



Australian Taxation Office Superannuation Circular 2003/2 (Withdrawn) - Responsibilities of the Approved Auditor

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**AUSTRALIAN TAXATION OFFICE
SUPERANNUATION CIRCULAR**

NO. 2 / 2003

**SELF MANAGED
SUPERANNUATION FUNDS**

**RESPONSIBILITIES
OF THE
APPROVED AUDITOR**

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Acronyms:

Superannuation Industry (Supervision) Act 1993 – SISA

Superannuation Industry (Supervision) Regulations 1994 – SISR

Self Managed Superannuation Fund – SMSF

Australian Taxation Office – ATO

Australian Prudential Regulation Authority - APRA

Introduction

1. The SISA makes trustee(s) solely responsible for the prudent management of superannuation entities and mandates that an important monitoring role be undertaken by an ‘Approved Auditor’.
2. The ATO is the Regulator of those superannuation funds that meet the definition of an SMSF as prescribed under section 17A of the SISA.
3. The Approved Auditor plays a crucial role in SMSF compliance. Each SMSF is subject to a mandatory annual audit by an Approved Auditor who must prepare an audit report in the approved form pursuant to section 113 of the SISA.
4. The SISA requires that any contravention of the SISA and the SISR provisions identified in the course of the audit be reported to the trustee(s) and that appropriate plans for resolving these contraventions are prepared and implemented by the trustee(s).
5. The purpose of this Circular is to:
 - (a) prescribe the approved form of the audit report pursuant to section 113 of the SISA;
 - (b) identify the ATO's auditing requirements in relation to SMSFs; and
 - (c) provide information about the expectations of the ATO with respect to audits of SMSFs.

Approved Auditor

6. Definition (*Regulation 1.04 of the SISR*)

Regulation 1.04 of the SISR defines an Approved Auditor in relation to SMSFs as either:

- a registered company auditor;
- a member of CPA Australia;
- a member of The Institute of Chartered Accountants in Australia;
- a member of the National Institute of Accountants;
- a member or fellow of the Association of Taxation and Management Accountants;
- a fellow of the National Tax and Accountants Association Ltd; or
- the Auditor-General of the Commonwealth, a State or a Territory.

It is important to note that the relevant professional bodies may impose additional rules governing their members undertaking auditing services in respect of SMSFs.

SISA Responsibilities

(Sections 36A and 113 of SISA)

Annual Audit

7. Subsection 113(1) of the SISA requires the trustee(s) of an SMSF, for each year of income, to appoint an Approved Auditor to audit the operations of the fund for that year and to give the trustee(s) a report, in the approved form.
8. Subsection 113(1A) of the SISA requires the trustee(s) to provide to the Approved Auditor any relevant documents the Approved Auditor requests, in writing, within 14 days of the request.
9. Subsection 113(4) of the SISA requires the Approved Auditor to report to the trustee(s) within the specified period after the end of the year of income. Regulation 8.03 of the SISR states that the specified period is the period ending on the day before the day by which section 36A of the SISA requires a return to be lodged in respect of an SMSF.
10. The trustee(s) of an SMSF are required, under section 36A of the SISA, to lodge an Annual Return 'Fund Income Tax and Regulatory Return (Form F)' with the ATO. The trustee(s) is not required to include a copy of the audit report with the Form F. However, the Form F does require the trustee(s) to provide a brief explanation of any audit qualification and/or other contraventions of the relevant SISA and SISR requirements that occurred during the income year.
11. The Form F covers lodgment requirements for both the *Income Tax Assessment Act 1936* (ITAA36), the SISA and makes provision for the lodgment of surcharge information by self-assessing superannuation providers.

