SMSF technical

Technical information about self-managed super funds.

How to report amounts that you rollover - SMSFs

Instructions for trustees of SMSFs - how to report contributions rolled out of or into your SMSF using SuperStream.

Limited recourse borrowing arrangements - questions and answers

Guidance for self-managed super funds on how the super law applies to limited recourse borrowing arrangements (LRBA).

Returning contributions

There are rules for accepting contributions that all trustees need to know.

PCG 2016-5 frequently asked questions

The application of Guideline PCG 2016/5 to non-arm's length limited recourse borrowing arrangements (LRBAs).

Transitional rules and in-house assets

In-house assets and the transitional rules that apply to certain

SMSF deductibility of expenses

Information about issues you, as a trustee, need to consider when determining the deductibility of expenses of the fund.

Stopping schemes to illegally access super

Find out how we are stopping schemes to illegally access super.

Excess contributions tax - administrative penalties

Practice statement, providing guidelines for remitting penalties for non compliance with excess contributions.

Notice of intent to claim a deduction

To help your members claim or vary a tax deduction for personal super contributions.

Recent changes to electronic lodgment of the SMSF annual return

From 1 July 2012 systems changes have been made to the electronic lodgment of the SMSF annual return.

QC 42618

PCG 2016/5 frequently asked questions

The application of Guideline PCG 2016/5 to non-arm's length limited recourse borrowing arrangements (LRBAs).

Last updated 14 July 2017

This page contains answers to frequently asked questions (FAQs) about the application of Practical Compliance Guideline **PCG 2016/5** to non-arm's length limited recourse borrowing arrangements (LRBAs).

PCG 2016/5 sets out the 'safe harbour' terms on which self-managed super fund (SMSF) trustees may structure their LRBAs consistent with an arm's length dealing.

PCG 2016/5 FAQs

My SMSF has entered into an LRBA which does not meet the terms of PCG 2016/5 however it does meet the terms of a housing lending rate quoted by a financial institution. Will this result in NALI?

If your SMSF has entered into an LRBA which does not meet all of the 'safe harbour' terms of PCG2016/5, it does not mean that the arrangement is deemed not to be on arm's length terms. Meeting the terms of the PCG simply means that the trustees are assured that the Commissioner will accept that the arrangement with an arm's length dealing.

If your LRBA does not meet the safe harbour terms outlined in the PCG, you need to be able to otherwise demonstrate that the arrangement was entered into and maintained on terms consistent with an arm's length dealing. One example of how you could demonstrate the arm's length nature of the arrangement may be by providing evidence of a loan offer to the SMSF in relation to the particular asset from a financial institution.

Does PCG 2016/5 also apply to unlisted shares or units? Can I rely on the safe harbour terms where I have an LRBA over unlisted units however the underlying assets of the trust are real property?

The safe harbour terms outlined in PCG 2016/5 only apply where the asset being acquired is real property or a collection of stock exchange listed shares or units. Where the asset being acquired is unlisted shares or units, the PCG will not apply regardless of the underlying assets of the entity.

If you have an LRBA over unlisted shares or units, you will need to otherwise demonstrate that the arrangement was entered into and maintained on terms consistent with arm's length dealing.

Can I apply the safe harbours in PCG 2016/5 to assets other than real property or listed units and shares?

The safe harbours provided in PCG 2016/5 only apply to LRBAs that are used to acquire real property or stock exchange listed shares or units. SMSF trustees who use an LRBA to acquire other assets – such as shares in an unlisted company or units in an unlisted unit trust – will need to be able to demonstrate that the arrangement was entered into and maintained on terms consistent with an arm’s length dealing when considering the application of the non-arm’s length income (NALI) provisions.

One example of how a trustee may demonstrate this is by obtaining evidence that shows their particular arrangement is established and maintained on terms that replicate the terms of a commercial loan that is available to them in the same circumstances. A printout from a bank’s website of general loan terms is not sufficient to meet this requirement.

Where, for example, an LRBA is over an asset for which the SMSF could not find a commercial third party lender to provide finance to acquire that asset and so entered into a related party loan, the trustee will be unable to demonstrate that the LRBA has been made on arm’s length terms. For the SMSF to be assured that it won’t be selected for an income tax review for the 2014–15 year or earlier years purely because the SMSF entered into an LRBA, the LRBA will need to be brought to an end by 31 January 2017.

Are there any plans to expand the safe harbours in PCG 2016/5 to other assets such as shares in unlisted companies and units in unlisted unit trusts?

The ATO does not have any plans to expand the safe harbours in PCG 2016/5 to include other assets such as unlisted units and shares which vary in nature and differ in the terms under which they may be acquired. The current safe harbours apply to the majority of LRBAs.

Do the safe harbours in PCG 2016/5 apply in relation to shares in a body corporate that provide the shareholder exclusive possession or rights in relation to a specified unit or apartment?

No, as these assets are not real property. However, this does not mean the NALI provisions automatically apply. Trustees will need to demonstrate that their arrangements are consistent with an arm's length dealing. In addition to the terms of the loan being on an arm's length basis, it must be shown that the asset is one that an arm's length party would lend against.

If by the 31 January 2017 deadline a taxpayer has not satisfied PCG 2016/5, will the ATO give taxpayers a further opportunity to rectify the loan arrangement?

Where SMSF trustees have not satisfied all the criteria of the PCG 2016/5, it does not mean that the arrangement will necessarily be deemed to be non-arm's length. This only means that the trustees are unable to be assured that the Commissioner will accept the arrangement to be consistent with an arm's length dealing.

PCG 2016/5 states that we will not select an SMSF for an income tax review for the 2014–15 year or earlier years purely because the SMSF has entered into an LRBA. However, this is conditional on the trustee ensuring that any LRBA that their fund has is on terms consistent with an arm's length dealing by 31 January 2017 or, alternatively, is brought to an end by that date. In addition, payments of principal and interest must be made under the LRBA terms consistent with an arm's length dealing by 31 January 2017.

Following this deadline, if it is considered that the NALI provisions apply to a particular LRBA and no reasonable attempt has been made to bring the arrangement in line with an arm's length dealing, the NALI provisions will apply from the commencement of the arrangement.

If you require advice on LRBAs and the application of the NALI provisions, we encourage you or your adviser to contact us in writing as soon as possible. This correspondence should be sent to:

Australian Taxation Office
PO Box 3100
Penrith NSW 2740

If you still have an LRBA in place to which the NALI provisions apply, we encourage you to contact us by making a voluntary disclosure. We can work with you and your SMSF professional to determine what action may be required to resolve this matter.

To make a voluntary disclosure, complete the SMSF regulatory contravention disclosure form. Include your proposal on how you intend to rectify this issue.

See also:

- SMSF early engagement and voluntary disclosure service

How do we show international interest rates are consistent with an arm’s length dealing?

