age.

Common breaches of the sole purpose test are:

- purchasing an investment that confers a benefit on a member or associate
- running a business within the fund, or
- providing financial assistance or benefit to a person or entity outside the fund.

EXAMPLE: CAN MY SUPERANNUATION FUND PURCHASE A GOLF CLUB MEMBERSHIP?

The short answer is almost always no. A trustee should not receive an additional benefit from any investment, unless it is incidental. If a fund purchases a property that has an attached golf membership right, the trustee should not use this benefit unless by on-selling to an unrelated party.

The principle that all investments are primarily for the trustee's retirement benefit must be followed. Most properties with an attached golf membership still attract annual fees, which would reduce the trustee's benefit in the fund. Even if the trustee used money from outside the fund to pay the fees, they would still be obtaining an advantage that would not normally be available to them.

Any investment that attracts a benefit that the trustee intends to use should be examined very carefully to ensure that it meets all investment rules and requirements. If unsure, please contact the Tax Office or your adviser.

PENALTIES FOR CONTRAVENING THE SOLE PURPOSE TEST

Contravening the sole purpose test is very serious and may lead to trustees facing civil and criminal penalties. It can result in a fine of up to 2000 penalty units and/or five years imprisonment for individual trustees, and may result in the fund losing its complying status. Higher penalties apply to corporate trustees. The value of a penalty unit is $110.

See APRA Circular III.A.4, *The sole purpose test*.

ACCEPT CONTRIBUTIONS IN ACCORDANCE WITH THE RULES

It is important that, as a trustee, you are aware of the minimum standards for accepting contributions under the SIS regulations. These standards are designed to ensure that contributions are made for retirement purposes only. However, you should also be aware that these are minimum standards, and the trust deed of your fund may prescribe more restrictive acceptance rules.

The Government has gazetted regulations which require the trustees to allocate to members any contributions received within 28 days after the end of the month in which they were received.

CONTRIBUTIONS

The two major categories of contributions are mandated employer contributions and non-mandated contributions.

Mandated employer contributions

Mandated employer contributions are contributions made by an employer for the benefit of a fund member that are:

- superannuation guarantee contributions
- superannuation guarantee shortfall components
- award-related contributions, or
- payments from the Superannuation Holding Accounts Reserve.

Under the SIS regulations, 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.

Non-mandated contributions

Voluntary superannuation contributions include contributions made by employers over and above their *Superannuation Guarantee (Administration) Act 1992* or award obligations, personal contributions made by employees, personal contributions made by self-employed people, spouse contributions, contributions from the baby bonus and contributions made for children under the age of 18 years. Such contributions can be accepted only in the following circumstances.

For members under 65 years of age

You may accept contributions if the member has, at any time in the previous two years, been **gainfully employed** on at least a **part-time** basis.

Contributions may also be accepted in some circumstances if the member has left employment because of ill health or is on specific authorised leave from their employer. The Tax Office can provide more information about these situations.

It has been proposed that the work test will be removed for those under 65 years of age.

For members aged 65 but less than 70

You may accept contributions only if the member is gainfully employed on at least a part-time basis.

For members aged 70 but less than 75

You may accept contributions only if the contributions are personal contributions made by the member and the member is gainfully employed on at least a part-time basis. You cannot accept other non-mandated contributions, such as spouse contributions or voluntary employer contributions, for a member aged 70 or over.

For members aged over 75

You can accept only mandated contributions (see above) for a member aged over 75.

Eligible spouse contributions

You may accept eligible spouse contributions at any time if the spouse is under the age of 65. If the spouse is aged between 65 and 70, eligible spouse contributions may be accepted only if the receiving spouse is at least gainfully employed on a part-time basis. If the spouse is 70 or over, you cannot accept eligible spouse contributions. There is no age limit or employment test for the person making the contributions.

Child contributions

From 1 July 2002, parents, grandparents and friends can make superannuation contributions on behalf of a child under the age of 18. They can contribute up to $3,000 a child over a three-year period.

Baby bonus contributions

From 1 July 2002, you can accept contributions for a person who receives the baby bonus in the 12 months after they receive the baby bonus. The amount of contributions is not limited, and can be more or less than the baby bonus received.

Gainfully employed means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. Gain or reward is the receipt of 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.

Full-time employment means gainful employment for at least 30 hours each week.

Part-time employment means gainful employment for at least 10 hours and less than 30 hours each week.

Co-contributions

From 1 July 2003, the government will match eligible personal superannuation contributions made by qualifying low-income earners up to $1,000. This measure replaces the low-income contributions tax offset. The Tax Office determines eligibility for co-contributions, based on information in income tax returns and surcharge member contributions statements.

It is proposed that the Government will increase the matched component to $1,500 commencing 1 July 2004.

In specie contributions

In specie contributions are contributions to the fund in the form of an asset other than money. Trustees of regulated superannuation funds are generally prohibited from intentionally acquiring assets (including in specie contributions) from related parties of the fund. Exceptions to this rule include listed securities and business real property, which must be acquired at arm's length and at market value. There are additional exceptions for in-house assets.

There is more information about acquiring assets from related parties in the section 'Manage the fund's investments'.

EXAMPLE

A retired person wishes to make contributions to the fund, however the trust deed of the fund only allows contributions from people in employment. The fund is not able to accept these contributions due to the restriction in the deed.

ROLLOVERS AND TRANSFERS

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

It is important to remember that a rollover or transfer of superannuation money to a self managed superannuation fund from another self managed fund or any other taxed fund is not a contribution. However, where a self managed fund receives a rollover that includes an untaxed post-June 1983 component from an untaxed fund or an employer, the self managed fund must include this amount as a taxable contribution in its income tax return.

The superannuation contributions surcharge applies if the rolled over eligible termination payment (ETP) was paid by an employer and includes a post-20 August 1996 component. The post-20 August 1996 amount therefore must be included on the *Superannuation member contributions statement*. The surcharge does not generally apply if the rollover came from a superannuation fund, taxed or untaxed.

There is more information about the reporting requirements for rolling over and/or transferring benefits in the section on 'Pay benefits in accordance with the rules'.

There are substantial penalties for not complying with the contribution standards.

The superannuation system includes regulated superannuation funds, approved deposit funds, retirement savings accounts, exempt public sector funds, deferred annuities and unclaimed money authorities.

You may transfer a member's benefit to a successor fund without the member's consent. A successor fund is a receiving fund that has member rights equivalent to those of the transferring fund.

ACCEPTING CONTRIBUTIONS FOR MEMBERS WHO ARE OVERSEAS

If a member of a fund goes overseas and becomes a non-resident in any year, you should not accept contributions on behalf of the member as this has the potential to make your fund a non-resident fund and, consequently, a non-complying fund. Contributions for a non-resident member can be accepted only if they relate directly to a time when the member was a resident. If you are in doubt, please contact the Tax Office.

MANAGE THE FUND'S INVESTMENTS

As a trustee of a self managed superannuation fund, one of your key areas of responsibility is to manage the fund's investments. The SIS Act places certain duties and responsibilities on trustees when making investment decisions. They are designed to protect and increase member benefits over time for retirement.

INVESTMENT STRATEGY

As a trustee, you are required to prepare and implement an investment strategy for your fund, and regularly review it.