Other Requirements

(Sections 129 and 130 of the SISA)

12. Sections 129 and 130 of the SISA impose obligations on Approved Auditors when, in the course of performing the functions of an Approved Auditor under the SISA (i.e. the carrying out of the audit of the fund's accounts and statements, and compliance with the provisions of the SISA and the SISR), he/she forms an opinion that:
 - (a) it is likely that a contravention of the SISA or the SISR may have occurred, may be occurring, or may occur in relation to the superannuation entity; or
 - (b) the financial position of the entity may be, or may be about to become, unsatisfactory.
13. In such circumstances, the Approved Auditor is required to notify the trustee(s) about the matter in writing [subsections 129(3) & 130(2) of the SISA]. Also, depending upon the seriousness or materiality of the matter, the Approved Auditor may also, at this time, report their concerns directly to the ATO.
14. Where the Approved Auditor reports the matter to the trustee(s), the Approved Auditor must request a report from the trustee(s) about the action (if any) the trustee(s) has taken, or proposes to take, to deal with the matter [subsections 129(5) & 130(4) of the SISA].
15. If the trustee(s) fails to provide the Approved Auditor with a written response or the action taken or proposed by the trustee(s) is not considered satisfactory by the Approved Auditor, the Approved Auditor **must** inform the ATO in writing [subsections 129(6) & 130(5) of the

SISA]. The address to send the form to is: Australian Taxation Office
Attention Small Funds Compliance
PO Box 277
WORLD TRADE CENTRE
VIC 8005

16. During the course of the audit, where the Approved Auditor identifies a weakness in an administrative procedure or system, even if this weakness has no impact on the financial statements nor does it give rise to a contravention under the SISA, the Approved Auditor has a duty to report the weakness to the trustee(s) and include it in the management letter.

Approved Form of the Audit Report

(Subsection 113(3) of the SISA) - ATTACHMENT A

17. Subsection 113(1) of the SISA requires that each superannuation entity be audited and that the Approved Auditor must provide a report in the approved form to the trustee(s).
18. The SISA audit report in the approved form for SMSFs was developed with a view to ensuring consistency with current auditing standards and formats. In preparing the form, the ATO consulted with APRA and representatives of the audit profession.
19. Approved Auditors must not vary the wording of the report, except where it is explicitly allowed for this to occur.
20. Where a trustee(s) is responsible for more than one fund, the Approved Auditor is required to perform appropriate testing and provide a separate audit report in respect of each superannuation entity. It is not acceptable to provide one audit report relating to multiple SMSFs.
21. Both the financial and compliance sections of the audit report provide scope for additional material to be inserted where the Approved Auditor has been engaged by the trustee(s) to express an opinion on additional aspects. Such insertions must not limit or detract from the scope/opinion prescribed in the approved form. Any other variations to the content of the audit report would not be in the approved form.
22. Financial Report - The audit report in the approved form to be completed in respect of the financial report of an SMSF for the year of income as required under subsection 113(3) of the SISA is set out in Part A of Attachment A.
23. Compliance - The Approved Auditor is mandated to audit trustee(s)'s compliance, in all material respects, with the requirements of the following provisions of the SISA and the SISR:
- Sections: 17A, 19, 62, 65, 66, 67, 69 – 71E, 73– 75, 80 – 85, 103, 104, 105, 106A, 109, 111, 112, 113, 118, 121, 124
- Regulations: 5.08, 6.17, 7.04, 13.14
24. The audit report in the approved form which is to be completed in respect of an SMSF's compliance with the SISA and the SISR for the year of income is set out in Part B of Attachment A.
25. A detailed summary of the above SISA provisions and the SISR regulations, together with ATO expectations of the Approved Auditor in relation to compliance, is contained in Attachment B.

