

DLK ADVISORY

ATO'S CONTINUED FOCUS ON ILLEGAL EARLY RELEASE



As a new calendar year commences, the ATO's priorities in the SMSF sector remain consistent. As with previous years, the greatest area of concern for the ATO continues to be taxpayers illegally accessing their super before meeting a condition of release. While it notes that the vast majority of SMSFs follow the rules, those that do not are having a significant impact on the system.

According to the ATO, early withdrawal of super seriously impacts a member's retirement savings which can lead to an increased reliance on taxpayer-funded pensions (ie aged pension) in the future. This is in addition to significant financial and regulatory impacts for individuals as illegally accessed benefits are assessable, and penalties, interest charges and disqualifications may be applied and sought by the ATO.

In order to weed out the few bad apples, the ATO implemented a program late last year called "illegal early access estimate" which allows it to estimate the amount of retirement money leaving the system before it should. The information from the program informs the ATO of the size, scale and trajectory of the illegal early access risk and gathers intelligence to assist in addressing the issue.

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This program will be used in conjunction with preventative approaches such as providing support and guidance products and education courses for new trustees. For example, the ATO continuously improves publications available on its website to support trustees to meet their obligations at different stages of the SMSF lifecycle. It has also developed several online learning modules focused on the same (ie lifecycle of the SMSF) which will go live very soon.

Another preventative strategy employed by the ATO is an initial review of new registrants, which involves a risk assessment of all SMSF registrations to ensure trustees are entitled to set up a fund and acts as a safeguard against identity fraud. The ATO estimates that in 2023, the initial review strategy protected around \$64m of super savings from leaving the system.

For new entrants into the SMSF system, the ATO has tailored the first-time non-lodgers program, which identifies and take actions against funds that have received a rollover from a member but have not yet lodged their first annual return. In the first instance, a letter will be sent advising that if super has been illegally accessed, any amounts will need to be included in personal income tax returns. The ATO advises that taxpayers should respond immediately after the receipt of such a letter otherwise significant consequences may apply.

In situations where trustees fail to meet their lodgement obligations in relation to annual returns and other reporting requirements, the ATO will withhold the SMSF's complying fund status on SuperFund lookup as a first step to restrict the fund from receiving rollovers and employer contributions. For trustees and SMSFs that continue to evade their obligations, ATO compliance action will be initiated.

On the topic of compliance action, the ATO has warned that it uses increasingly sophisticated risk detection models which resulted in a significant number of sanctions being applied last year. In 2023, it disqualified 753 trustees, triple the number from 2022, and raised around \$29m in additional tax, penalties and interest. The use of this detection model is set to continue in the current year.