

SMSF Trustee Penalty Regime

As trustee of your Self Managed Super Fund, you are responsible for ensuring that the fund complies with all rules as set out in law and within the trust deed. Furthermore, it is important that you understand the consequences of non-compliance with those rules.

This is an update on the current powers of the Australian Taxation Office and the potential effect that those powers can have on the trustees of an SMSF.

Since 1 July 2014, legislative changes provide the ATO with new ways to respond to compliance breaches of the SIS Act. Previously, the ATO was limited to applying penalties on the extreme end of the scale (even for minor breaches). The new penalties include:

- Education directions - the ATO can require a trustee to undertake further learning where a compliance breach occurred due to a lack of knowledge.
- Rectification directions – the ATO can require a trustee to undertake specific action within a period of time (usually 6 months) to rectify the breach.
- Administrative penalties - the ATO can impose fines (from \$900 up to \$10,800 per offence) if an SMSF breaches specific provisions of the SIS Act.

It is important to be aware that these penalties are applied per trustee. Therefore, an SMSF with a corporate trustee will only pay a fine once, whereas an SMSF with individual trustees will have the fine applied to each individual. Any fine is payable by the individual/director and cannot be reimbursed by the SMSF.

In addition to the above, the ATO has the power to:

- disqualify a trustee;
- freeze or wind-up an SMSF;
- issue a notice of non-compliance (resulting in severe tax consequences); and
- seek civil and/or criminal penalties through the courts.

If you were to ever receive a penalty notice from the ATO that you felt was unfair, you can make a request in writing for the penalty direction to be varied. The ATO will then make a decision and provide a response within 28 days.

If you have any questions, please contact us on (02) 4927 0295 or mail@ballingers.com.au