Auditing Standards

26. The audit report in the approved form, issued by the ATO for the purpose of section 113 of the SISA, requires that audits undertaken must be conducted in accordance with Australian Auditing Standards prepared by the Auditing Standards Board of the Australian Accounting Research Foundation. The Australian Auditing Standards are issued by the Australian Accounting Research Foundation on behalf of CPA Australia and The Institute of Chartered Accountants in Australia. Members of these associations, and members of the other associations listed in paragraph 6, are required by their relevant association rules to comply with Australian Auditing Standards when performing all audit services.
27. Australian Auditing Standards state that an unqualified audit report may only be issued if the Approved Auditor is satisfied that the financial report of the entity has been presented fairly and in accordance with applicable Accounting Standards and relevant statutory and other requirements.
28. Whilst the ATO does not monitor compliance with Australian Auditing Standards or Australian Accounting Standards, it may, as the result of its review of an SMSF, form the view that significant deficiencies are apparent in the work of an Approved Auditor. In these cases, if the ATO considers that such deficiencies bring into question the person's fitness and propriety to be an Approved Auditor, it may, pursuant to section 131A of the SISA, refer the matter to the person's professional association for possible disciplinary action. The ATO may also consider disqualifying the person from being an Approved Auditor pursuant to section 131 of the SISA.

Auditor Independence

29. Whilst SISA does not specifically comment on the issue of independence of the Approved Auditors, the Approved Auditor should conduct their audit in accordance with Australian Auditing Standards and Guidelines.
30. Code of Professional Conduct – 'Professional Statement F.1 - Professional Independence' states that professional independence is a concept fundamental to the accounting profession requiring a member to approach their work with integrity and objectivity.
'Professional Statement F1 – 'Professional Independence' has been revised and reissued. The new statement which comes into effect for all audit reports dated after 31 December 2003 sets out guidelines and definitions to ensure that every Approved Auditor is independent both in mind and appearance. All Approved Auditors of SMSFs are asked to familiarise themselves with the guidelines and definitions set out in the revised statement.
31. A further guidance statement and case studies in the application of Professional Statement F1 – 'Professional Independence' was jointly issued by the accounting bodies in May 2002 and the Auditing Assurance Standards Board (AuASB). This paper has added clarity to the issue of determining audit independence.
32. Statement of Auditing Practice AUP 32 – 'Audit Independence' defines independence as a freedom from any interest incompatible with integrity and objectivity. An Approved Auditor must not only be independent, but must also appear to be independent. Independence requires a freedom from bias, personal interest or association and susceptibility to undue influence or pressure.

Please refer to "Issues of Concern", paragraph 43 for the ATO position

Materiality

33. The audit report in the approved form for an SMSF incorporates the concept of materiality in the opinion paragraphs.
34. An Approved Auditor should qualify his/her audit report where he/she finds:
- the financial report does not reflect the true and fair financial position of the entity;
 - the financial position may be, or may be about to become unsatisfactory; or
 - a contravention of the specified provisions of the SISA and the SISR, and which in his/her professional opinion is material.
35. In forming an opinion as to whether a matter is material and therefore requiring qualification within the audit report, the Approved Auditor should refer to relevant professional guidelines issued by the professional bodies. The guidance provided within those professional guidelines on the meaning and application of the concept of materiality should be adapted as appropriate to the task of judging the entity's financial position and compliance with the relevant legislative provisions.
36. **All** instances of non-compliance of the specified provisions of the SISA and the SISR must be reported to the trustee(s) and/or the ATO (if required) in accordance with section 129 of the SISA. It is stressed that the concept of materiality ***does not*** apply to section 129 of the SISA. Under section 129 of the SISA, if the trustee(s) do not rectify the contravention, or do not satisfactorily address the cause of the contravention, the Approved Auditor is required to refer the matter to the ATO.
37. It is possible that some instances of non-compliance which have since been rectified by the trustee(s) will nevertheless be material and accordingly will require qualification of the audit report. The ATO would also consider it unlikely that a contravention or a matter relating to the fund's unsatisfactory financial position would be deemed immaterial if the trustee(s) failed to respond or provide an inadequate response to concerns raised by the Approved Auditor under sections 129 and/or 130 of the SISA.