Trustees need to show evidence that the terms of the loan are arm's length. In order to satisfy the Commissioner of the arm’s length nature of a particular loan with attributes of those outside PCG 2016/5, the trustees should provide relevant documentation to substantiate the arm’s length nature. This may include documentation relating to a bank or commercial lender’s loan offer to the SMSF for comparison with the loan documentation of the related party. This test would apply for both local and international lenders.

Must a charge/mortgage be registered where there is a related party loan?

Similar to the above answer, if trustees wish to take advantage of the safe harbour provisions, they must meet all the terms and conditions set out within PCG 2016/5. This includes registering a charge/mortgage or similar security, even in the case of a related party loan.

If there is not a registered charge/mortgage, trustees will need to provide relevant documentation to substantiate the arm’s length nature of the arrangement. This may include documentation relating to a bank or commercial lender’s loan offer to the SMSF for comparison with the loan documentation of the related party.

Can refinancing of an existing loan be with a related party lender?

There is no prohibition on the refinancing of an existing loan with a related party lender. However, to ensure that the NALI provisions do not apply, SMSF trustees will need to provide evidence that the refinanced loan is established and maintained on terms consistent with an arm's length dealing; for example, by applying the safe harbour guidelines in PCG 2016/5 if applicable.

Are the interest rates referred to in 'Safe Harbour 1' and 'Safe Harbour 2' in PCG 2016/5 to be applied as nominal annual interest rates or are they to be compounded?

Both 'Safe Harbour 1' and 'Safe Harbour 2' options in PCG 2016/5 require monthly payments of principal and interest. On that basis, interest is required to be calculated monthly on a compounding basis (ie, not on an annual nominal basis).

If I have an LRBA that is not on arm's length terms and the non-arm's length provisions apply, what do I report in my 2016 SMSF annual return?

If at the time of lodgment of its 2016 SMSF annual return, an SMSF trustee has not taken action to ensure any LRBA in their fund is on terms consistent with an arm's length dealing and the required catch-up payments have not been made, the relevant income is NALI and should be reported as such in the SMSF's 2016 annual return.

If you lodge your 2016 SMSF annual return after 31 January 2017 and your LRBA is consistent with the safe harbour terms in PCG 2016/5, including the requirement that all catch-up principal and interest payments have been made, then you don't need to report any relevant income as NALI.

If you lodge your SMSF annual return prior to 31 January 2017 and have not restructured your arrangement, there would need to be an intention to restructure the LRBA and make the required principal and interest payments, for the SMSF not to report NALI. If you subsequently do not take these steps, the 2016 SMSF annual return should be amended to report NALI. SMSF trustees should consider making a voluntary disclosure in these circumstances.

Restructure of the LRBA can occur anytime up to and including 31 January 2017 and the interest rate and other terms (eg loan to market value ratio (LVR) and remaining loan term) should reflect the date the restructure is done. We would consider it best practice for the SMSF to record accrued liabilities for any additional principal and interest payments relating to the 2015–16 year, made after 30 June 2016 and by 31 January 2017, if the fund does not report the relevant income as NALI in the 2016 SMSF annual return.

Are catch up payments of principal and interest required to be made from the beginning of the borrowing arrangement?

In accordance with PCG 2016/5, we will not select an SMSF for an income tax review for the 2014–15 year or earlier years purely because the SMSF has entered into an LRBA. This is conditional on the SMSF trustee ensuring that any LRBA that their fund has is on terms consistent with an arm's length dealing by 31 January 2017, or is brought to an end by that date. For this concession to apply, catch up payments of principal and interest should also be made from 1 July 2015 for those arrangements that are either brought to an end by 31 January 2017 or are on terms consistent with an arm’s length dealing by this date.

Do the NALI provisions apply to all of the income generated by the asset or just the non-arm's length portion?

An amount of income either has the character of being NALI or it does not. When an amount of income is NALI, the whole amount is NALI. An amount of income that is characterised as NALI cannot be divided between an amount that is NALI and an amount that is not NALI. The amount of income that is NALI is not only the amount by which an amount of income is greater than the amount that might have been derived if the parties had been dealing at arm's length; it is the whole amount of income derived, including any capital gains (refer to Taxation Ruling TR 2006/7, paragraphs 10 and 12).

My SMSF borrowed money from a related party to enter into an LRBA that satisfied all the terms in PCG 2016/5. However, due to a downturn in the market, the value of the single acquirable asset has

decreased and now the LVR under the arrangement has fallen outside the acceptable range provided by PCG 2016/5. Is my LRBA now subject to the NALI provisions?

For the purposes of applying PCG 2016/5 where there have been market fluctuations, we look at the LVR at the time the loan is taken out. Therefore, it is the market value of the asset at the time the loan is entered into that is important when applying the PCG.

See also:

- Practical compliance guidelines
- Guidance for SMSFs with non-arm's length LRBAs

QC 50873

Transitional rules and in-house assets

In-house assets and the transitional rules that apply to certain assets.

Last updated 22 March 2017

On this page

There are transitional rules that apply to certain assets owned before 11 August 1999.

It is important, if you were affected by the transitional rules, that you review your fund's investment structure to ensure it continues to comply with the in-house asset rules after 30 June 2009.

The 10-year transitional period ended on 30 June 2009. Ensure your fund complies with the current in-house asset rules.

These guidelines are intended for SMSFs only. If you are a trustee of another type of fund, you should seek advice from the Australian Prudential Regulation Authority (APRA).

See also:

- Sections 71A to 71F of the Superannuation Industry (Supervision) Act 1993 (SISA) for more information about in-house assets.

An asset is not an in-house asset when it is included in a class of assets specified in the regulations.

See also:

- SMSFD 2008/1 – Division 13.3A of the Superannuation Industry (Supervision) Regulations 1994 (SISR) and our determination.

What transitional provisions apply to in-house assets?

Before 11 August 1999, an in-house asset was defined as a loan to, or an investment in, either:

- a standard employer sponsor of the fund
- an associate of a standard employer sponsor of the fund.

These rules were revised and the definition of in-house assets was extended.

The changes also included transitional rules so some specific loans and investment arrangements you entered into before the end of 11 August 1999 would not be included as in-house assets.

The maximum level of in-house assets your SMSF can hold is 5% of the market value of your SMSF's total assets. However, assets that are covered by the transitional rules are not counted towards the cap.

Transitional rules apply to existing related party assets that you obtained on behalf of your SMSF by the end of 11 August 1999, but which were not in-house assets under the old rules. The transitional rules also allowed you to make certain additional investments after 11 August 1999 and by 30 June 2009.

What changed after 30 June 2009?

After 30 June 2009, if your SMSF had investments with related parties or related trusts that were made before 11 August 1999, your SMSF would no longer be able to:

- reinvest any earnings from those assets
- pay up any partly paid shares or units
- make any additional investments in relation to those assets.

If you continued to reinvest earnings or make additional investments or loans after 30 June 2009 on behalf of your SMSF, the additional investments or loans would be in-house assets that count towards the 5% limit.