The strategy must reflect the purpose and circumstances of the fund and consider:

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

EXAMPLE

The trustees of a self managed superannuation fund are approaching retirement age. As a result, they have decided to amend their investment strategy with the aim of investing in assets which give a lower return but less risk. They believe this will provide more stability for their benefits until they are paid out.

See APRA Circular III.D.1, *Managing investments and investment choice*.

An appropriate investment strategy should set out the investment objectives of the fund and detail the investment methods the fund will adopt to achieve these objectives. An investment strategy should be *unique* to the requirements of the fund and its members, and should be reviewed regularly and updated as required.

You must make sure all investment decisions are made in accordance with the documented investment strategy of the fund. If in any doubt, you should seek investment advice or appoint an investment manager in writing.

RESTRICTIONS

The superannuation law does not prescribe what a fund can and cannot invest in, but it does restrict some investment practices of superannuation funds. Firstly, the investment restrictions aim to protect fund members by ensuring fund assets are not overly exposed to undue risk (for example, the risk of an associated business failing). Secondly, the restrictions aim to ensure that funds make investment decisions with the primary purpose of generating retirement benefits for members, rather than providing current day support to members or other parties.

The investment rules are one of the most important requirements of the SIS Act and failure to comply with the rules could result in trustees being imprisoned, removed as trustees or fined, and/or the fund losing its complying status.

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

Loans/financial assistance to members or a member's relative

As a trustee, you are prohibited from lending money or providing direct or indirect financial assistance (including the provision of credit) from the fund to a member or a member's relative. The use of a fund asset by a member or a member's relative as a guarantee to secure a personal loan, for example, would contravene this investment restriction.

EXAMPLE

> Your son is looking to finance a business and asks you to loan him some money. The money cannot be loaned from your fund.

> See APRA Circular II.D.2, *Lending and provision of financial assistance to members of superannuation entities*.

In relation to a member, **a relative** means:

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

A **spouse** includes another person who, although not legally married to the person (that is, a de facto spouse), lives with the person on a genuine domestic basis as a husband or wife of the person.

Borrowings

As a trustee, you are prohibited from borrowing money except in the following limited circumstances:

- for a maximum of 90 days to meet benefit payments due to members or to meet a surcharge liability as long as the borrowing does not exceed 10% of the fund's total assets, or
- for a maximum of seven days to cover the settlement of security transactions if the borrowing does not exceed 10% of the fund's total assets.

You cannot borrow to settle security transactions, unless at the time the transaction was entered into it was likely that the borrowing would not be needed.

> See APRA Circular II.D.4, *Borrowing by superannuation entities*.

Acquisition of assets from a related party

As a trustee, you are prohibited from acquiring assets for the fund from a related party of the fund. There are limited exceptions to this rule where:

- the asset is a listed security (for example, shares, units or bonds listed on an approved stock exchange) and acquired at market value
- the asset is business real property and acquired at market value, or
- the asset is an in-house asset and would not result in the level of in-house assets of the fund exceeding 5% of the fund's assets, or is an asset specifically excluded from being an in-house asset.

A **related party of a fund** covers all members of the fund and their associates, and all standard employer-sponsors of the fund and their associates.

Associates of members include their relatives, business partners and any companies or trusts they control (either alone or with their other associates).

Associates of standard employer-sponsors would include business partners and any companies or trusts the employer controls (either alone or with their other associates), or companies and trusts that control the employer.

EXAMPLES: TRANSFERRING PROPERTY TO A SELF MANAGED FUND

1. Leo owns a residential property that is rented to an arm's length tenant. Leo is also a member of the Leo Superannuation Fund. The fund has four members. Can the Leo Superannuation Fund acquire the property from Leo? No, the property is a residential property, the acquisition of which is not covered by one of the exceptions under the acquisition of property from a related party rule.
2. Dianne owns a factory that is rented to an arm's length tenant. She is also a member of the Dianne Superannuation Fund. The fund has four members. Can the Dianne Superannuation Fund acquire the property from Dianne? Yes, as the property is a factory, it would fall under the business real property exception under the acquisition of property from a related party rule.
3. Joe owns a farm on which an area of land of less than two hectares contains a dwelling that is used for domestic or private purposes. Joe is a member of a self managed superannuation fund. Joe wants to sell the farm to his superannuation fund. Can Joe's superannuation fund acquire the farm? Yes, the fund could acquire the farm as the amount of land being used for domestic or private purposes is less than two hectares, thus the exemption under the acquisition of property from a related party rule.

See APRA Circular II.D.3, *Acquisition of assets from related parties*.

In-house assets

An in-house asset is a loan to, an investment in, or a lease with, a related party of the fund, or an investment in a related trust of the fund. In general, as a trustee you are restricted from lending to, investing in or leasing to a related party of the fund more than 5% of the fund's total assets.

There are some exceptions, including for business real property that is subject to a lease between the fund and a related party of the fund. There is a limited exemption for certain investments in related non-geared trusts or companies.

See APRA Circular II.D.6, *In-house assets*.

Investments must be made and maintained on an arm's length basis

Investments by trustees must be made and maintained on a strict commercial basis. The purchase and sale price of fund assets should always reflect a true market value for the asset. Income from assets held by the fund should always reflect a true market rate of return.

See APRA Circular II.D.5, *Investments to be on an arm's length basis*.

Special investment rules

Special investment rules may apply to investments made by funds before 23 December 1999. If your fund was established before this date, please contact the Tax Office or your adviser if you need more information.

Business real property of an entity generally relates to land and buildings used wholly and exclusively in a business. Trustees are permitted to acquire up to 100% of the fund's total assets in the form of business real property from 12 May 1998 (previously 40%).

You must ensure the level of investment in business real property still meets the investment strategy of the fund, including diversification of assets, liquidity and maximisation of member returns in the fund. A fund with 100% investment of assets in business real property could struggle to meet these requirements.

As with other superannuation fund investments, there cannot be a charge over a property ie. a loan or covenant.

PAY BENEFITS IN ACCORDANCE WITH THE RULES

As a trustee of a self managed superannuation fund, you need to know the requirements of the SIS Act and the SIS regulations when paying benefits from your fund. The payment standards contained in the SIS Act and the regulations, the sole purpose test and the preservation rules ensure monies in the fund are paid to members only in appropriate circumstances. A member's benefits in a fund may be paid only by being 'cashed' in accordance with the SIS Act.

CASHING OF BENEFITS

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

Compulsory cashing of benefits

Benefits in a regulated self managed fund *must* be paid to the member (that is, cashed) when:

- the member reaches age 65 (but is not yet 75) and is no longer gainfully employed for at least 10 hours each week
- the member reaches age 75 and is no longer gainfully employed for at least 30 hours each week, or
- the member dies.

The benefits may be paid in the form of a lump sum, pension or annuity or a combination of these.

The government is proposing to alter these restriction in the near future.

Voluntary cashing of benefits

A member's benefits in a fund will be classified as one or more of the following:

- preserved benefits
- restricted non-preserved benefits, and/or
- unrestricted non-preserved benefits.

From 1 July 1999, regardless of their source, *all* contributions made by or on behalf of a member and all earnings in respect of the period after 30 June 1999 are preserved benefits.