ATO Access to Audit Working Papers

38. As the Regulator of SMSFs, the ATO relies on the audit process and the Approved Auditor's report to monitor the compliance of these funds with the provisions of the SISA and the SISR.
39. The ATO, as part of its regulatory role, will carry out regular reviews of the work performed by the Approved Auditor to validate the fund's compliance with the SISA and the SISR and to ensure that there are no significant deficiencies in the audit process.
40. These reviews will take the form of visits to the Approved Auditor's premises and/or desk audit, and will incorporate an examination of the Approved Auditor's working papers.
41. The Approved Auditor will be required to make available to the ATO their audit working papers and any other documentation deemed relevant to the fund's compliance with the SISA and the SISR.
42. It is therefore essential that the Approved Auditor maintains sufficient documentation to ensure that the ATO can be satisfied that the audit was conducted in accordance with the legislative requirements and auditing standards. The Approved Auditor should document all

matters, and working papers should include copies of all relevant papers, statements and documents, which are important in providing evidence that support the Approved Auditor's findings and opinion.

Issues of Concern

43. The areas of principal concern from recent compliance activities include the following:

(a) ***Independence***

There have been many instances where it was felt that the independence of the Approved Auditor may have been compromised. These instances have arisen where the Approved Auditor also has involvement in the day-to-day running of the SMSF; is in a position to influence the fund's decision making processes; or has responsibility for maintaining the accounts and preparation of the financial report.

The ATO considers that it is the responsibility of each Approved Auditor to determine his/her own independence and to be able to demonstrate that they satisfy the prescribed standards as set out by the professional bodies.

The ATO's preferred position is that the audit of an SMSF be undertaken by an independent practitioner. The ATO may report breaches of independence to the Approved Auditor's relevant professional association.

(b) ***Compliance with Sections 129 and 130 of the SISA.***

Sections 129 and 130 of the SISA impose obligations on the Approved Auditors when during the course of the audit of an SMSF, the Approved Auditor forms the opinion that a contravention has occurred or that the financial position is unsatisfactory. The Approved Auditor is required to report the matters to the trustee(s) (in writing) and/or the ATO under sections 129 and/or 130 of SISA.

The ATO has found that some Approved Auditors are not complying with the requirements of these provisions and the ATO may impose penalties where Approved Auditors do not follow these requirements.

(c) ***Working Papers***

The ATO has found that many Approved Auditors of SMSFs have not maintained sufficient documentation that supports the Approved Auditor's findings and opinion in connection to the financial report and compliance with SISA. As a minimum requirement, the working papers should include copies of all relative documents and supporting papers, including :

- *Letter of Engagement*
- *Evidence of existence, ownership, acquisition and valuation of assets*
- *Management letter*
- *Financial report*
- *Audit Report in the approved form*

Where the ATO forms the view that significant deficiencies are apparent in the work of an Approved Auditor the ATO may, pursuant to sections 131 and 131A, consider disqualifying the person from being an Approved Auditor or refer the matter to the person's professional association for possible disciplinary action.

Penalty Provisions

44. *Failure to Provide an Audit Report within the Prescribed time (Subsection 113(5) or 113(6) of the SISA)*

It is an offence for an Approved Auditor to fail to provide an audit report to the trustee(s) within the prescribed time. Under subsection 113(5) of the SISA, the maximum penalty that may be imposed is a term of imprisonment not exceeding 6 months or a maximum fine of 50 penalty units under subsection 113(6) of the SISA. Where a person is convicted, the Court, under the provisions of subsection 4B(2) of the *Crimes Act 1914 (Cth)*, may convert a term of imprisonment to a monetary penalty which may be imposed in place of (or in addition to) the term of imprisonment. Using this formula, the maximum monetary penalty that may be imposed in place of or in addition to a term of imprisonment is a fine not exceeding 30 penalty units.

45. *Failure to Inform the Trustee(s) of a Contravention of the SISA and the SISR:*

Subsections 129(3) and 130(2) of the SISA provide that, should the Approved Auditor, in carrying out the audit under the Act, become aware of possible contraventions of the SISA or the SISR, or form the opinion that a fund's financial position may be, or is about to become, unsatisfactory, the Approved Auditor is required to bring these matters to the notice of the trustee(s) in writing.

