



How to apply for SMSF specific advice

How to apply for advice of how super laws may apply to your SMSF for a specific transaction or arrangement.

Last updated 13 August 2021

- [About SMSF specific advice](#)
- [Applying for SMSF specific advice](#)

You can apply for SMSF specific advice about:

- your own SMSF's affairs
- another's SMSF's affairs if you are their agent.

You can download the [Request for self-managed superannuation fund specific advice](#) form.

Remember to include all of the [supporting documentation and information](#) required with your form.

If you are new to this site, you should first read about private rulings to see [how a tax law may apply to your specific scheme or circumstance.](#)

About SMSF specific advice



Applying for SMSF specific advice



QC 22130

About SMSF specific advice

Last updated 13 August 2021

What is SMSF specific advice?

SMSF specific advice is a written explanation of our view of how super laws may apply to your SMSF for a specific transaction or arrangement. 'Superannuation laws' about SMSF specific advice are based on:

- the *Superannuation Industry (Supervision) Act 1993* (SISA)
- *Superannuation Industry (Supervision) Regulations 1994* (SISR).

If you rely on SMSF specific advice you have received (that is, you apply the SMSF specific advice to your SMSF's affairs), we must administer the law in the way set out in the advice. Unless the advice is incorrect.

While similar in form to a private ruling, SMSF specific advice is not legally binding and does not have the same review rights as a private ruling.

It will provide you with certainty on applying super laws to your specific circumstances. For example, you will have some protection if you acted in good faith and followed the advice you were given, even if the advice turns out to be incorrect.

See also:

- Refer to [PS LA 2009/5](#) for more information about our advice and guidance in relation to SMSFs.

Scheme

We use 'scheme' as a general term in taxation and super matters on this site and in the application forms. A scheme can be any agreement, arrangement, understanding, plan, proposal, action, course of action, course of conduct, promise or undertaking, whether express or implied

and whether enforceable, or intended to be enforceable, by legal proceedings.

See also

- Refer to [PS LA 2009/5](#) for more information about a scheme.

Who does SMSF specific advice apply to?

The Commissioner usually provides SMSF specific advice in response to an application by, or on behalf of, an SMSF. Each advice is specific to that SMSF and cannot be relied on by another entity or SMSF.

As the Commissioner of Taxation provides SMSF specific advice as part of his role as the regulator of SMSFs, SMSF specific advice has **no application to entities other than SMSFs and former SMSFs that are regulated by the Commissioner**. 'Former SMSFs' means super funds that have ceased being SMSFs for the purposes of the SISA and the trustee of the fund is not a registrable super entity licensee.

When should you consider applying for SMSF specific advice?

Typically, you would apply for SMSF specific advice when you want to be certain about how a super law applies to your SMSF's particular circumstances.

In many cases, you may be satisfied by the information and guidance that are available through any of the main information services provided by the ATO. These include:

- SMSF rulings and determinations
- ATO booklets and website content
- asking us to provide general written guidance.

Written guidance provides general assistance to help you understand your obligations and duties, usually in situations where you have enquired about the broad operation of the law and have not provided full details of your specific circumstances.

Written guidance often provides step-by-step guidance but is unlikely to cover all possibilities and does not address an SMSF's specific circumstances.

If you cannot find the information you need in ATO publications, you can write asking us to provide general written guidance or contact us for assistance:

- for super enquiries, phone **13 10 20**
- for account management, phone **13 11 42**
- for tax agents, phone **13 72 86** and select the relevant [fast key code](#)

If none of these services is able to give you the answers you need, you should apply for SMSF specific advice using the relevant form.

What matters can SMSF specific advice cover?

SMSF specific advice sets out the Commissioner's opinion about how superannuation laws apply in relation to a transaction or arrangement, including the following:

- investment rules, including
 - those relating to an investment by a fund in a company or trust
 - acquisition of assets from related parties
 - borrowing or charges
 - in-house assets
 - business real property
- in-specie contributions or payments
- payment of benefits under a condition of release.

However, SMSF specific advice cannot be provided where the query relates to:

- the complying status of your SMSF
- trustee covenants as set out in subsection 52(2) of the SISA
- the actual exercise of a discretionary power
- the residency status of your SMSF (you can apply for a private ruling on this issue as it is a taxation issue).