Preserved benefits may be cashed voluntarily only if a condition of release is satisfied, subject to any cashing restrictions imposed by the SIS Act. Cashing restrictions specify what form the benefits must be taken in. For example, the SIS regulations may state that the benefit must be taken as a non-commutable life pension.

Restricted non-preserved benefits cannot be cashed until the member satisfies a condition of release. They are subject to the same cashing restrictions as preserved benefits, with one exception (see the section on terminating gainful employment).

Unrestricted non-preserved benefits do not require a condition of release to be satisfied, and may be paid upon demand by the member. An example of this type of benefit is where a member has previously satisfied a condition of release and decided to keep the money in the superannuation fund.

PRESERVATION AGE

Preservation age is generally the age at which a person is allowed to access their superannuation benefits if they have stopped working, unless other extenuating circumstances occur and the requirements which permit accessing the benefits early are met.

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

Preservation age is important for a condition of release. Refer to the next page for 'Conditions of release'.

FORM OF BENEFIT PAYMENTS

If member benefits must be cashed, they can be paid in any one or more of the following forms, provided the governing rules of the fund allow it:

- a single lump sum
- an interim lump sum and final lump sum
- one or more pensions
- the purchase of one or more annuities, or
- a combination of two or more of the above.

EARLY ACCESS TO BENEFITS

Early access or release of preserved benefits is permitted only in cases of severe financial hardship or on tightly restricted compassionate grounds. These situations occur only in very limited circumstances.

Setting up or using a self managed superannuation fund to gain improper early access to superannuation is illegal. Significant penalties apply to both the trustee of the fund and the recipient of the early release if a benefit is unlawfully released.

> Be aware of promoters who claim they can help you access your preserved superannuation savings, such as for buying a house, car or a holiday, or for solving your financial problems. These schemes are illegal. Early access to superannuation is allowed only in cases of severe financial hardship or on compassionate grounds. Such requests do not require the services of a promoter. In cases of severe financial hardship, the decision to release benefits will be made by the trustee of the fund. Compassionate grounds should be referred to APRA, who will consider and process such requests **free of charge**.

WHAT ARE THE CONDITIONS OF RELEASE?

Conditions of release are the nominated events, under the SIS Act, that a person must satisfy to enable them to withdraw their preserved benefits and restricted non-preserved benefits from a superannuation fund. You need to be aware that the conditions of release are also subject to the rules of your individual superannuation fund (as set out in the trust deed). It is possible that a benefit may be payable under the SIS Act but cannot be paid under the rules of your fund.

Preserved superannuation is money invested for a member's retirement. It enjoys tax concessions, provided it is not accessed until the member meets certain conditions, which are generally retirement-related.

According to the SIS Act, a member's preserved benefits and restricted non-preserved benefits may be paid out for the following reasons.

1. Retirement

Actual retirement depends on a person's age and, for those under 60 years of age, their future employment intentions. A retired member cannot access their preserved benefits before they reach their preservation age. From 1 July 1999, depending on the member's date of birth, preservation age increased from age 55 to age 60.

A member who has reached their preservation age and is **aged less than 60** retires when the arrangement under which they were gainfully employed ceases and you are reasonably satisfied the member does not intend to be gainfully employed (for at least 10 hours a week) in the future.

When the member has **reached 60 years of age**, their retirement occurs when an arrangement under which they were gainfully employed ceases. There are no 'cashing restrictions' for retirement.

Where a member who is **aged 60 or more** gives up one employment arrangement but continues in another employment relationship, they:

a. may cash all preserved and restricted non-preserved benefits accumulated up until that time, but

b. may 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 aged 60 or more commences 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.

2. Attaining age 65 or more

If a member has reached age 65 (but is not yet 75) and is gainfully employed for at least 10 hours a week, they may cash their benefits at any time. However, if the member is **not gainfully employed** for at least 10 hours a week, the benefits *must* be cashed on reaching age 65 (as outlined under 'Compulsory cashing of benefits' above).

There are no restrictions on payment of benefits.

3. Terminating gainful employment after 1 July 1997 – benefits less than $200

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

4. Terminating gainful employment – benefits of $200 or more

Subject to the governing rules of the fund, where a member has terminated employment with an employer who had contributed to the member's fund, preserved benefits may be paid, but the benefits must 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.

5. 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, ever again to engage in gainful employment of the type for which they are reasonably qualified by education, training or experience. There are no restrictions on payment of benefits.

6. 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 which does not constitute permanent incapacity.

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 must be paid as a non-commutable income stream for the period of the incapacity.

7. Severe financial hardship
Different conditions for release and cashing restrictions apply depending on the age of the member.

- Where the member is under their preservation age plus 39 weeks, *you must be satisfied* that the member:
  - cannot meet reasonable and immediate family living expenses, and
  - has been receiving Commonwealth income support payments for a continuous period of 26 weeks and was receiving that support at the time of applying to the trustee.

  The cashing restriction is that the payment must 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.
- Where the member has reached their preservation age plus 39 weeks, *you must be satisfied* that the member:
  - has been receiving Commonwealth income support payments for a cumulative period of 39 weeks since reaching their preservation age, and
  - was not gainfully employed on a full-time or part-time basis at the time of applying to the trustee.

There are no cashing restrictions if releasing benefits under these circumstances.

8. Compassionate grounds
Benefits may be released on specified compassionate grounds where:

- a member does not have the financial capacity to meet an expense
- release is allowable under the governing rules of the fund, and
- APRA determines, in writing, that release is permitted.

There are specific grounds for release and, once APRA has approved the release, the final decision to release the benefits lies with you as trustee.

9. Temporary residents departing Australia
From 1 July 2002, people who have entered Australia on an eligible temporary residents visa and who subsequently permanently depart Australia can be paid any superannuation they have accumulated. The payment is subject to special withholding tax.

You are required to issue a withholding payment summary to the individual and report details of the amounts withheld annually to the Tax Office. There is more information on our website at **www.ato.gov.au/super**

10. APRA approval
APRA may give written approval for the payment of benefits in restricted circumstances. APRA has the power to approve ancillary benefits and, accordingly, the power to approve circumstances in which those benefits can be paid.

ROLLOVERS AND TRANSFERS
Generally, rollovers of eligible termination payments (ETPs) and transfers do not require a condition of release to be satisfied, subject to the governing rules of the fund.

REPORTING REQUIREMENTS
There are certain **reporting requirements** that trustees of self managed funds must follow when paying benefits to members or rolling over benefits between funds.

Where the benefit is paid as an **ETP**, the trustee must:

1. calculate the eligible service period and ETP components
2. calculate the ETP preservation amounts and other amounts
3. give the member an ETP pre-payment statement (unless an exemption applies)
4. either pay the ETP in cash or pay the ETP to a rollover fund according to the member's instructions (ensuring that the correct amount of tax is withheld if paid in cash)

5. where the ETP is paid in cash, issue an ETP payment summary
6. where an ETP is rolled over, complete an ETP rollover statement, and
7. report the payment to the Tax Office for reasonable benefit limit purposes.

Where the benefit is paid as a **superannuation pension or annuity** there are different reporting requirements. These are covered in the section on 'Meet administrative obligations'.