46. Where it can be shown that the Approved Auditor intentionally or recklessly failed to advise the trustee(s), the Approved Auditor is guilty of an offence under subsections 129(7) and 130(6) of the SISA with a maximum fine of 50 penalty units upon conviction.

47. *Obtaining Trustee(s)'s Report*

(Subsections 129(5), 129(7), 130(4) and 130(6) of SISA)

Subsections 129(5) and 130(4) of the SISA require that if the Approved Auditor informs the trustee(s) of a contravention, or that the financial position of the fund is unsatisfactory, and has not informed the ATO, the Approved Auditor must give the trustee(s) a written notice requesting the trustee(s) to provide the Approved Auditor with a written report detailing the action (if any) that the trustee(s) has taken, or proposes to take, to deal with the matter. Where it can be shown that the Approved Auditor has intentionally or recklessly failed to adhere to the requirements of subsections 129(5) or 130(4) of the SISA, the Approved Auditor is guilty of an offence, punishable on conviction by a fine not exceeding 50 penalty units.

48. *Failure to Report to the ATO*

(Subsections 129(4), 129(7), 130(4) and 130(6) of the SISA)

Where the trustee(s) does not respond to an Approved Auditor's request under subsections 129(5) and 130(4) of the SISA or provide the Approved Auditor with a satisfactory course of action, the Approved Auditor must give the ATO a written report about the matters of concern or non-compliance. Failure by the Approved Auditor to report to the regulator is an offence under subsections 129(7) and 130(6) of the SISA punishable on conviction by a fine not exceeding 50 penalty units.

49. *Misleading Information*

(Subsections 129(3B) and 130(2B) of the SISA)

Where the Approved Auditor is aware of a matter that must be told to the trustee(s) under section 129 of the SISA and knowingly tells another person that he/she has told the trustee(s) or the ATO about the matter but has not taken that action, the Approved Auditor is guilty of an offence punishable by a term or imprisonment of 12 months.

50. *Failure to Carry Out or Perform the Duties of an Approved Auditor*
(Section 131 and 131A of the SISA)

Section 131 of the SISA provides the ATO with the power to disqualify a person from being an Approved Auditor, and section 131A of the SISA allows the ATO to refer matters to the Approved Auditor's professional association where:

- (a) the person has failed to carry out or perform adequately and properly the duties of an Approved Auditor under the SISA or any other law of the Commonwealth, State or Territory or any functions that an Approved Auditor is entitled to perform in relation to the SISA; or
- (b) the person is otherwise not a fit and proper person to be an Approved Auditor for the purposes of the SISA.

51. *Failure of the Trustee(s) to Appoint an Approved Auditor or to provide Relevant Documents*
(Subsection 113(2) or 113(2A) of the SISA)

The trustee(s) is guilty of an offence under subsection 113(2) of the SISA or guilty of an offence of strict liability under subsection 113(2A) of the SISA if the trustee(s):

- (a) fails to appoint an Approved Auditor for each year of income within the prescribed period [subsection 113(1) of the SISA], or
- (b) fails to provide relevant documentation to the Approved Auditor within 14 days of an Approved Auditor's written request [subsection 113(1A) of the SISA]

Subsection 113(2) of the SISA imposes a maximum penalty of 2 years imprisonment and subsection 113(2A) of the SISA imposes a maximum penalty of 50 penalty units.