SMSF specific advice cannot be provided if your fund is not an SMSF or a former SMSF.

For more information about SMSF specific advice, refer to [Law Administration Practice Statement PS LA 2009/5](#) Provision of advice and guidance by the ATO in relation to the application of the *Superannuation Industry (Supervision) Act 1993* and the Superannuation Industry (Supervision) Regulations 1994 to Self Managed Superannuation Funds

Who can apply for SMSF specific advice?

You, as trustee, can apply for SMSF specific advice for your own SMSF.

Alternatively, someone else can apply on your behalf. For example, a tax agent, approved auditor or a legal personal representative can apply if you give them written authority to do so. If you give someone written authority to apply for SMSF specific advice on your behalf, we refer to them as your 'agent', even if they are not a tax agent.

A trustee of an SMSF can request SMSF specific advice on behalf of their SMSF. This advice applies to the members of the SMSF, and to any trustee that replaces the applicant trustee, for as long as the advice remains current.

When we may decline to provide SMSF specific advice

We may decline to provide SMSF specific advice in certain circumstances:

- if we are considering, or have already considered, this issue for you
 - for example, in an ATO audit relating to the particular question
- if we ask you to provide information we need and you do not provide it within a reasonable time
- if the Commissioner considers that making the SMSF specific advice would prejudice or unduly restrict the administration of the law
- if the Commissioner considers that
 - your application is frivolous or vexatious

- you are not seriously contemplating the arrangement you describe, or providing the advice would not have any practical consequences (for example, if the period for making the proposed investment has expired)
- if the Commissioner chooses to exercise a power available under the law, rather than provide advice on how that power would be exercised
- if the Commissioner considers that the correctness of the SMSF specific advice depends on certain [assumptions](#), and chooses not to provide SMSF specific advice subject to those assumptions.

Relying on SMSF specific advice

Though SMSF specific advice is not binding, it will provide certainty to your SMSF on the application of the SISA and SISR in relation to the arrangement or questions raised in your SMSF specific advice request.

If we later take the view that the law applies less favourably to your SMSF than the SMSF specific advice indicated, the fact that you (as trustee of your SMSF) acted in accordance with that SMSF specific advice would be a relevant factor in your favour in our decision regarding what compliance action, if any, is to be taken in response to a breach of that law.

As such, it is important that you make a full and true disclosure of all the relevant facts in relation to the arrangement on which the SMSF specific advice is sought. SMSF specific advice will not be applicable where relevant facts were not fully disclosed.

General advice or help


You can get general advice by phoning or visiting the ATO, and through a wide range of our publications.

If you need more information about applying for SMSF specific advice:

- for super enquiries, phone **13 10 20**
- for tax agents, phone **13 72 86** and select the relevant [fast key code](#).

If you do not speak English well and need help from the ATO, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone the ATO through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS at relayservice.com.au  and ask for the ATO number you need.

QC 22130

Applying for SMSF specific advice

Last updated 13 August 2021

How to apply

1. Download a [Request for self-managed superannuation fund specific advice](#) application form.
2. Use this site to find what information and documents we need to provide SMSF specific advice.
3. Complete the SMSF specific advice application form.
4. Send your SMSF specific advice application by fax or post, to the addresses listed in the form.

If you are a registered tax agent, or a Business Portal user, you may lodge your application through the Tax Agent Portal.

Required information and documents

The [supporting documents information](#) for SMSF specific advice lists the information and documents we usually need to resolve questions about the subjects listed.

Check whether the topic to send us all the supporting documents it requests. This will help to prevent delays caused by our having to ask you to provide the information later.

Supporting document requirements for SMSF specific advice

This information lists the documents and information we usually need to process self-managed superannuation fund (SMSF) specific advice about:

- the acquisition of an asset
- business real property
- in-house assets.

We cannot usually provide SMSF specific advice about future years or transactions unless you have a high degree of certainty about how you will conduct your activities.