If there is an outstanding debt, as covered in section 71E of the SIS Act, any investment in the unit trust or company made after 30 June 2009 would be an in-house asset.

If you paid up partly paid shares or units after 30 June 2009 on behalf of your SMSF, a proportion of those shares or units (equivalent to the proportion of the payments made after 30 June 2009) would be treated as in-house assets.

See also:

- For more information about trust distribution, see our determination SMSFD 2007/1.

What remained the same after 30 June 2009?

Assets won't be treated as in-house assets if they are:

- investments or loans you entered into on behalf of your SMSF before the end of 11 August 1999 and were not in-house assets under the old rules (exempted pre 11 August 1999 investments)
- additional investments or loans you made between 11 August 1999 and 30 June 2009 which are in line with the transitional provisions

- fund assets subject to a continuous lease or an uninterrupted series of leases between the SMSF and a related party commencing prior to 11 August 1999.

What are the transitional rules?

Between 11 August and 23 December 1999

The following arrangements entered into between the end of 11 August 1999 and 23 December 1999 were not counted as in-house assets until 1 July 2001:

- investments made with or loans made to related parties or related trusts
- leases and lease arrangements with a related party.

This is provided that such investments, loans or lease arrangements would not have been in-house assets of the fund had they been entered into by the end of 11 August 1999.

This should no longer apply to any SMSF as the exception expired on 1 July 2001.

Reinvesting earnings

If the earnings your SMSF received from an investment held in a related entity on or before 11 August 1999 (that was not an in-house asset under the old rules) are reinvested in that entity, the amount so reinvested is exempt from the in-house asset rules. The earnings from such reinvestments may also be reinvested in the related entity.

However, the total amount that can be reinvested cannot exceed the sum of:

- the total amount of all dividends or trust distributions derived from the original investment held in the related entity before the end of 11 August 1999 and received by the fund from 12 August 1999 to 30 June 2009
- the total amount of all dividends or trust distributions derived from reinvesting the total amount stated in the above paragraph and received by the fund from 12 August 1999 to 30 June 2009.

This exemption applied until 30 June 2009. Any reinvestment you make on behalf of your SMSF after 30 June 2009 will be considered an in-house asset.

See also:

- For more information about reinvesting earnings, see our determination SMSFD 2007/1.

Unpaid trust distributions

It is possible that an SMSF that held units in a related unit trust on or before 11 August 1999 may have accumulated unpaid trust distributions that have not yet been paid or reinvested back into the trust.

If an SMSF has accumulated unpaid trust distributions relating to multiple years, these distributions may currently be in-house assets. This is consistent with the ruling SMSFR 2009/3.

This ruling states that non-payment of trust distributions from a related trust may be seen as an arrangement for the provision of credit or financial accommodation, which satisfies the extended definition of a 'loan' in a related party (meeting the basic definition of an in-house asset).

However, an opportunity existed until the expiration of the transitional rules (on 30 June 2009) for the outstanding trust distributions to be reinvested in the unit trust. This should have been done by either:

- the issue of new units which may be exempted from the in-house assets test
- entering into a contractual agreement whereby the unpaid distributions are paid and lent back to the unit trust on arm's length terms (including interest).

If your fund took this course of action, we will consider that any previous contravention of the in-house asset rules caused by the accumulation of unpaid trust distributions has effectively been rectified and take no further action.

Where a contractual agreement was entered into, it should be evidenced by a written record that indicated the terms of the loan. This may include whether the loan was at call, the amount of the loan and the interest rate or other means of calculation of the interest.

This written record should have been prepared by 30 June 2009 but, in practice, where the loan funds were with the borrowing entity as at 30 June 2009 and the actions of the parties were consistent with the existence of the agreement, we would extend the period for the formalisation of the agreement up to the due date for lodgment of the 2009 annual return.

Geared investments

If your SMSF holds exempted pre 11 August 1999 investments in a unit trust or company which is a related party of your SMSF, any additional investments in, or loans to, that unit trust or company (you made on behalf of your SMSF after 11 August 1999) are likely to be counted as in-house assets.

However, such additional investments are not counted as an in-house asset if all the following apply:

- the unit trust or company was geared on or before 11 August 1999
- a loan was owed by the unit trust or company to any entity other than the fund
- the sum of such additional investments does not exceed the amount of the loan in the unit trust or company at 11 August 1999
- such additional investments were made no later than 30 June 2009
- the trustee made a written election by 23 December 2000 that section 71E (Exceptions - Certain geared investments) of the SIS Act is to apply to such additional investments.

The relevant amount of the debt is the amount of the principal outstanding at 11 August 1999. If the sum of the purchase price of additional investments or loans exceeds the amount of the debt at 11 August 1999, the formula found in subsection 71E(4) of the SIS Act applies to work out the value of the increment that will be treated as an in-house asset.

The options under sections 71D (for reinvesting) and 71A (for investments and loans under pre 12 August 1999 contracts or for payments on partly paid shares or units in a related trust) are not available if you have made a written election on behalf of your SMSF under section 71E in relation to additional investments made after 11 August 1999.

Pre 11 August 1999 investments and loans

Fund investments and loans

If your SMSF had investments in, or loans provided to related parties or related trusts of your fund after 11 August 1999, they are not considered in-house assets if:

- the investments or loans were made under a contract entered into by the end of 11 August 1999
- the investments or loans occurred after that date.

Shares in a private company or units in a related unit trust

Shares you held in a related private company or units you held in a related unit trust, on behalf of your SMSF, are not considered in-house assets if you acquired them before the end of 11 August 1999 or under a contract entered into before that date.

This exclusion also applies to payments made on partly-paid shares or units in a related trust purchased prior to 11 August 1999, provided you did not make a payment after 30 June 2009.

Payments made after 30 June 2009 on these shares or units would result in these shares or units becoming subject to the in-house assets rules. The formula found in subsection 71A(3) of the SIS Act applies to calculate a reduced value of the in-house asset in these circumstances.

Next step:

To obtain the formula to work out the reduced value of in-house assets for payments on partly paid shares or units made after 30 June 2009, refer to subsection 71A(3) of the SIS Act.

Pre 11 August 1999: leases and lease arrangements

An asset you hold on behalf of your SMSF that is subject to a lease or lease arrangement entered into between your SMSF and a related party by 11 August 1999 is not considered an in-house asset. However, the lease must be a continuous one or must be renewed with no gaps between periods of the leases.

The terms and conditions of a renewed lease don't need to be the same, but the lease must be for the same asset.

The exemption will apply if a legally enforceable lease or lease arrangement came into force after 11 August 1999, but the agreement was entered into on or before 11 August 1999.

If a renewed lease or lease arrangement is for a new asset, or there is a gap between lease renewals, the market value of the asset is counted as an in-house asset.

QC 20275

Self-managed superannuation funds – deductibility of expenses

Information about issues you, as a trustee, need to consider when determining the deductibility of expenses of the fund.