As a trustee, you have very important responsibilities in determining whether (and when) a member can receive their benefits. You may be subject to significant penalties if you fail to comply with the payment standards.

> All of the conditions of release are subject to the fund's rules. You must ensure the trust deed of the fund allows members to be paid benefits in the above circumstances.

> See the following publications
>
> - *Eligible termination payments (ETP) – a practical guide for superannuation payers who are paying an eligible termination payment to a member* (NAT 2699)
> - *Illegal arrangements to withdraw your superannuation* (NAT 10417)
> - APRA Circular I.C.2, *Payment standards for regulated superannuation funds*.

TYPES OF PENSION BENEFITS

As outlined above, benefits from a superannuation fund may be paid as a lump sum, pension or annuity, provided the member has satisfied a condition of release (for example, retirement). The following four types of income streams qualify as a pension or annuity and were available before 12 May 2004:

- **Lifetime pension** – guaranteed payable for the whole of the primary beneficiary's life. Upon the member's death, the pension ceases or reverts to a designated reversionary beneficiary. The designated reversionary beneficiary is usually the nominated beneficiary.
- **Allocated pension** – the member has their own account where payments are debited and investment earnings are credited. Payments are not fixed but must occur at least annually and are subject to minimum and maximum amounts. The pension or annuity continues until the death of the person or until the account is exhausted. Upon the member's death, the pension ceases or reverts to a designated reversionary beneficiary.
- **Defined pension** – guaranteed payable for a set period of time (for example, 10 years). It often has a residual capital value payable at the end of the term. Upon the member's death, the balance of the pension is paid to a designated beneficiary. A defined pension can be purchased only through a life insurance company.
- **Life expectancy/15-year pension** – payable for the life expectancy of the primary beneficiary. If the life expectancy of the primary beneficiary is less than 15 years, the pension is payable at least annually throughout the period of the primary beneficiary's life expectancy. If the life expectancy is 15 years or more, the pension must be paid for at least 15 years but for no more than the life expectancy of the primary beneficiary. The pension does not have a residual capital value and cannot be transferred to a person other than the reversionary beneficiary on the death of the primary beneficiary.

The allocated pension is the most common income stream product as it is generally more flexible in terms of commuting amounts to a lump sum and in varying the annual income from year to year. Where an amount is commuted, you must report the ETP to the Tax Office.

> The Government has gazetted regulations which will affect the types of pensions a self managed superannuation fund will be able to pay. As of 12 May 2004, the only new pensions a self managed superannuation fund will be able to pay are an allocated pension and a pension purchased from life insurance companies.
>
> Under new measures announced in June, retirees who were members of a self managed superannuation fund on 11 May 2004, will be able to start a life pension until at least 30 June 2005.
>
> The Government has announced a new type of pension called a market linked pension which will be available from 20 September 2004. Self managed superannuation funds will be able to pay these pensions.
>
> Where a self managed superannuation fund was paying a defined benefit pension to a member before 12 May 2004, it can continue to do so after that date. There is also a provision in the regulations for a defined benefit pension to be paid after that date, where an entitlement to a defined benefit pension was already established.

Actuarial certificates

Requirements under the *Income Tax Assessment Act 1936*

Where a fund provides a pension, including an allocated pension, you have to obtain an actuarial certificate to qualify for exemptions from tax on the fund's income from assets used to make current pension payments as they fall due. There are two types of certificates, depending on whether the assets being used to provide the pension payments are classed as segregated or unsegregated:

- **Segregated assets** are assets of the fund that are used to generate income in order to fund current pension liabilities and are segregated from other assets in the fund. An actuarial certificate is required and may cover a maximum of three years.
- **Unsegregated assets** are assets used to fund pension liabilities that are not segregated. An actuary is required to determine what proportion of the fund's income relates to the current pension liabilities and is therefore exempt from tax. A new actuarial certificate is required each year.

It is proposed to remove the requirement to obtain an actuarial certificate for exempt current pension income purposes.

Requirements under the SIS Act

Where a fund provides a pension (other than an annuity purchased through a life insurance company or an allocated pension), you have to obtain an actuarial certificate confirming that the fund will be able to meet its pension liabilities. This certificate is required every year.

Characteristics of an allocated pension

The characteristics of an allocated pension include the following:

- There must be at least one pension payment each financial year.
- The pension payment must be within clearly defined parameters, which dictate a minimum and maximum annual level of the pension. These levels are designed to ensure that tax is not avoided and that pension funds are not exhausted prematurely.
- Part of the pension may be commuted or converted to a lump sum at any time. Any such lump sum payment is taxed as an ETP.
- The income relating to the assets within the fund that are being used to create the income stream for the allocated pension member are generally tax-free (including capital gains tax to a certain extent), providing they satisfy prescribed criteria.
- The capital value of the allocated pension at commencement is counted towards an individual's lump sum reasonable benefit limit. In most instances, the income stream paid to the member is eligible for a 15% pension rebate, unless the benefits are more than the person's lump sum reasonable benefit limit.
- An allocated pension may be purchased only from superannuation benefits.
- The pension cannot be assigned to a third party and the member cannot use the pension as security for a borrowing.

Whether a self managed superannuation fund can pay an allocated pension depends on the governing rules of the fund's trust deed. If at the time the fund elected to become a regulated fund the trust deed stated that the sole purpose of the fund was to provide age pensions, the fund can provide an allocated pension. If the trust deed does not provide for income stream payments, an amendment to the deed is required (subject to amending powers).

In paying an allocated pension or other types of pensions, as a trustee you have the following administrative obligations:

- register the fund for pay as you go withholding (PAYG) and report any amounts withheld to the Tax Office according to the PAYG system
- lodge a reasonable benefit limit reporting form with the Tax Office when the fund starts paying a benefit as an allocated pension
- obtain a tax file number declaration from the member (this declaration allows the member to quote a tax file number and supply information to determine the withholding rate)
- issue an end-of-year payment summary to the member
- if part of the allocated pension is commuted, issue an ETP payment summary, and
- obtain the relevant actuarial certificates as required under the *Income Tax Assessment Act 1936* and the SIS Act.

> Before commencing to pay an allocated pension or other pension or annuity, we recommend that you seek the advice of a professional adviser such as an accountant, financial planner or actuary.
>
> There is more information about paying allocated pensions and the requirement for actuarial certificates on our website at **www.ato.gov.au/super**

MEET ADMINISTRATIVE OBLIGATIONS

There are a range of administrative obligations imposed on self managed superannuation funds under the law. As a trustee, you are responsible for ensuring all these obligations are met. Failure to do so may result in you being fined and may also jeopardise the fund's eligibility for tax concessions.

ANNUAL INCOME TAX AND COMPLIANCE RETURNS

All self managed superannuation funds must lodge annual income tax and superannuation compliance information with the Tax Office using the **fund income tax and regulatory return** for the relevant year.

The lodgment and payment date for all self managed funds that prepare their own income tax and regulatory return is **31 October** each year.

The lodgment and payment dates for all tax agent prepared income tax and regulatory returns for self managed funds are in accordance with the tax agent lodgment program. An up-to-date program is available from our website at **www.ato.gov.au/super** or by phoning **13 10 20**.

All self managed funds are required to have the financial accounts and statements of the fund audited each year by an approved auditor (see 'Appoint an approved auditor').