Acquisition of an asset

If you want us to determine whether the acquisition of an asset by your SMSF is prohibited by the *Superannuation Industry (Supervision) Act 1993 (SISA)* or whether it meets one of the exceptions, provide us with:

- documents that show the current or previous (depending on whether the acquisition has occurred already) legal ownership of the asset
- details describing the relationship between the party who owns (or owned) the asset and your SMSF
- documents or details about the asset acquired or to be acquired, in particular whether you believe the asset is
 - listed shares
 - business real property
 - an asset described within subsection 66(2A) of the SISA
- details or documents that outline how the acquisition/transaction would occur or has occurred, including the value of the asset and how the value of the asset was arrived at.

Watch

Media: SMSF - Related party transactions.

<https://tv.ato.gov.au/ato-tv/media?v=bd1bdiub8cjgsd>  (Duration: 3:01)


Business real property

If you want us to determine whether property meets the definition of 'business real property' for the purposes of the SISA, provide us with:

- details describing the relationship between the party who owns (or owned) the property, or lease, to be acquired and your SMSF or members of your SMSF
- documents detailing the legal ownership of the interest in the real property and the form of that ownership (such as lease or freehold)
- details or documents that outline how the transactions would occur, or have occurred, including the market value of the asset and how that value was arrived at
- documents explaining or a detailed description of business activities that occur on the property or in a location of which the property is a part
- details of any private or non-business use on the property, including the degree of non-business use, purpose and frequency.

Watch

Media: SMSF - Business real property.

<https://tv.ato.gov.au/ato-tv/media?v=bd1bdiubfs46jy>  (Duration: 2:00)

In-house assets

If you want us to determine whether an investment, loan or lease (whether proposed or not) would meet the definition of an 'in-house asset' for the purposes of the SISA (and whether or not a contravention of the in-house assets rules has occurred), provide us with:

- details or documents outlining the specific transaction – this may include investment, loan and lease documents

- details describing the relationship between all parties and your SMSF for the investment, loan or lease arrangement
- details or documents that outline how the transactions would occur, or have occurred, including the market value of the investment, loan or lease and how that value was arrived at
- the total value of your SMSF's assets in the year of income that the transaction has or would occur.

Watch

Media: SMSF - In-house assets

<https://tv.ato.gov.au/ato-tv/media?v=bd1bdiubfs46e7>(Duration: 02:25)

Send the relevant documents and information with your [request for self-managed superannuation fund specific advice](#) form.

For more information about:

- the acquisition of assets, refer to [SMSFR 2008/D2](#)
- business real property, refer to [SMSFR 2009/1](#)
- in-house assets, refer to [SMSFR 2009/4](#)

What to include in your SMSF specific advice application

The information and supporting documentation required in a SMSF specific advice application are:

- your contact details
- the full name of the SMSF that the SMSF specific advice is for
- the questions that you want answered
- the facts describing the [scheme](#) or transaction (including everything listed in the [supporting documents information](#))
- research and analysis of the technical issues (optional)
- details of any previous SMSF specific advice you have received on the issue
- a checklist to help us to determine whether your application is valid

- your [declaration and signature](#).

Your questions

Your questions must be clear so that we can accurately identify your questions and issues.

If you are a tax professional, we prefer that you refer to the specific provisions of law on which you require the SMSF specific advice. Other applicants do not have to refer to the law.

Facts describing the scheme or transaction

You must provide us with a description of all of the facts (with [supporting documentation](#)) that are relevant to your scheme or transaction.

If there is any material difference between what you actually do and the [scheme](#) that we describe in your SMSF specific advice, the SMSF specific advice is ineffective.

If the scheme you describe in your facts is only a proposal, the facts must still be reasonably certain. We will not provide SMSF specific advice on hypothetical situations.

Your arguments and references (optional)

If you are a tax agent or other tax professional, we encourage you to provide a full description of the issues, together with the results of any research you have undertaken. Your research might include journal and textbook commentary on the relevant provisions, and your application may include case citations and references to SMSF public rulings (where applicable). We also encourage you to state your own opinion about how the law applies to the question, together with your reasoning. If you wish, you may also supply a draft of the SMSF specific advice sought.

If you provide your arguments with your client's application, we will be able to take them into account when considering our response. It should also reduce our need to ask for further information and help to speed our response.

If you are not a tax agent or other tax professional, and you have an opinion on the matter, tell us how you think the [scheme](#) or transaction should be treated under the law.