Last updated 15 December 2020

On this page

This page outlines expenses that a trustee of a self-managed super fund (SMSF) may claim. The information applies to complying funds. Read this in conjunction with:

- Taxation Ruling TR 93/17 *Income tax: income tax deductions available to superannuation funds*
- Taxation Ruling TR 97/7 *Income tax: section 8-1 – meaning of 'incurred' – timing of deductions.*

Find out about:

- Common fund expenses
- When you can claim
- Deductibility of expenses
- Apportionment

Common fund expenses

When considering if it is appropriate for the fund to pay a particular expense, it is important to ensure the payment is:

- in accordance with a properly formulated investment strategy
- allowed under your trust deed and the super laws.

Some of the different types of fund expenses are:

- Operating expenses
- Investment-related expenses
- Tax-related expenses – incurred on income tax affairs
- Legal expenses – including trust deed amendments
- Statutory fees and levies
- Death, total and permanent disability, terminal illness and income protection insurance premiums
- Increased amount of super lump sum death benefit (or anti-detriment payment)
- Collectables and personal use assets such as artwork

Operating expenses

Operating expenses incurred by an SMSF are mostly deductible under the general deduction provision (section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)).

This is except where they either:

- relate to gaining non-assessable income (such as exempt current pension income), or

- are capital in nature.

The following are examples of the types of operating expenses that are typically deductible under the general deduction provision:

- Management and administration fees
- Audit fees
- Australian Securities & Investments Commission (ASIC) annual fee)

Management and administration fees

These are costs associated with the daily running of the fund. For example, preparing trustees' minutes, stationery and postage fees. These costs must be apportioned if the fund earns both assessable and non-assessable income.

No apportionment is necessary for costs that are wholly incurred in collecting and processing contributions. For example, costs associated with obtaining an electronic service address (alias) to meet the data standards requirements are not apportioned.

An SMSF may incur other more specific management and administrative costs in running a fund. These are dealt with under other sections of this document.

Audit fees

An SMSF is required by the super laws to ensure that an approved SMSF auditor is appointed to give the trustee(s) a report of the operations of the entity for each year of income.

Audit expenditure that relates to meeting obligations under super laws is deductible. It must be apportioned if the SMSF gains or produces both assessable and non-assessable income.

Administrative penalties that can be levied on a trustee under the super laws are not deductible to the fund. They are incurred by the trustee of the fund (or director of the corporate trustee). They must not be paid or reimbursed from the assets of the SMSF.

Australian Securities & Investments Commission (ASIC) annual fee

ASIC charges an annual fee to special purpose companies, whose sole purpose is to act as a trustee of a regulated super fund. Most SMSFs operate under a corporate trustee structure. However, some choose to use an individual trustee arrangement.

Corporate trustees pay an initial ASIC registration fee. They also pay an annual fee and, as such, this expense is deductible by the fund.

Investment-related expenses

The exact nature of the investment-related expenses is critical in determining deductibility. Examples of deductible investment related expenses include:

- interest expenses
- ongoing management fees or retainers paid to investment advisers
- costs of servicing and managing an investment portfolio, such as bank fees, rental property expenses, brokerage fees
- the cost of advice to change the mix of investments, whether by the original or a new investment adviser. This is provided it does not amount to a new financial plan.

If the investment related advice covers other matters or relates in part to investments that do not produce assessable income, only a proportion of the fee is deductible.

Example 1

The trustees of Jim's SMSF approach a financial adviser to put in place a long-term financial strategy. It needs to have sufficient liquidity to:

- pay super income stream benefits
- pay lump sum payments
- continue with investments that in the long term will provide super or death benefits for the members.

The trustees pay a fee to an investment adviser to draw up an investment strategy for the fund. The fee is a capital outlay under these circumstances. This is even if some of the existing investments are maintained as part of the plan. That is because the fee is for advice that relates to drawing up a new investment strategy. The character of the outgoing is not altered because existing investments fit in with this new strategy. It is still an outgoing of capital.

Example 2

The trustees of a fund decide to seek the advice of an investment adviser. They want to know what listed securities they should invest in. This is specified in the fund's investment strategy and permitted by the governing rules of the fund.

The trustees deduct the cost of the advice on listed securities to invest in. This is because the advice is part of the ongoing maintenance of the current investment strategy. It is not part of a new investment strategy or plan.

See also:

- Taxation Determination TD 95/60 *Income tax: are fees paid for obtaining investment advice an allowable deduction under section 8-1 of the Income Tax Assessment Act 1997 (ITAA 1997) for taxpayers who are not carrying on an investment business?*

Tax-related expenses

A specific deduction is allowable under section 25-5 of the ITAA 1997 for either:

- an expense incurred in managing a fund's tax affairs
- complying with a Commonwealth tax law obligation imposed on the trustee.

You cannot deduct capital expenditure under this section. However, an expense is not a capital expense merely because the tax affair relates to a matter of a capital nature. For example, you may be able to deduct the cost of applying for a private ruling on whether you can depreciate an item of property under this section.

The following are examples of deductible tax-related expenses incurred in managing an SMSF's income tax affairs and complying with income tax laws:

- costs relating to the preparation and lodgment of the SMSF's annual return, including the preparation of financial statements
- actuarial costs incurred in satisfying income tax obligations. For example, to determine the amount of tax-exempt income (or exempt current pension income).

Statutory fees and levies

An SMSF is also liable to pay a supervisory levy under the *Superannuation (Self- Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*. The levy is a flat amount and is also deductible under section 25-5 of the ITAA 1997.

The costs incurred in preparing and lodging the SMSF's annual return are deductible. The return is an approved form covering both income tax and super law requirements. However, we don't require SMSFs to have to apportion between the two types of expenses. We allow it in full as a deduction for the expenses incurred in preparing and lodging the return.

A tax-related expense does not need to be apportioned for an SMSF deriving both non-assessable and assessable income. This is unless the expenditure relates to audit fees paid by the fund. Audit expenditure to meet obligations under super laws is deductible under the general deduction provisions. It must be apportioned if the SMSF gains or produces both assessable and non-assessable income. Refer to Audit fees.

See also:

- SMSF supervisory levy

Legal expenses

Some legal expenses are covered by specific deduction provisions. For example, legal expenses incurred in complying with income tax obligations under section 25-5 of the ITAA 1997.

Legal expenses that are not covered by a specific provision are generally deductible under the general deduction provision. This is except when they are incurred in deriving non-assessable income or are capital, private or domestic in nature.

Example: Borrowing expenses – capital in nature

Nick's SMSF engages a legal firm to set up a trust to hold an asset. The fund intends to acquire the asset under a limited recourse borrowing arrangement (LRBA). This is required by the super law.

Section 25-25 of the ITAA 1997 is a specific deduction provision. It enables the deduction of expenses incurred for borrowing money used to produce assessable income. The fund claims the following borrowing expenses:

- loan establishment fees
- obtaining relevant valuations
- costs of documenting guarantees required by the lender
- lender’s mortgage insurance
- fees for property and title search fees, costs for preparing and filing mortgage documents, etc.