You must not lodge the income tax and regulatory return until after the audit of the fund has been finalised, as information from the audit report is required to complete the regulatory return.

You need to be aware that failure to lodge your fund's annual return by the due date can result in penalties and/or the loss of the fund's tax concessions.

EXAMPLE

A fund is established on 10 June. The fund must lodge an income tax/regulatory return, and obtain an audit report from an approved auditor and lodge it with the return, for that financial year.

EXAMPLE

Our records showed that a trustee of a self managed superannuation fund had failed to lodge the regulatory return of the fund. A letter was sent to the trustee advising of their requirement to lodge the return. No response was received. A reminder letter was sent requesting the lodgment of the return. As the regulatory return was still not lodged the case was referred for prosecution action to have a maximum penalty of $5,500 imposed.

EXAMPLE

When conducting an audit of a self managed superannuation fund, the Tax Office discovered that a benefit was paid to a member of the fund. As the member would exceed their reasonable benefit limit, the trustee decided not to report the benefit so the member wouldn't have to pay additional tax. The trustee intentionally disregarded the law so as to save tax for the member. The case was referred for prosecution and, as it was the trustee's first offence, a penalty of $2,200 was imposed by the court.

SUPERANNUATION SURCHARGE

You are required to report all member details, including any surchargeable contributions, to the Tax Office by **31 October** following the end of each financial year. You can provide this information electronically or manually lodge a *Superannuation member contributions statement* (MCS). We use this information to determine whether members of the fund have a superannuation surcharge liability in a particular year. We notify you of the surcharge assessed for each member.

You are required to pay any surcharge liability within one month of receiving the assessment.

A member's tax file number is vital for surcharge administration and the legislation allows you, as a trustee, to use a member's tax file number for surcharge purposes. It is therefore important for members to quote their tax file number for easier administration of the surcharge and to avoid unnecessary surcharge liabilities.

Superannuation surcharge – self-assessing

Only self managed funds that can self-assess the surcharge liability for each and every member of the fund can provide this information to the Tax Office after 31 October. In order to do this they must lodge the information electronically at the same time as they lodge the fund income tax and regulatory return. Any self-assessed liability must be paid within seven days of lodging the return.

REASONABLE BENEFIT LIMITS

You are required to report information about benefits (superannuation pensions, annuities and ETPs) paid to members. You must send this information to the Tax Office within 14 days of the end of the month in which you make the payment. For example, a benefit payment made on 1 July would have to be reported by 14 August. Information can be lodged electronically or in paper form.

Surchargeable contributions consist of:

- employer-sponsored contributions (for example, superannuation guarantee payments)
- tax deductible contributions under section 82AAT of the *Income Tax Assessment Act 1936*
- employer ETPs in relation to the post-20 August 1996 service period rolled over after 1 July 1997, and
- allocated surplus amounts after 1 July 1997.

SUPERVISORY LEVY

You must pay the annual $45 superannuation supervisory levy to the Tax Office by the lodgment date for your fund's income tax and regulatory return. A levy payment advice form can be obtained from our website at **www.ato.gov.au/super**

RECORD KEEPING REQUIREMENTS

We have identified poor and inadequate record keeping as a major problem for small superannuation funds. Make sure you give this area your detailed attention.

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 the fund
- an annual operating statement and an annual statement of the fund's financial position, and
- copies of all annual returns lodged.

You must keep the following records for a minimum of *10* years:

- minutes of trustee meetings and decisions (where matters affecting the fund were discussed)
- records of all changes of trustees
- members' written consent to be appointed as trustees, and
- copies of all reports given to members.

Once you have established your fund, every year you must lodge a fund income tax and regulatory return and *Superannuation member contributions statement* (MCS) (including the year the fund is established), pay the supervisory levy and prepare an audit report, regardless of whether there are any assets in the fund or any transactions have been made.

APPOINT AN APPROVED AUDITOR

Please note that from 1 July 2004 the approved auditor will be required to report contraventions that negatively affect the interests of the member(s) directly to the Tax Office as well as to the trustee, at the same time.

As a trustee of a self managed superannuation fund, you are required to appoint an approved auditor to audit the operations of the fund for each year or part year the fund is in existence. The auditor is required to assess the fund's overall compliance with the SIS Act (compliance audit) and the fund's financial statements (financial audit).

You must provide the auditor with any relevant documentation requested to enable the auditor to finalise the audit. The approved auditor must provide an audit report in the approved form to you prior to the due date of the fund's income tax and regulatory return. Some of the information in the audit report must be used to complete the regulatory return.

Auditors must bring to the attention of trustees and the Tax Office any concerns about the fund's financial position or its compliance with the SIS Act. Under new legislation, the *Superannuation Safety Amendment Act 2004*, auditors must advise the Tax Office of certain SIS Act contraventions that they may become aware during an audit. This is in addition to the existing auditor obligation to report all contraventions to the trustees.

An approved auditor may be a registered company auditor, the Auditor-General of the Commonwealth or of a state or a territory, or a member or fellow of one of the following professional organisations.

Professional organisation	Manner of association
Australian Society of Certified Practising Accountants	Member
The Institute of Chartered Accountants in Australia	Member
National Institute of Accountants	Member
Association of Taxation and Management Accountants	Member or Fellow
National Tax and Accountants Association Ltd	Fellow

AUDITOR INDEPENDENCE

The SIS Act has no specific requirement for auditor independence however a lack of independence may be a factor contributing to a SMSF's failure to meet legislative guidelines.

Auditors need to follow the standards as outlined by their professional bodies. The code of Professional Conduct of the Australian Society of Certified Practising Accountants (CPA) and the Institute of Chartered Accountants in Australia (ICAA) can be a useful guide. Professional Statement F1 'Professional Independence' provides guidance to members of CPA and ICAA. Threats to independence in this guide include:

- **self review (F1 Appendix 1.24) –** where the person who prepared the fund's accounts also conducted the fund's audit.
- **self interest (F1 Appendix 1.23) –** this could occur, for example, if the auditor benefits financially from an investment the client has made (eg. shares in the same company).
- **intimidation (F1 Appendix 1.27) –** this could occur, for example, if a trustee threatens to stop using the auditor's services for related work (eg. the auditor may be engaged to provide other services such as financial advice or preparing the accounts of other entities belonging to the trustee).

It is in the interest of the trustee to ensure the highest possible standards of professional conduct from the Approved Auditor.

Trustees can do everything to fulfil the requirements of the SIS Act except audit the fund. They *must* appoint an auditor who is not a trustee to do this.

WIND UP A SELF MANAGED SUPERANNUATION FUND

As a trustee of a self managed superannuation fund, you must notify the Tax Office in writing if a decision is made to close the fund. Regulation 11.07A of the SIS regulations states that trustees must advise the Tax Office in writing when a fund is winding up. The wind up information must also be included in the **fund income tax and regulatory return**.

You should ensure that all tax and reporting obligations have been met at the time of winding up the fund. These obligations include:

- lodging income tax and regulatory returns with the relevant wind-up labels completed
- lodging all *Superannuation member contributions statements* (MCS) for each member
- reporting any benefits paid by the fund to its members for reasonable benefit limit purposes
- issuing eligible termination payment (ETP) summaries where any ETPs have been paid to members, and
- paying any outstanding tax liabilities and the supervisory levy.

