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♦ Super Fund Check list

♦ Sole Purpose Test – to provide retirement benefits for the members/beneficiaries of the fund
Our audit procedures, with respect to the Sole Purpose Test (section 62), include testing that the fund trust deed establishes the fund, solely for the provision of retirement benefits for fund members or their dependants in the case of the member's death before retirement; a review of investments to ensure the fund is not providing financial assistance to members; and that no preserved benefits have been paid before a condition of release has been met. Some examples of contravention of the Sole Purpose Test include:-
- Investments or property purchased to provide a current day benefit to a member or associate.
- Running a business as part of an investment strategy.

♦ Investment Strategy
An SMSF is required to prepare and implement a written investment strategy which must be reviewed at regular intervals and take into account the goals of the trustees for retirement, any risks associated with particular investments and when benefits will need to be paid out.

♦ Record-keeping
Trustees must keep some records for a minimum of five years and some for a minimum of 10 years. When the ATO audits SMSFs, it expects to see trustee minutes outlining investment decisions, how those decisions were made, transaction records, statements of the fund's financial position, who the trustees of the fund are, their consent to act as trustees and copies of Income Tax Returns.

♦ Assets Held in Fund's Name
Assets held in a member or trustee's own name, rather than the fund's, is considered to contravene the SIS Act. Further, where an auditor notices a fund's assets are being held in another name, they are required to report this to the ATO using an Auditor Contravention Report. However, the ATO has announced that no enforcement action will be taken by the ATO in respect of asset ownership in 2004/05, but there will be a renewed focus on ensuring fund and personal assets are kept separate in 2005/06 and in following years. Furthermore, the ATO asks that all trustees correct this situation as soon as possible, to ensure it is not reported again by their auditor next year, resulting in their fund attracting ATO attention.

♦ Loans & Borrowings
Lending money to a member or relative is prohibited and SMSFs cannot borrow funds (except in very limited circumstances).

♦ Acquisition of Assets From Related Parties
Trustees cannot purchase residential property and unlisted shares from members or related parties (which are not covered by the 'business real property' and 'listed shares' exemptions).

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- In-house Assets

SMSFs generally cannot lend, invest in, or lease to a related party of the fund more than five per cent of the fund's total assets. While there are some complex transitional rules, which some trustees have found difficult to understand, the ATO notes that many in-house asset contraventions are blatant and involve trustees using fund money to assist related parties, often an ailing related business. Also, if the related party is a member or a relative, loans are not allowed at all.

- Super Choice

From 1 July 2005, many employees will be able to choose their preferred superannuation provider to receive their Superannuation Guarantee (SG) payments. The employer will give each employee a "standard choice form". Where no choice is made, the employer will make contributions to a default fund. As a formality, these forms must also be provided by employers to employees who are trustees of their own fund. The penalty for not complying with Fund Choice requirements is a maximum of $500 per quarter per employee.

- Auditors' Obligations

The audit of a self-managed super fund covers two areas. A compliance audit that assesses the fund's overall compliance with the SIS Act and regulations, and a financial audit to assess the fund's financial statements. Trustees must provide the auditor with any relevant documentation requested to enable the auditor to finalise the audit.
Since 1 July 2004, under the legislation, auditors must advise the Tax Office of certain breaches of the SIS Act and regulations that they become aware of during any audit they conduct, regardless of the year they are auditing. This is in addition to the existing auditor obligation to report breaches to trustees. Most significantly, auditors must advise the Tax Office if they form the opinion that a breach has occurred, may be occurring or may occur in the future, and it is of such a nature that it may affect the interests of members, or, if the financial position of the fund may be or may be about to become, unsatisfactory.

The ATO is also reviewing SMSF trustee eligibility through the introduction of registration checks that aim to prevent ineligible individuals, such as insolvents and those convicted of offences involving dishonesty, from registering as trustees.

If you have any queries, or with to discuss any of these matters in more detail, please contact our office.