The fund can't claim the costs in establishing the trust for the LRBA as they are not borrowing expenses. They are incurred to establish the arrangement for borrowing, not for the borrowing itself. Therefore, the SMSF can't claim a deduction for legal expenses in setting up the trust.

Also, the fund can't claim the costs as a deduction under the general deduction provision. This is because they are capital in nature.

Trust deed amendments

Trust deed amendments to facilitate the ongoing operations of the super fund are generally deductible under the general deduction provision. If a fund amends a trust deed to keep it up to date with changes to the super law, the expense will be deductible under the general deduction provision. This is unless the amendment results in enduring changes to the SMSF’s structure or function or creates a new asset.

Trust deed amendment costs incurred in establishing a trust, executing a new deed for an existing fund and amending a deed to enlarge or significantly alter the scope of the trust's activities are generally not deductible. This is because they are capital in nature.

Example 1

Sue and Jim have a two-member SMSF. The couple are also the individual trustees of the fund. Jim dies before either of them has retired. Sue decides to continue the SMSF with a corporate trustee as the sole director.

The fund incurs legal expenses of $1,000 to amend the trust deed so the corporate trustee can be appointed. Making changes to permit appointment of a corporate trustee relates to the structure of the SMSF. The expenses are capital in nature.

The fund can't deduct the legal expenses incurred in amending the trust deed. They are not deductible under section 8-1 of the ITAA 1997.

Example 2

The trustees of Wong's SMSF decide that the fund's trust deed is out of date. It refers to super law provisions which have been repealed. It also gives contact addresses for the trustees that are no longer current.

The trustees decide to engage a legal firm to update the deed. The firm charges $500. The changes to the trust deed are an ordinary incident of the day to day running of the fund and are not capital in nature. The $500 charged by the legal firm is deductible to the fund.

Example 3

The trustees of Anna's SMSF decide to borrow money to purchase an apartment under an LRBA. This is part of a properly formulated investment strategy.

The trust deed of the SMSF, as it currently stands, does not permit the trustees to borrow money. The trustees engage a legal firm to amend the trust deed. This will permit them to borrow money under an LRBA.

The costs incurred in engaging the law firm to change the trust deed are not deductible. This is because the addition of borrowing powers is an enduring change to the function of the SMSF.

See also:

- Taxation Ruling TR 2011/6 *Income tax: business related capital expenditure - section 40-880 of the Income Tax Assessment Act 1997 core issues*

Death, total and permanent disability, terminal illness and income protection insurance premiums

A specific deduction is available to the trustee of a complying super fund for insurance premiums. This is for premiums paid for insurance policies that are for current or contingent liabilities to provide death or disability benefits.

A deduction is available for insurance premiums for the following types of death or disability benefits:

- super death benefits
- terminal medical condition benefits
- disability super benefits
- benefits provided due to temporary inability to engage in gainful employment for a specified period.

The amount the fund can claim is set out in the relevant income tax laws. There is no apportionment required for expenses that relate to assessable or non-assessable income.

See also:

- Taxation Ruling TR 2012/6 *Income tax: deductibility under subsection 295-465(1) of the Income Tax Assessment Act 1997 of premiums paid by a complying superannuation fund for an insurance policy providing Total and Permanent Disability cover in respect of its members*

Increased amount of super lump sum death benefit (or anti-detriment payment)

From 1 July 2019, there is no tax deduction for anti-detriment payments available. Where a fund member died before 1 July 2017, a tax deduction for an anti-detriment payment was available up to 30 June 2019. Where a fund member died on or after 1 July 2017, a tax deduction for an anti-detriment payment was no longer available.

Previously a tax deduction was available to a complying super fund that paid an increased lump sum, because of the death of a member for the benefit of their spouse, former spouse or child, to compensate for income tax paid by the fund in respect of contributions made for the member during their lifetime.

Collectables and personal use assets such as artwork

Special rules apply to SMSF investments in collectable and personal use assets, such as artwork. These rules were introduced on 1 July 2011 to cover aspects such as storage and insurance.

Insurance costs for artwork and other collectables are deductible to the SMSF provided:

- the items are insured in the name of the fund within seven days of acquisition
- the receipt for the expense is in the name of the fund.

You can't, for example, insure the item as part of a trustee's home and contents insurance.

Storage costs for artwork and collectables are also deductible to the fund. This is provided that items are stored in accordance to the *Superannuation Industry (Supervisions) Regulations 1994*. In particular, the trustees must make and keep records of the reasons for deciding where to store the item number.

Include allowable deductions for insurance and storage costs for collectables and artworks at the investment expenses deduction label in the SMSF annual return.

When you can claim

As a general rule, the trustee can claim the fund’s expenses in the year the trustee incurs them. However, deductions for the decline in value of certain depreciating assets (such as plant and equipment) are claimed over the effective life of the asset and not when the trustee incurs the expenditure.

Trustees should retain any invoices and receipts evidencing the fund's expenses. Invoices and receipts must be in the name of the SMSF. Wherever possible, the expense should be paid directly from the fund's bank account.

Deductibility of expenses

As a general rule, the deductibility of expenses incurred by a super fund is determined under the general deduction provision in section 8-1 of the ITAA 1997. It won't apply where a specific deduction provision applies. For example, tax related expenses that are deductible under section 25-5 of the ITAA 1997.

If an expense is deductible under the general deduction provision, and the fund has both accumulation and pension phase members, the expense may need to be apportioned. This will determine the amount that the fund can deduct. Refer to Apportionment.

If an expense is deductible under one of the specific deduction provisions, then the wording of that provision will indicate whether the expense must be apportioned and on what basis.

See also:

- Deductions for APRA-regulated super funds

Specific deductions

The following is a list of some of the specific deduction provisions that apply to SMSFs. Some can be claimed in full or in part while others will require apportionment:

- Expenditure incurred to the extent that it is for managing the tax affairs of the SMSF or complying with an obligation imposed on the SMSF which relates to its tax affairs. For example, the SMSF Supervisory Levy (section 25-5 of the ITAA 1997).
- Death, total and permanent disability, terminal illness and income protection premiums to the extent specified in the relevant law (section 295-465 of the ITAA 1997).
- Increased amount of superannuation lump sum death benefit (or anti detriment payment) to the extent specified in the relevant law (section 295-485 of the ITAA 1997. Note: From 1 July 2019, the anti-detriment deduction no longer applies to these payments.

General deductions

In the absence of a specific deduction provision, a loss or outgoing incurred by a super fund is deductible under the general deduction provision in section 8-1 of the ITAA 1997. This is to the extent that:

- it is incurred in gaining or producing assessable income
- it is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.

Expenses that are an ordinary incident of the operations of the SMSF that gain or produce its assessable income fall under this general deduction provision. This can include expenses such as:

- management and administration fees
- audit fees
- subscriptions and attending seminars
- ongoing investment related expenses.

The general deduction provision will apply unless a specific provision could also apply and is more appropriate in the circumstances.