You must also ensure that all assets and members have left the fund and that everything has been done in accordance with the trust deed.

PENALTIES AND COMPLIANCE

03

A range of penalties apply to a self managed superannuation fund or a trustee of a fund depending on which obligation has been contravened. This section provides a summary of the main sanctions used when breaches occur.

PENALTIES

REGULATORY PENALTIES

To protect members' retirement incomes, the Tax Office regulates self managed funds to ensure they comply with both the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS regulations). Failure to comply is known as a 'contravention' of the Act and/or regulations and may result in the Tax Office taking enforcement action.

- Section 133 of the SIS Act allows the Tax Office to suspend or remove a trustee or all the trustees of a self managed fund. If the Tax Office suspends a trustee, section 134 of the SIS Act requires the Tax Office to appoint a constitutional corporation or an individual to act as the trustee during the period of suspension. The appointee is called the acting trustee. The Tax Office then has the power under section 141 of the SIS Act to direct the acting trustee to do or not to do one or more specified acts or things in relation to the fund, which may include winding up the fund or disqualifying the trustees.
- Section 120A of the SIS Act allows the Tax Office to disqualify a trustee as not being a fit and proper person.
- Under section 264 of the SIS Act, the Tax Office may, by written notice given to the trustee or investment manager, direct them not to dispose of or otherwise deal in a particular way, any of the assets of the fund until the notice is revoked.
- A complying fund that has been made non-complying can suffer serious tax consequences. The fund's total assets (less any member contributions for which no tax deduction has been claimed) are subject to tax at the highest marginal rate. In addition, any income in a year in which a fund is non-complying is taxed at the highest marginal rate.
- Setting up or using a self managed fund to gain improper early access to superannuation is illegal. Trustees who knowingly allow improper access to benefits may suffer severe penalties, including heavy fines and imprisonment. This action may also result in the fund being declared non-complying and the fund's assets being taxed at the top marginal tax 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 SIS Act are $220,000 (civil proceedings) and/or five years imprisonment (criminal proceedings).

Using your self managed fund to gain early access to your superannuation benefits is a breach of the law. As a trustee, you will face a range of penalties. As a member of the self managed fund, any benefits you access will lose their tax concessions and you are likely to face higher taxes and additional penalties.

CONTRIBUTION SURCHARGE PENALTIES

If trustees do not meet their surcharge obligations (under section 13, 14, 15B or 35 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*), the Commissioner can issue a contravention notice.

The prescribed penalty is five penalty units for each week or part of a week during which the contravention continues. A penalty unit is $110 for individuals or $550 for a corporation. This means the penalty is $550 for individuals and $2,750 for corporations for each week or part of a week in which the contravention continues.

INCOME TAX PENALTIES

An **administrative penalty** may be applied where a trustee makes a statement (or fails to make a statement) that results in an underpayment of tax.

A penalty may apply if a superannuation fund does not lodge an income tax and regulatory return and/or fails to make a statement.

As a trustee, you are liable for an administrative penalty if you make a statement to the Commissioner that results in a 'shortfall amount' and:

- the statement is false and misleading
- you take a position that is not reasonably arguable
- you fail to make a statement when required, or
- you do not follow a private ruling.

Depending on your conduct with respect to 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 the trustee:

- voluntarily disclosing information
- hindering the Commissioner's enquiries, and/or
- repeating the error.

A **general interest charge** is a single rate of interest for all tax where a payment 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 following amendment of an assessment
- an underpayment of tax following a revision of an activity statement, and
- failure to lodge penalties that remain unpaid after the due date.

The general interest charge 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.

TAX OFFICE COMPLIANCE APPROACH

Since November 1999 we have focused on education and we will continue to do so. However, we are concerned about how some self managed superannuation funds are managed, so we are increasing our audit activity on high-risk funds to ensure all obligations are met. We want to make sure trustees, auditors, tax practitioners and financial planners are aware of the rules governing self managed superannuation funds.

Where we find that trustees are genuinely making an effort to meet their obligations, we will work with them to rectify any breaches. However, we will take a firm approach with trustees who fail to make a genuine effort to comply, or who set out to deliberately avoid meeting their legal obligations. As always, we will take a person's individual circumstances into account.

Our approach to ensuring that trustees take responsibility for protecting and investing members' retirement benefits appropriately is based on our compliance model.

This model reflects the government's intention that trustees must take greater responsibility in managing the compliance of their fund. It also recognises the importance of the role of intermediaries (for example, auditors, actuaries, tax agents and financial planners). We are working with trustees and intermediaries to develop cooperative strategies and support tools.

We use a four-step graduated approach to improving compliance, as outlined below.

1. EDUCATION, COMMUNICATION AND CLIENT SERVICE

We recognise that the majority of self managed funds are complying with the rules, or would be, if they were made aware of the rules.

Using this knowledge, our approach is based on self-regulation.

Our aim is to achieve further compliance improvement, mainly through education, fund reviews and client service, to help self managed funds self-regulate.

Our objective is to encourage self-management, self-regulation and self-assessment.

We are committed to educating and helping trustees to voluntarily comply with the requirements of the SIS Act.

2. SELF-REGULATION

We promote self-regulation rather than enforced regulation.

Through our consultation process, we have developed practical materials to help trustees better understand their responsibilities. There are many publications now available to trustees of self managed funds, including a series of information products, trustee checklists and this guide.

We use a number of communication channels (for example, the internet and email, industry publications and seminars) to convey relevant information to trustees.

3. ASSISTED REGULATION

We recognise that some funds will require assistance to comply.

Our compliance action generally focuses on making sure that trustees of self managed funds are aware of their responsibilities, and understand the rules and the reasons for the rules.

Where we identify non-compliance, and it is appropriate, we initially use targeted education to encourage trustees to change their behaviour and comply. This pro-active approach aims to encourage self-regulation and enable the trustees to quickly address any compliance problems.

Putting in place an enforceable undertaking may be another method used to ensure any serious compliance problems are addressed. An enforceable undertaking is a written undertaking between the trustees and the Tax Office detailing the agreed action to be taken to deal with the contravention.

4. ENFORCED REGULATION

We also recognise that some self managed funds may need a motivator to comply and some may need enforced regulation.

In those cases where funds deliberately contravene the law in a serious manner, we undertake enforcement action. Depending on the severity of the breach, such action may include:

- removing a trustee
- disqualifying a trustee
- freezing a fund's assets
- declaring the fund to be non-complying (whereby it loses valuable tax concessions)
- prosecuting trustees for failing to obey the law.

As the regulator of self managed superannuation funds, 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.

EXAMPLE

The Commissioner made a fund non-complying in the following circumstances.

A married couple set up a self managed superannuation fund, invested in a related trust – a trust managed by the trustees of the fund – then used the money to pay off the mortgage on their home.

We sent a letter to the trustees explaining that they had breached the SIS Act's sole purpose test as the members used the money in the fund to pay for their own residential property.

They had also breached the SIS Act by receiving financial assistance from the fund. When the trustees did not respond, we made the fund non-complying. This meant that the fund was taxed at 47%, resulting in the fund owing significantly more that what would have been owed had it been complying and taxed at 15%.

