

# SMSF TRUSTEE PENALTY UNITS INCREASE

THE ATO HAS ONCE AGAIN RAISED THE COST OF EACH PENALTY UNIT TO NON-COMPLYING SMSFS; **THIS TIME BY NEARLY 17 PER CENT.**

**WORDS**  
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The Australian Taxation Office has many weapons in its arsenal when it comes to regulating self-managed super funds. One of the most frequently used has just increased in cost by almost 17 per cent for defaulting trustees of SMSFs.

The ATO's ultimate weapon of mass destruction, similar to what the nuclear deterrent was during the Cold War, is making an SMSF non-complying, which can result in members losing almost 50 per cent of the value of their fund in penalties.

The ATO tends to make an SMSF non-complying only in extreme circumstances when trustees refuse to take corrective action. The new penalty regime was meant to apply from July 1, 2013, but due to the wrangling and political manoeuvring that normally afflicts Canberra, was not introduced until July 1, 2014.

The regime gives the commissioner of the ATO the power to:

- impose administrative penalties without reference to a court
- require trustees to take specific action to correct breaches
- require trustees to undertake educational activities.

The penalties the ATO can impose are a multiple of the Commonwealth penalty units, with the multiple depending on the seriousness of the offense. These penalties range from five penalty units up to a maximum of 60 penalty units.

The contraventions for which five penalty units are imposed include such minor breaches as not appointing an investment manager in writing, not complying with rectification directions, not providing information to the regulator, and not completing survey forms or complying with education directions.

Contraventions where 10 penalty units could be imposed include the failure to prepare and retain: specified accounting statements; minutes or records for individual and corporate trustees; documentation of elections or changes of trustees; trustee duties declarations; and members' benefit reports.

The more serious offenses, which result in a penalty of 60 units, include providing financial assistance to members, borrowing funds, breaching the in-house asset rules and failure to notify the ATO of significant events, such as a fund no longer meeting the legal definition of an SMSF.

The value of each penalty unit had not been increased for 15 years prior to December 2012, but at that time it was increased to \$170. It is obvious that the government recognised it was missing out on a valuable revenue source, as the value of penalty units increased in July 2015 to \$180, and now from July 1, 2017, the value increased to \$210.

Under the penalty regime, the fines are imposed on either the individual trustees of the SMSF or the directors of a corporate trustee. With the penalty unit increasing to \$210, the fines now range from \$1050 up to \$12,600.

The ATO does not publish specific information showing how many fines it has imposed on trustees each year and for how much. However, an ATO spokesman was able to confirm that, "In 2016-17, approximately \$1.6 million in administrative penalties were imposed on SMS trustees who were found to have contravened the superannuation laws, particularly inappropriate use of fund assets and related party dealings".

Although the ATO has the ability to impose penalties, the spokesman said that it would rather "encourage trustees to seek guidance from their professional advisors and engage with the ATO early using our SMSF Early Engagement and Voluntary Disclosure service to reduce the risk of becoming liable to any administrative penalties".

It is, therefore, important for advisers to educate clients on the importance of fixing errors and non-compliance in SMSFs, rather than trying either to hide the facts or ignore contraventions of the rules. ■