Is a super fund carrying on a business?

The investment activities of SMSF trustees must be conducted in accordance with the trustees' duty to preserve and grow the fund for its members and their dependants in the event of their death. In that context, the investment activities of most SMSFs would not be characterised as activities in the nature of carrying on a business. This is compared with similar activities conducted by a trading company.

However, the activities of some SMSFs in dealing in shares and other investments may amount to the carrying on of a business. This is having regard to factors such as the scale of the activities and the manner in which they are conducted.

See also:

- Taxation Ruling TR 93/17 *Income tax: income tax deductions available to superannuation funds*

Exclusions

Under the general deduction provision, an SMSF cannot deduct a loss or outgoing to the extent that:

- it is a loss or outgoing of capital, or of a capital nature
- it is a loss or outgoing of a private or domestic nature
- it is incurred in relation to gaining or producing income of the fund that is not assessable income, such as exempt current pension income
- the income tax laws prevent the fund from deducting it.

You cannot claim more than one deduction for the same expenditure. If two or more tax provisions allow you deductions for the same expenditure you can deduct only under the most appropriate provision.

Apportionment

General deductions

Where an expense is deductible under the general deduction provision, the expenditure is deductible only to the extent to which it is incurred in producing the fund's assessable income.

Distinctly identified part

An expense may be incurred partly in gaining or producing assessable income and partly in gaining or producing non-assessable income, such as exempt current pension income. Where the fund can identify a distinct and severable part devoted to gaining or producing assessable income, this is the part to claim as a deduction under the general deduction provision.

Example

The trustee of Zhao's SMSF appoints a property managing company for three investment properties held by the fund. One is a holiday rental home and is managed by the company's regional office. It is also a segregated current pension asset of the fund. This means the income derived from this property is exempt.

The company charges the fund $2,000 for its services. However, the invoice identifies $500 as costs incurred by the regional office for managing the holiday rental home.

The amount of $500 can be distinctly identified as a cost incurred in gaining the fund's exempt income. The remaining $1,500 can be distinctly identified as a cost incurred in gaining the fund's assessable income. The fund may claim the $1,500 as a deduction. This is the amount of expenditure which relates to the assessable income.

Estimating an expense

Many expenses cannot be divided into distinct and severable parts in this way. For example, when paying an approved SMSF auditor to provide an annual report for the fund. This is an expense that does not relate in any particular way to either the fund's assessable or non-assessable income.

In such a case, the fund has to estimate, in a fair and reasonable way, how much of that expense was incurred in producing the fund's assessable income.

It is not possible to prescribe a single method for apportioning expenditure of a super fund. Taxation Ruling TR 93/17 provides a number of examples. It provides guidance on what the Commissioner of Taxation may accept as a method producing a fair and reasonable outcome.

Example 1

The trustee of Jane's SMSF incurs audit expenses of $1,500. This is for providing the SMSF with a report in accordance with its regulatory obligations. The fund has unsegregated assets and therefore obtains an actuarial certificate each year. This determines the exempt current pension income of the fund.

The percentage specified by the actuary in the relevant year is that:

- 70% of the value of fund assets is held to support current pension liabilities
- the remaining 30% of the value of fund assets is held to provide for assessable income in the fund.

The trustee decides that this percentage is a fair and reasonable method for apportioning the audit expenses. The expenditure that can be claimed as incurred in gaining assessable income is $450 ($1,500 × 30%).

Example 2

The trustee of Santo's SMSF incurs audit expenses of $1,500. This is for providing the SMSF with a report in accordance with its regulatory obligations. The SMSF earns:

- $60,000 in assessable income
- $100,000 in non-assessable income.

The trustees of the fund decide that the following method is a fair and reasonable way to apportion these expenses:

- audit expense × (assessable income ÷ total income)
- = $1,500 × ($60,000 ÷ $160,000).

This results in an amount of $562 for audit expenses claimed as a deduction by the fund.

Example 3

Sanchez SMSF has both pension and accumulation members. It does not segregate its assets.

The trustees obtain an actuary's certificate to determine the proportion of the fund's income that is exempt current pension income. The actuary certifies that 40% of the fund's income is exempt.

The trustees engage an accounting firm to undertake the administrative functions of the fund. The accounting firm charges a fixed upfront fee of $1,500 per annum for the following services:

- preparation of annual financial statements
- preparation and lodgment of the fund's annual return
- arranging for the annual audit of the fund
- preparing member benefits statements
- preparation of reports on the fund's investments.

The fixed fee of $1,500 is not calculated according to the cost of each particular service. The expense therefore cannot be easily divided into distinct and severable parts.

The trustees decide that it would be fair and reasonable to use the exempt income percentage as certified on the actuary's certificate. This determines the proportion of the accountant's fee that is deductible. They calculate this as follows:

- Expense × assessable income %

$1,500 × (100% − 40%) = $900.

This results in a portion of $900 of the $1,500 fee that can be claimed as a deduction.

Capital versus revenue expenses

An expense that is incurred in establishing or making enduring changes to a super fund's structure or function is capital in nature and is not deductible under the general deduction provision. For example, the costs of establishing an SMSF are capital in nature. An expense incurred in acquiring a capital asset is also usually capital in nature. Refer to the example under trust deed amendments.

On the other hand, an expense that is incurred in making changes to the internal organisation or day to day running of the fund is not considered to be capital in nature provided such changes do not result in an advantage of a lasting character. If a super fund is carrying on a business, it may be entitled to deduct certain capital expenses under the specific deduction provision, section 40-880 of the ITAA 1997. Refer to Is a super fund carrying on a business?

Section 8-1 of the ITAA 1997 does not allow a deduction for expenditure of a capital, private or domestic nature or expenditure incurred in gaining or producing exempt income.

Example

Julia and John are members in a two-member SMSF. They are individual trustees. When Julia dies, John decides to change the SMSF to a single member fund with a corporate trustee. He does this once the death benefit has been paid from the fund.

In addition to the usual fund expenses incurred in running the fund, John incurs the following additional expenses:

- legal expenses to amend the trust deed to change the fund to a single member fund with corporate trustee – $300
- Australian Securities & Investments Commission (ASIC) fees associated with setting up the corporate trustee.

The SMSF will not be able to claim either of these amounts. The legal expenses of $300 are of a capital nature. This is because they are incurred in making enduring changes to the structure of the fund. ASIC fees incurred in setting up the corporate trustee are also capital in nature. In any event, they are not considered to be expenses incurred by the fund.

Refer to Trust deed amendments for further examples.

See also:

- Taxation Ruling TR 93/17 *Income tax: income tax deductions available to superannuation funds*

- Taxation Ruling TR 97/11 *Income tax: am I carrying on a business of primary production?*
- Taxation Ruling TR 2011/6 *Income tax: business related capital expenditure – section 40-880 of the Income Tax Assessment Act 1997 core issues*

QC 53481

Stopping schemes to illegally access super

Find out how we are stopping schemes to illegally access super.