SELF MANAGED SUPERANNUATION FUND COMPLIANCE PROGRAM

The self managed superannuation fund compliance program will be available at the end of July on our website at **www.ato.gov.au/super**

This framework explains the approaches we adopt to ensure that self managed funds are meeting their superannuation, income tax and surcharge obligations.

It explains to trustees, auditors and parties involved in the superannuation industry the type of activities that attract our attention, the action we take to ensure that obligations are being met, and our approach to enforcement where we identify failure to comply with the law.

WHAT THE TAX OFFICE EXPECTS OF TRUSTEES DURING AN AUDIT

The Tax Office expects that during an 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, and
- be truthful and honest in your dealings with us.

COMPLIANCE CHECKLIST FOR TRUSTEES

04

The checklist in this section is designed to draw your attention to details that you, as a trustee of a self managed superannuation fund, must be aware of in the day-to-day operation of your fund. It does not cover every detail for managing your self managed fund. Your fund's compliance is a matter that can be determined only at a given point in time and considering all the facts at that time.

HOW TO USE THE CHECKLIST

The checklist highlights some of the more important rules under the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS regulations) that you, as a trustee, must comply with. We recommend that you consult the checklist regularly to ensure you are complying with all requirements in running your self managed fund. If we identify that you have contravened your legislative requirements, you may be penalised and lose your tax concessions. For more information see the section on 'Penalties' in the previous section.

If, when using this checklist, you identify a possible problem with your fund or need more information:

- seek advice from your tax agent, accountant, financial planner or adviser
- phone **13 10 20**
- phone **13 28 60** to obtain a fax, or
- visit our website at **www.ato.gov.au/super**

CHECKLIST

Trust deed

My fund's trust deed must:

- [ ] be properly executed
- [ ] state the name of the fund
- [ ] include a statement that the fund must appoint a corporate trustee or that the sole or primary purpose of the fund is to provide old age pensions.

It also sets out:

- [ ] who the trustees are
- [ ] how trustees are appointed and how they can be removed from the fund
- [ ] the powers of the trustees

Deeds may also cover:

- [ ] that the members agree to act as trustees
- [ ] confirmation that the trustees are not 'disqualified persons'
- [ ] that trustees cannot accept payment for services as trustees
- [ ] paying benefits to members
- [ ] what contributions the fund can accept
- [ ] who can be members
- [ ] winding up the fund.

Overall:

- [ ] I have read and understand my trust deed
- [ ] I know the deed sets out the rules that all the trustees of the fund must comply with.

! As a trustee, you are bound by your deed and responsible for any contravention of the rules set out in the deed. For these reasons, it is very important that you know the contents of the deed.

Trustees and members

My fund is a self managed superannuation fund because it meets all these requirements:

- ☐ there are fewer than five members in the fund
- ☐ all members of the fund are trustees of the fund (or directors of the trustee company)
- ☐ each individual trustee of the fund, or director of the trustee company, is a member of the fund
- ☐ no member of the fund is an employee of another member of the fund, unless those members are related
- ☐ no trustee of the fund receives any remuneration for their services as a trustee.

OR, for single member funds:

- ☐ no trustee of the fund receives any remuneration for their services as a trustee
- ☐ the member is the sole director of the trustee company
- ☐ the member is related to the other director of the trustee company (and there are only two directors of that company)
- ☐ the member is not an employee of the other director of the trustee company (and there are only two directors of that company)
- ☐ the member is one of only two trustees, of whom one is the member and the other is a relative of the member, or
- ☐ the member is one of only two trustees and the member is not an employee of the other trustee, and
- ☐ no trustee of the fund receives any remuneration for their services as a trustee.

There are some exceptions to these general rules, for example, where a member is under a legal disability.

Electing to be regulated

- ☐ An election that the SIS Act is to apply to the fund was lodged with the Tax Office within 60 days of establishing the fund.

A fund must elect to be a regulated superannuation fund and comply with the requirements of the SIS Act to ensure it is a complying superannuation fund. If it does not, the fund may not receive concessional tax treatment and/or other sanctions may be imposed on the trustees of the fund for contravening the SIS Act where the fund is a regulated superannuation fund.

Tax file number

- ☐ The fund has its own tax file number.

Australian business number

- ☐ The fund has its own Australian business number (ABN).

Although it is not compulsory that your fund has its own ABN, it may be beneficial to the fund to obtain an ABN.

Separate bank account

- ☐ A separate bank account has been opened so that money belonging to the fund can be kept separate from accounts of the members, the trustees and related employers (employer-sponsors).

This is very important to prevent the fund contravening the SIS Act rules and also assists trustees in preserving and protecting their retirement income.

Accepting contributions

- ☐ The trustees are aware of the SIS Act rules that relate to gainful employment, and age restrictions for accepting contributions.
- ☐ The trustees are aware that funds can accept contributions only in accordance with their fund's deed. The deed can also impose restrictions on the fund's ability to accept contributions so trustees need to decide what contributions they wish to accept and to ensure the fund's deed allows those contributions to be accepted.
- ☐ The trustees are also aware they cannot accept contributions from related parties in the form of assets other than money (known as 'in specie' contributions), except assets that are expressly allowed to be acquired from related parties under the SIS Act.

According to my trust deed, the fund:

- ☐ can accept contributions from a member's employer
- ☐ can accept contributions from members
- ☐ can accept rollover payments
- ☐ can accept contributions in respect of a member's non-working spouse
- ☐ can accept contributions in respect of minors.

Investment strategy

My fund has a medium to long term investment strategy that considers:

- ☐ a wide range of investment possibilities, including such things as:
  - – cash-based, low-risk investments
  - – growth investments, for example, shares
  - – combinations of investment types
- ☐ the return on investments compared with risks involved
- ☐ the ease of converting assets to cash in order to meet payments due by the fund
- ☐ members' ages and individual retirement benefit needs
- ☐ overall, the aim of my fund's strategy is to increase members' benefits over time.

Contravention of the requirement to have an acceptable investment strategy can result in the trustees being fined or sued for loss or damages. The fund can lose its compliance status and, as a result, its concessional rate of tax.

Investing

The assets of the fund are kept separate at all times from those of:

- ☐ the members
- ☐ the trustees
- ☐ related employers.

- ☐ Each member has a separate account in the fund.
- ☐ The fund's accounting and banking records are kept entirely separate from those of members/trustees/employers.
- ☐ All transactions by the fund are conducted on a strict commercial basis.
- ☐ The fund can demonstrate that market value has been paid and received on all transactions.

These requirements are very important to prevent the fund:

- contravening the sole purpose test, and
- exposing the members' retirement benefits to unnecessary risk.

Investment restrictions

The trustees can demonstrate that they have not:

- ☐ lent money to or provided financial assistance using the resources of the fund to a member or member's relative
- ☐ borrowed money
- ☐ acquired assets from 'related parties' of the fund. Related parties include all members of the fund and their associates and all employer-sponsors of the fund and their associates
- ☐ leased, loaned or invested more than 5% of the fund's total assets in related parties of the fund. These assets are known as 'in house assets'.