Audit Report in the Approved Form

Audit Report for a Self Managed Superannuation Fund

Provisions of the *Superannuation Industry Supervision Act 1993* (SISA) and the
Superannuation Industry Supervision Regulations 1994 (SISR)

NOTE: 1. This form must be used to report on only one Self Managed Superannuation Fund #
2. A Self Managed Superannuation Fund is not A Reporting Entity as defined by
Accounting Standard AAS 25 ##

SECTION 113 - APPROVED FORM

..... *[Insert name of the superannuation entity]*

Independent Report by Approved Auditor to the *[Trustee(s)/Members/ [OR] Trustee(s) and Members]*
(*)

Part A - Financial Report

Scope

I have audited the special purpose financial report comprising

*[Insert the title of statements audited; see section 112, regulations 8.01 and 8.02 of the SISA and the SISR eg
"Statement of Financial Position", "Operating Statement", "Statement of Cash Flows", "Statement of Net
Assets" and "Statement of Changes in Net Assets"]*

of *[Insert name of the superannuation entity]*
for the [year ended .../.../... [OR] period/.../... to .../.../...]. (*)

The trustee(s) is/are responsible for the financial reports and has determined that the accounting policies used are consistent with the financial reporting requirements of the superannuation entity's governing rules, comply with the requirements of the SISA and are appropriate to meet the needs of the members.

I/We have conducted an independent audit of the financial reports in order to express an opinion on them to the *[Trustee(s)/ Members/ [OR] Trustee(s) and Members]* (*) of
..... *[Insert name of the superannuation entity]*.

No opinion is expressed as to whether the accounting policies used are appropriate to the needs of the members.

The financial report has been prepared for distribution to the members for the purpose of fulfilling the trustee(s)'s financial reporting requirements under the superannuation entity's governing rules.

I/We disclaim any assumption of responsibility for any reliance on this report or on the financial statements to which it relates to any person other than the members, or for any purpose other than that for which it was prepared.

My/Our audit has been conducted in accordance with Australian Auditing Standards #### applicable to the audit of special purpose financial reports. My/Our procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements and the evaluation of significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statements are presented fairly in accordance with the accounting policies described in the Notes to the financial statements. (These policies do not require the application of all Accounting Standards ###).

[NB Additional material may be inserted here at the discretion of the Approved Auditor eg. in relation to compliance with provisions of the superannuation entity's governing rules - so long as this in no way limits or detracts from the scope expressed above.]

The financial report audit opinion expressed in this report has been formed on the above basis.

Qualification (*)

[Provide details where audit findings include a Qualified () Audit Opinion].*

In my/our opinion [except for the effects on the financial statements of the matter(s) referred to in the qualification paragraph] (*) the financial statements

- (a) present fairly in accordance with the accounting policies described in the Notes to the financial statements the financial position of *[Insert name of the superannuation entity]* as at .../.../..... and the results of its operations and its cash flows for the [year ended .../.../... [OR] period .../.../... to .../.../...].(*) OR
- (b) present fairly in accordance with the accounting policies described in the Notes to the financial statements the financial position of *[Insert name of superannuation entity]* as at .../.../..... and the results of its operations for the [year ended .../.../... [OR] period .../.../... to .../.../...]. (*) OR
- (c) present fairly in accordance with the accounting policies described in the Notes to the financial statements the net assets of*[Insert name of superannuation entity]* as at .../.../... and the changes in net assets for the [year ended .../.../...[OR] period .../.../... to .../.../...]. (*) OR
- (d) present fairly in accordance with the accounting policies described in the Notes to the financial statements (and the Trust Deed) the operations of *[Insert name of superannuation entity]* for the [year ended .../.../..., [OR] period .../.../... to .../.../.....].(*)

(*) Delete as appropriate

Part B - Compliance

Scope

I/We have conducted tests in accordance with Australian Auditing Standards as necessary to provide reasonable assurance whether the trustee(s) of the[*Insert name of the superannuation entity*] has/have(*) complied, in all material respects, with the relevant requirements of the following provisions (to the extent applicable) of the SISA and the SISR:

Sections: 17A, 19, 62, 65, 66, 67, 69 – 71E, 73– 75, 80 – 85, 103, 104, 105, 106A, 109, 111, 112, 113, 118, 121, 124

Regulations: 5.08, 6.17, 7.04, 13.14

[*Additional sections and regulations may be inserted here at the discretion of the Approved Auditor.*]

for the [year ended .../.../..... [OR] period .../.../... to .../.../.....] (*).

