SMSF COMPLIANCE ACTIVITY ESCALATION

After a relatively quiet period in the SMSF compliance space due to the effects of the pandemic and its aftermath, the ATO is once again bolstering its compliance activities. This has occurred in response to an increasing number of funds being identified as not complying with their superannuation obligations.

For the 2023 year, ATO compliance actions included issuing an additional $29m in income tax liabilities, administrative and tax shortfall penalties, and interest on SMSF trustees and/or members, which is double the amount of tax and penalties the ATO issued in 2022. In addition, a total of 753 trustees were disqualified in the 2023 income year, and that is more than triple the amount of disqualifications in the 2022 income year.

According to the ATO, the most common reason for applying penalties was the illegal early access of super benefits by fund members. It reminds SMSF trustees that they have a responsibility that members have met a condition of release before any funds are released. Trustees should also be aware that some conditions of release have cashing restrictions which restrict the form of benefit (ie lump sum or pension) or the amount of benefit that can be paid.

Partnering together to achieve your objectives

Common conditions of release include the fund member having reached preservation age and retired, or commenced a transition-to-retirement income stream; ceasing an employment arrangement on or after the age of 60; being 65 years old even though they haven't retired; or having died.

If the common conditions of release aren't met, where a member meets eligibility requirements under certain special circumstances, they are able to have at least part of their super benefits released before reaching preservation age. These special circumstances include the that the fund member:

- has terminated gainful employment;
- is temporarily or permanently incapacitated;
- is suffering severe financial hardship;
- meets conditions for compassionate grounds;
- has a terminal medical condition; or
- is taking part in the first home super saver scheme.

Trustees should note that each of the special circumstances has its own eligibility conditions; for example, in the case of severe financial hardship, the trustee must first be satisfied that the member cannot meet reasonable and immediate family living expenses, has been receiving relevant government income support payments for a continuous period of 26 weeks and was receiving that support at the time they applied to the trustees. Cashing restrictions also apply – in the example of severe financial hardship, the super payment must be a single gross lump sum of no more than $10,000 and no less than $1,000.

Another special condition of release which may be confusing for trustees is compassionate grounds. Not only do trustees have to be satisfied that the member qualifies under certain circumstances, prior ATO approval must be received by the trustee before any funds can be released. The amount of super that can be paid on compassionate grounds must be in the form of a lump sum and is limited to what is reasonably needed for the circumstances (eg medical treatment, palliative care, payment on home loan, council rates, accommodating disability, funeral expenses etc).

Besides targeting illegal early release, the ATO has reminded trustees of SMSFs that their fund must be audited every year by a suitably qualified auditor and an annual return must be lodged by the due date. This blitz on the SMSF compliance is set to continue all through until the end of the 2024 income year, with the ATO explicitly stating it will take "firm action" against trustees who persistently fail to comply with their obligations and seriously breach the superannuation laws.

CONTACT

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