Last updated 25 October 2024

On this page

How we are protecting super

We're working to protect Australians' retirement savings from schemes to illegally access super by:

- raising awareness of the risks and how to address them
- reviewing and assessing all new self-managed super funds (SMSFs) before they can receive a registered or complying status on Super Fund Lookup (SFLU)

- working closely with industry partners to strengthen the rollover process.

These approaches will help prevent the creation of an SMSF for the purpose of illegal access of super.

Find out more about **illegal early release of super**.

SMSF registration process

The SMSF registration process helps safeguard retirement savings by preventing the inappropriate establishment of SMSFs. It can take up to 56 days before an SMSF is shown on SFLU as a regulated fund.

Once a new SMSF is displayed on SFLU, it will initially be given a status of 'Registered'. This status is allocated to all SMSFs on registration and will be updated within 7 days to 'Complying' when the SMSF receives its Notice of Compliance.

An Australian business number (ABN) for the fund will be issued before the election to be regulated is processed. This means that you can use the ABN to establish a bank account for the SMSF.

If we identify a problem with a new registration, we will immediately contact the authorised contact for the SMSF.

We have updated SFLU to provide clearer information about the complying and regulatory status of SMSFs and identify SMSFs that we have concerns about.

SMSF member verification system

When Australian Prudential Regulation Authority (APRA) regulated funds and SMSFs receive a request to rollover their member’s super balance to an SMSF, they must use the SMSF verification service (SVS) to confirm:

- the ABN in the request is registered as an SMSF
- SMSF status (complying or regulated)
- the tax file number (TFN) of the member requesting the rollover is associated with the SMSF
- the TFN of the member requesting the rollover is not compromised

- no verified date of death exists for that member
- SMSF bank details in the rollover request match those held by the ATO
- Electronic Service Address (ESA) in the rollover request matches that held by the ATO.

If a fund suspects fraud or illegal early access

When an APRA-regulated fund receives a transfer or rollover request and they suspect they're dealing with fraud or illegal early access activity, you should:

- report this by going to **Making a tip-off**, or
- phone us on **1800 060 062**.

We will investigate all reports of suspicious transactions.

Depending on the suspicious transaction, you may also have obligations to report to Australian Transaction Reports and Analysis Centre (AUSTRAC) and relevant law enforcement agencies.

Keep your SMSF details up to date with us

Keeping your details up to date with us will help reduce the risk of fraud and illegal early access.

It's also important because when someone initiates a rollover request into an SMSF, the SVS will verify the fund and member details. If the SVS indicates the SMSF doesn't have a 'registered' or 'complying' status, they will not be able to receive a rollover. If the transferring fund suspects any illegal activity, they will report it to us and may also be required to report it to relevant law enforcement agencies.

You need to ensure your SMSF membership details are recorded correctly and **notify us of changes**. This includes your fund's:

- bank account
- electronic service address.
- trustees

- directors of the corporate trustee
- members
- contact details (contact person, phone, email address and fax numbers)
- address (postal, registered or address for service of fund notices)
- fund status.

Alerts for changes

To safeguard retirement savings and reduce the risk of fraud, we send an email or text alert (or both) when there is a change to the SMSF's:

- financial institution account details
- ESA
- authorised contact
- members.

If you receive an alert and did not authorise or know about the changes outlined, you should take action immediately.

Phone us on **13 10 20** between 8:00 am and 6:00 pm Monday to Friday if you're concerned that **without your consent or knowledge**:

- an SMSF has been established, or
- changes have been made to your existing SMSF.

Have your TFN or ABN ready to establish your identity before you phone us.

QC 22209

Excess contributions tax - administrative penalties

Practice statement, providing guidelines for remitting penalties for non compliance with excess contributions.

Last updated 20 May 2013

We have released a practice statement, PS LA 2011/24, which provides guidelines for remitting administrative penalties where an individual or super provider does not comply with their excess contributions tax (ECT) release authority obligations.

We impose penalties to:

- encourage compliance
- encourage the prompt withdrawal of excess non-concessional contributions tax from the super system
- ensure that no more than the ECT amount is removed from the super fund.

We will consider each case individually when deciding whether we should remit any part of the penalty. If we find the individual or super provider has made a genuine attempt to comply with their obligations, we may remit the penalty in full. However, if we find they have made little or no attempt to meet their obligations, we may not remit the penalty at all.

The practice statement provides examples that show what we will consider when working out whether to impose or remit these penalties.

QC 24363

Notice of intent to claim a deduction

To help your members claim or vary a tax deduction for personal super contributions.

Last updated 14 October 2016

On this page

> [Accepting notices](#)
>
> [Acknowledging notices](#)

To help your members claim or vary a tax deduction for personal super contributions, you should:

- accept notices
  - ensure the notice is both valid and in the approved form
  - ensure, if it is a variation notice, that it does not increase the amount to be claimed
- acknowledge notices.

Accepting notices

Validity

You must not accept an invalid notice and should advise your member their notice is invalid. A notice will be invalid if any of the following conditions apply:

- it is not related to the contribution
- it includes all or a part of an amount covered by a previous notice
- when the member gave you the notice they were not a member of the fund, or holder of the retirement savings account (RSA)
- when the member gave you the notice
  - you no longer held the contribution
  - you had begun to pay a superannuation income stream based on whole or part on the contribution
- before the member gave you the notice
  - they had made a contributions-splitting application in relation to the contribution, and
  - you had received the application and not rejected it.

A notice can only cover personal contributions. The following are not personal contributions:

- rolled over super benefits
- benefits transferred from a foreign super fund
- a directed termination payment paid by an employer (under transitional arrangements that applied until 30 June 2012)
- salary-sacrificed amounts.

Notices in the approved form

Ensure your members have used an approved form to provide the notice.

An approved form is one of the following:

1. our **Notice of intent to claim or vary a deduction for personal super contributions** (NAT 71121-06.2012) paper form
2. the 'branded' paper form you provide, which specifies all the information contained in NAT 71121, our approved paper form. If you provide a fund 'branded' form to your members, you should also provide them with the instructions for completing the form available on the ATO website.
3. a letter from the member, stating that they wish to claim a tax deduction for a specific amount of their personal super contributions and containing at least the following information
   - first name
   - family name
   - date of birth
   - fund name
   - fund member account number
   - the financial year in which the contributions were made
   - the amount covered by their notice
   - the amount they intend claiming as a tax deduction
   - a declaration that they are lodging the notice by the due date, that is, by the earlier of the following

  - the day they lodged their income tax return for the year in which they made the contributions
  - the end of the income year following the one in which they made the contributions

- a statement that the information contained in their letter is true and correct
- their signature
- the date (day, month and year).

4. a virtual form given to you electronically by the member, provided that the virtual form was developed in accordance with the Guide for super funds to develop a virtual (electronic) form version of the *Notice of intent to claim or vary a deduction for personal super contributions*.