My/Our procedures included examination, on a test basis, of evidence supporting compliance with those requirements of the SISA and the SISR.

These tests have not been performed continuously throughout the period, were not designed to detect all instances of non-compliance, and have not covered any other provisions of the SISA and the SISR apart from those specified. The trustee(s) is/are (*) responsible for ensuring compliance with the requirements of the SISA and the SISR.

My/Our procedures with respect to section 62 included testing that the fund trust deed establishes the fund solely for the provision of retirement benefits for fund members or their dependants in the case of the member's death before retirement; a review of investments to ensure the fund is not providing financial assistance to members, unless allowed under the legislation; and that no preserved benefits have been paid before a condition of release has been met.

My/Our opinion on compliance expressed in this report has been formed on the above basis.

Qualification (*)

[*Note: The Approved Auditor should only qualify where he/she is of the opinion that a contravention is material, and/or the trustee(s) has not responded or provided a satisfactory response to concerns raised by the Approved Auditor under section 129 and/or 130 of the SISA.*]

In my opinion [except for the matter(s) referred to above] the trustee(s) of..... [*Insert name of the superannuation entity*] has/have (*) complied, in all material respects, with the requirements of the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1993* specified above for the [year ended .../.../..... [OR] the period .../.../..... to .../.../.....] (*).

Signature of Approved Auditor

Date.....

Name of Approved Auditor
Firm.....

Approved Auditor qualification as required under Regulation 1.04(2) of the SISR:

[Delete which is not applicable - a registered company Approved Auditor; a member of the Australian Society of Certified Practising Accountants; a member of The Institute of Chartered Accountants in Australia; a member of the National Institute of Accountants; a member or fellow of the Association of Taxation and Management Accountants; a fellow of the National Tax and Accountants Association Ltd; or the Auditor-General of the Commonwealth, a State or a Territory.]

Professional Organisation Membership Number / Identifier

(*) Delete as appropriate

- # Wherever appearing, means a Self Managed Superannuation Fund as defined in section 17A of the *Superannuation Industry (Supervision) Act 1993*.
- ## Australian Accounting Standard AAS 25 “Financial Reporting by Superannuation Plans” as issued in March 1993.
- ### Wherever appearing and as applicable, the Australian Auditing Standards issued by the Australian Accounting Research Foundation on behalf of CPA Australia and The Institute of Chartered Accountants in Australia.

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ATTACHMENT B

SELF MANAGED SUPERANNUATION FUNDS

Compliance Requirements under SISA and SISR

Provisions of the *Superannuation Industry Supervision Act 1993* (SISA) and the *Superannuation Industry Supervision Regulations* (SISR) relevant to a minimum compliance audit for a Self Managed Superannuation Fund.

If the Approved Auditor is ***not satisfied*** that these minimum requirements have been met they are required to report the matters to the trustee(s) (in writing) and/or the regulator in compliance with sections 129 and 130 of the SISA. If the trustee(s) does not comply with the Approved Auditor's request or the Approved Auditor is not satisfied with the action taken or proposed to be taken by the trustee(s), the Approved Auditor **must** give the ATO a written report about the matter and issue a qualified audit opinion.

The requirements have been categorised under the following headings:

1. Structure of Self Managed Superannuation Fund;
2. Sole Purpose Test;
3. Investments;
4. Contributions; and
5. Administrative requirements.

The Approved Auditor should be satisfied that requirements of the following provisions and regulations have been met:

1. Structure of the Self Managed Superannuation Fund

Section 17A

Definition of a self managed superannuation fund.

When conducting the audit the Approved Auditor should ensure that the fund meets the definition of an SMSF as defined under section 17A of the SISA.