> ! There are limited exceptions to the above restrictions and trustees should refer to *Self managed superannuation funds – investment strategy and investment restrictions* (NAT 2063) for a more detailed explanation.

Record keeping

Wherever possible, responsible accounting practices will be adopted by the trustees, such as:

- ☐ joint signatories to signing cheques
- ☐ separating of accounting functions, for example, receipts and payments
- ☐ segregation of duties

Trustees must keep the following records for at least five years:

- ☐ accurate and accessible accounting records that explain the transactions and financial position of the fund.
- ☐ an annual operating statement and an annual statement of the funds financial position
- ☐ copies of annual returns lodged

Trustees must keep the following records for at least 10 years:

- ☐ minutes of all meetings
- ☐ records of changes of trustees
- ☐ records of changes of directors, if corporate trustees
- ☐ written consents by members to be appointed as trustees

Penalties apply if trustees fail to keep the records listed above for the required period.

Paying a benefit

The trustees:

- ☐ will pay benefits only in accordance with the SIS Act, SIS regulations and the trust deed of the fund
- ☐ are aware that the SIS Act sets payment standards based on events such as reaching a certain age and termination of employment, and can place restrictions on how a benefit can be paid.

All paperwork in relation to the following will be completed:

- ☐ eligible termination payments (ETPs)
- ☐ withholding tax from ETPs and superannuation pensions and annuities and remitting the tax to the Tax Office
- ☐ reasonable benefit limits.

Benefits should be checked for accuracy before payment. The payment standards of the SIS Act work with the sole purpose test and the preservation rules to ensure monies are paid to members only in appropriate circumstances.

Annual requirements

The trustees will:

- ☐ appoint an approved auditor to examine the records at the end of the financial year
- ☐ lodge the combined income tax and regulatory return (Form F) with the Tax Office by the due date
- ☐ pay the supervisory levy and the fund's tax liability when due
- ☐ comply with surcharge requirements.

There are penalties for failing to meet the annual requirements listed above.

Tax matters

The trustees will keep records of:

- ☐ deductions claimed for administrative and operating expenses of the fund
- ☐ sales/purchases of assets for capital gains tax purposes
- ☐ tax file numbers of members
- ☐ deductions claimed for the provision of death and disability benefits for members.

ADDITIONAL REFERENCES

Self managed superannuation funds (SMSF) – Information products

Product ID	Product name	Description
NAT 2057	*Introduction to superannuation – for self managed superannuation funds*	Describes how superannuation is a long term savings arrangement that operates primarily to provide income for retirement.
NAT 2058	*What is a self managed superannuation fund?*	Defines what a self managed superannuation fund is
NAT 2059	*Setting up a self managed superannuation fund*	Provides a guide to the steps involved in setting up a fund. Topics covered include: > Obtaining a trust deed > Corporations basis or pensions basis > Appointing trustees > Electing to become a regulated fund, and > Obtaining a tax file number (TFN) and Australian business number (ABN)
NAT 2060	*Duties of trustees*	Trustees of self managed superannuation funds are the ones who are ultimately responsible for the running of their fund. It is imperative that each trustee understands the duties, responsibilities and obligations of being a trustee.
NAT 2061	*Sole purpose test*	Explains the object of the sole purpose test is to ensure that self managed superannuation funds are maintained for the purpose of providing benefits to members upon their retirement.
NAT 2062	*Acceptance of contributions*	Explains to trustees of self managed superannuation funds the minimum standards relating to the acceptance of contributions prescribed under the *Superannuation Industry (Supervision) Act 1993*. Current as at November 2002.
NAT 2063	*Investment strategy and investment restrictions*	A key area of responsibility for trustees of self managed superannuation funds is investment management
NAT 2064	*Administrative obligations*	There is a range of administrative obligations imposed on self managed superannuation funds under the law.
NAT 2065	*Our compliance approach*	Self managed superannuation funds with fewer than 5 members must comply with the rules and are encouraged to self regulate.
NAT 2067	*Election and return lodgment – APRA or the Tax Office*	Explains the process for election and annual return lodgments and who regulates and manages the process – Tax Office or APRA.
NAT 2069	*Checklist for self managed superannuation funds (long version)*	The checklist highlights some of the more important rules under the *Superannuation Industry (Supervision) Act 1993* that a trustee must comply with
NAT 2070	*Preservation rules*	Trustees of self managed superannuation funds are required to comply with the preservation rules set out under the *Superannuation Industry (Supervision) Act 1993*.
NAT 2071	Payment of benefits	Trustees of self managed superannuation funds need to know the requirements of the *Superannuation Industry (Supervision) Act 1993* when paying benefits from their fund.

Product ID	Product name	Description
NAT 4591	*Actuarial certificates*	Outlines the two distinct purposes for which a self managed superannuation fund may need to obtain an actuarial certificate in relation to pensions.
NAT 6854	*Checklist for self managed superannuation funds (short version)*	This short form checklist is designed to draw attention to details that a trustee of a self managed superannuation fund must be aware of in the operation of a fund.
NAT 6733	*Allocated pension payments*	*The Superannuation Industry (Supervision) Regulations 1994* requires a pension payment at least annually. This information sheet explains allocated pension payments for self managed superannuation funds.
NAT 6732	*Allocated pension deductions and rebates*	Explains if a recipient receives a deductible amount and a tax offset (rebate) on an allocated pension/annuity
NAT 6730	*Tax implications for allocated pensions*	If your fund pays a pension it can avail itself of one of two methods under the *Income Tax Assessment Act 1936*, to exempt from tax, that 'proportion' of the fund's income earned in respect of its current pension liabilities.
NAT 6731	*Payment for allocated pensions*	Provided that the trust deed allows for the payment of benefits as an income stream, the self managed superannuation fund can pay for the allocated pension.
NAT 6734	What is an allocated pension?	An allocated product can be treated as a pension by meeting specific conditions under *Superannuation Industry (Supervision) Regulations 1994*. An allocated pension can be set up within a superannuation fund to pay a benefit as income.
NAT 7236	*Penalties*	Discusses penalties that may apply to self managed superannuation funds who contravene the *Superannuation Industry (Supervision) Act 1993*.
NAT 10417	*Illegal arrangements to withdraw your superannuation*	Explains the Tax Office's concerns that schemes involving self managed superannuation funds are being used to gain improper early access to preserved superannuation and the consequences of being involved.

Self managed superannuation funds (SMSFs)— Circulars

Product ID	Product name	Description
NAT 8311	Australian Taxation Office Superannuation Circular 2003/1—valuation of assets	The Tax Office intends that self managed superannuation funds should use market values for all valuation purposes. This includes valuations for determining the purchase price of a pension and the use of market value accounting for all financial statements. The purpose of this Circular is to provide the basis for conducting these valuations.

MORE INFORMATION

If you need more information about the responsibilities of trustees of self managed superannuation funds, you can:

- visit our website at **www.ato.gov.au/super**
- phone **13 10 20**
- obtain a fax by phoning **13 28 60**, or
- write to
  Superannuation Business Line
  Australian Taxation Office
  PO Box 277
  WTC VIC 8005

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77.** If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727.**

For more information on Australian Prudential Regulation Authority (APRA) circulars referred to in this guide:

- visit the APRA website at **www.apra.gov.au**
- phone **1300 13 1060**.