Next step:

- For a copy of the Guide, refer to softwaredevelopers.ato.gov.au/sfvf1

If you choose to provide your own paper form or your member notifies you in writing, make sure the notification contains all the necessary information from the NAT 71121 paper form, including the member declaration, to make it a notice in the approved form.

If a paper notice does not contain all the required information, or a virtual form was not developed in accordance with the Guide, the member will not be providing a notice in the approved form as required by section 290-170 of the *Income Tax Assessment Act 1997* (ITAA 1997) and they may later be denied an income tax deduction.

Variations

A variation may only reduce the amount to be claimed (including reducing it to nil).

Only accept variations that reduce the amount of the deduction to be claimed.

A variation is not effective if:

- the person is no longer a member of the fund
- the fund no longer holds the contribution
- the fund has begun paying an income stream based in whole or part on the contribution.

If the member wishes to vary their notice of intent to claim a deduction, they may use any of the above methods for providing a notice. If they are writing a letter to you, they need to include the same information as in their original notice, plus a statement that they wish to vary their previous notice to reduce the amount claimed. They must also specify the amount they now intend to claim (which may be nil).

The member should also have signed a declaration that they are giving this variation within the relevant timeframe (see Important Information below).

If a member wants to increase the amount they are going to claim as a tax deduction, they must lodge a separate notice of intent to claim a deduction for the additional amount. This will be a new notice rather than a variation.

Important information

A member must give you their notice (or variation) by whichever of the following dates occurs first:

- the day they lodge their income tax return for the income year in which the contribution was made
- the end of the income year following the income year in which the contribution was made.

Note: that the above deadline does not apply if the ATO has disallowed a member's deduction and a variation is being made to reduce the amount claimed by the amount not allowable.

As you may not be aware of the specific date (from the above) that each member must give you their notice by, the member is required to sign a declaration to say that they have given you the notice (or variation) within the relevant timeframe.

A valid notice of intent cannot be revoked or withdrawn but the member may vary the notice so as to reduce (even to nil) the amount they want to claim, so long as they do it within the timeframe set out above.

If we disallow a deduction your member has claimed, the member may vary the notice to reduce their claim by that amount. This variation is not subject to the above timeframes.

Always advise your members of the reasons for rejecting their notices and of any actions they can take to lodge valid ones. This may reduce the frequency of escalated complaints.

Acknowledging notices

You are required to acknowledge your member's valid notice, without delay, unless the value of the relevant super interest, on the day you receive the notice, is less than the tax that would be payable by you in respect of the contribution if you were to acknowledge the notice.

You should also advise your member if their notice is invalid.

To avoid disadvantaging your members, your acknowledgment should include:

- a clear statement that you have received their notice of intent to claim a deduction
- the date
  - your fund received the original notice
  - your fund received any subsequent variations
  - of the acknowledgment
- the member's account and fund details
- the total amount of personal contributions that the original notice covers and, of those, the amount the member currently intends to claim as a deduction
- the date the contributions were made or the income year they were made in.

This information will ensure that your members are able to claim the deductions they are entitled to, and that the correct super co-contributions and excess contributions tax outcomes apply to them.

Additional requests for acknowledgment

Where your members have lost, or failed to receive, your acknowledgment they may request a new acknowledgment.

In such circumstances, you can either:

- provide them with a copy/duplicate of the original acknowledgment
- confirm their original notice is valid and provide them with a new acknowledgment.

We are concerned that members are incorrectly claiming deductions when:

- they have not provided a valid notice of intent to their fund
- their fund has not acknowledged their valid notice of intent
- the amount of the deduction is in excess of their valid and acknowledged notice of intent.

QC 24422

Recent changes to electronic lodgment of the SMSF annual return

From 1 July 2012 systems changes have been made to the electronic lodgment of the SMSF annual return.

Last updated 22 March 2017

On this page

All self-managed super funds (SMSFs) must lodge a SMSF annual return (NAT 71226) with us each year. The return combines income tax, regulatory and member information reporting obligations.

Lodgment of the annual return is required once a fund is established, which is only after assets have been set aside for the benefit of members. After that, regardless of whether or not the fund had any activity or assets during a financial year, a return is required each year until the fund is being wound up.

We have been advising funds that we expect SMSFs to have assets set aside for the benefit of their members. A SMSF is a trust and it must have assets set aside for the benefit of its members to legally exist.

New requirements

From 1 July 2012, we have made systems changes to ensure that unless a SMSF has been wound up during the financial year, you will not be able to lodge a 2012 SMSF Annual Return through the electronic lodgment system (ELS) where the SMSF had either:

- no assets at the end of the financial year end
- no member balances at the end of the financial year.

In most instances, no assets or no member account balances indicate that the fund needs to be wound up or the return has been completed incorrectly and needs to be corrected to allow lodgment.

Zero Total Assets – you cannot lodge an SMSF annual return via ELS

From 1 July 2012, when attempting to lodge a 2012 SMSF Annual Return you will get an error message and will not be able to proceed with an ELS lodgment where:

- the balance for 'Total Australian and Overseas Assets' (Label U) is zero
- the answer to Section A Question 9 is 'no', indicating that the fund is not winding up.

This is because a SMSF is a trust and it must have assets set aside for the benefit of its members to legally exist.

There is a concession we have for newly registered SMSFs which have not commenced operating in their first financial year of registration. In certain circumstances, we may apply a RNN (return not necessary) concession to the fund for this first year.

Zero member account balances – you cannot lodge a SMSF annual return via ELS

In sections F and G of the SMSF annual return you are required to report all current members at 30 June of the relevant financial year and former members who were paid a benefit (that is, a lump sum or income stream, but not a rollover) during the income year. This includes members for whom no contributions were received.

Each closing balance should reflect the member's actual interest in the fund so that you can reconcile this against assets and other liabilities of the fund in section H.

From 1 July 2012, SMSF annual returns for the 2012 financial year showing a zero balance for total member closing account balances (Label W) will not be able to be lodged via ELS. You will receive an error message and will not be able to proceed with lodgment of the SAR.

There are only two exceptions. The first exception is if the SMSF is winding up and has answered 'yes' at Section A, Question 9 of the SMSF annual return. The second exception is if the SMSF has indicated at Section A, Question 8 of the SMSF annual return that the fund is a defined benefit fund.

What you need to do

You should review the SMSF annual return to ensure that assets and member account balances are accurately reported.

If you have determined that no further returns will be necessary for the SMSF, you need to consider the steps required to wind-up the fund.

See also:

- Winding up a self-managed super fund
- Self-managed super fund annual return

If you continue to experience any difficulties with lodging returns via ELS, you should contact the Tax agents phone line, **13 72 86** Fast Key Code (FKC) 3 1 for assistance.

If you have any other questions, refer to the Super Funds website or phone us between 8.00am and 6.00pm, Monday to Friday, on **13 10 20** for specific information about your super reporting and lodgment obligations.

Alternatively write to us at:

Australian Taxation Office
PO Box 3100
PENRITH NSW 2740

QC 24474

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.