Checklist

Each SMSF specific advice application form has a checklist section. This section helps us to ensure that your application is valid. Answer the questions and provide the details to the best of your knowledge.

You may specify the years or periods to which the SMSF specific advice will apply; however, a time period is not mandatory.

Your signature and declaration

If lodging your own application, it must contain a declaration with your signature stating that the information in the SMSF specific advice application and supporting documents is true and correct.

Client declaration when applying as the agent of someone else

If you are lodging an application as the agent of another person (where they have authorised you to apply for the SMSF specific advice), you must get a declaration from that person before you lodge the application with your agent's declaration (referred to above).

The declaration must state:

- this document and any attached documents have been prepared in accordance with the information supplied by the entity or entities identified on this form
- you are authorised to give the SMSF specific advice application to us
- the information provided to you for the preparation of the SMSF specific advice application is true and correct.

You do not need to send this declaration to the ATO with the SMSF specific advice application. Your client (or the person you are acting for) should retain the declaration and produce it if requested. You may hold the declaration on your client's behalf.

Where to lodge the SMSF specific advice application form

If you wish to apply for SMSF specific advice at the same time as you lodge your SMSF's return, do not attach the form to your SMSF's

return. You should lodge the SMSF specific advice application separately.

You must lodge your returns and activity statements by the due date, even if you are waiting for us to provide you with advice.

Online services for agents

If you are a tax agent, you can lodge the SMSF specific advice application form on the Tax Agent Portal; submit as an attachment to a new mail message.

If you are lodging your completed form by:

Fax, send to **1300 669 846**

Post, send it to

Australian Taxation Office
PO Box 3100
PENRITH NSW 2740

What happens after you have applied for SMSF specific advice?

We generally acknowledge your request when we receive it. We'll then review your request for specific advice about how the super law applies to your particular transaction or arrangement for your self-managed superannuation fund.

We will let you know if we need additional information.

We aim to provide you with specific advice within 28 days of receiving all the necessary information.

If we need more information

If we need more information, we aim to ask for it within 14 days of receiving your application. Where you have applied on behalf of someone else, you must obtain another declaration from them, stating that the additional information you provide to us is true and correct.

SMSF specific advice on matters not raised in the application

We will generally only provide SMSF specific advice on the matters directly raised in the SMSF specific advice application.

If there are other matters that we believe to be relevant, we will tell you about them and ask if you want us to address these. Should you want us to provide SMSF specific advice on any of these additional matters, we will invite you to submit a further SMSF specific advice application.

Assumptions and information from third parties

If we need to make assumptions to provide you with SMSF specific advice, we will advise you what those assumptions are and give you a reasonable opportunity to respond. We may decline to provide SMSF specific advice rather than make SMSF specific advice subject to assumptions.

If we intend to use any relevant information from third parties to provide you with SMSF specific advice, we will advise you about the information, tell you what it is and give you a reasonable opportunity to respond.

Our service standards

We aim to provide you with SMSF specific advice within 28 days of receiving all the necessary information from you. If we cannot give you a SMSF specific advice within the relevant time period, we aim to contact you within 14 days of receiving all the necessary information to discuss an appropriate reply date.

Withdrawing SMSF specific advice application

You can tell us that you want to withdraw your SMSF specific advice application at any time before the SMSF specific advice is made. We will confirm the withdrawal in writing.

Revision of SMSF specific advice

You can ask us to review SMSF specific advice. In some cases we may revise our advice without being asked, but generally only if the [scheme](#) and income year to which the original advice relates have not begun.

Note: You can apply for a new SMSF specific advice at any time. It does not matter if the scheme or year of income has not yet begun.

If you decide to apply for a new SMSF specific advice or request a review of a previous SMSF specific advice, you must tell us about any previous SMSF specific advice you have received on that subject. Otherwise, the new SMSF specific advice will be taken not to have been made. However, if you do tell us about a previous SMSF specific advice, and the new SMSF specific advice is inconsistent with the old, the new SMSF specific advice applies.

The ATO may decline to give you a new SMSF specific advice on the same subject and for the same years if your existing SMSF specific advice is enough.

QC 22130

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.

Copyright notice

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).