Section 19

The superannuation fund must have a trustee(s). The trustee(s) must be a constitutional corporation pursuant to a requirement contained in the governing rules, or the governing rules must provide that the sole or primary purpose of the fund is the provision of old age pensions.

The trustee(s) have made an election to become a regulated superannuation fund.

The Approved Auditor should ensure that the trustee(s) has made the appropriate election with the ATO to become a regulated superannuation fund.

Section 104

The trustee(s) of a superannuation entity must keep and retain for at least 10 years, records of changes of trustee(s), changes of directors of any corporate trustee(s) and all written consents to be appointed trustee(s).

The Approved Auditor should confirm that records of changes of trustee(s), changes of directors of any corporate trustee(s) and all written consents to be appointed trustee(s) have been maintained and kept for a minimum of 10 years or since the establishment of the Fund, if less than 10 years.

Section 105

The trustee(s) of a superannuation entity must keep and retain for at least 10 years, copies of all reports given to members

The Approved Auditor should confirm that all reports to members have been maintained and kept for a minimum of 10 years or since the establishment of the Fund, if less than 10 years.

Section 106A

Where a superannuation entity changes its status to become / or ceases to be an SMSF, the trustee(s) must give written notice to the ATO.

The Approved Auditor should confirm that the trustee(s) has/have given written notice to the ATO where the fund has changed its status to become / or ceases to be an SMSF.

Section 118

Consent to appointment as trustee(s) must be made in writing.

The Approved Auditor should sight the trustee(s)'s written consent to be appointed as a trustee of the SMSF.

Section 121

The trustee(s) or responsible officer of a corporate trustee must not be a disqualified person.

The Approved Auditor should confirm with each trustee(s) whether the trustee(s) is or has at any time during the year been a disqualified person.

2. Sole Purpose Test

Section 62

The trustee(s) of an SMSF must ensure the fund is maintained for the 'sole purpose' of providing benefits to fund members upon their retirement, or their dependants in the case of the member's death before retirement.

The Approved Auditor should test whether an SMSF has contravened the sole purpose test by examination of:

- (a) the Trust Deed to ensure that the fund has been established solely for the provision of providing benefits to fund members upon their retirement, or their dependants in the case of the member's death before retirement, and
- (b) the character and purpose of the fund's investments to ensure:
 - the investment arrangements do not indicate that the purpose of the fund is to provide financial assistance to another party, unless allowed by the legislation.

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- the fund is not running a business as part of its investment strategy, the view is that if a superannuation fund is conducting a business, then it is not being administered for the sole purpose of providing benefits for members and beneficiaries of the fund, as there is an inherent risk that running a business may jeopardise the member's benefit.
 - the trustee(s) have not made the assets of the fund available for his/her own private use or that of his/her family and friends;
- (c) there are no preserved benefits paid before a condition of release is met.
[Regulation 6.01 & Schedule 1 of the SISR].

Note that expectation of the Approved Auditor in relation to this provision is set out in the Approved Auditor report. That limitation is repeated below.

The procedures with respect to section 62 includes testing that the fund trust deed establishes the fund solely for the provision of retirement benefits for fund members or their dependants in the case of the member's death before retirement; a review of investments to ensure the fund is not providing financial assistance to members, unless allowed under the legislation; and that no preserved benefits have been paid before a condition of release has been met. The ATO does not expect Approved Auditors to be subjective in the compliance audit of section 62, but to only qualify on sole purpose where a reasonable person would objectively conclude that a breach had occurred.

3. Investments

Section 65

The trustee(s) or an investment manager of a regulated superannuation fund must not lend money, or give any other financial assistance to a member or relative of a member.

The Approved Auditor should satisfy him/herself that the trustee(s) have not lent money, or provided any other financial assistance to a member or relative of a member at any time during the financial year under review.

Section 66

The trustee(s) or an investment manager of a regulated superannuation fund must not intentionally acquire an asset from a related party, except in limited circumstances as provided in the legislation.

A person must not intentionally enter into or carry out a scheme which would have the effect of avoiding the general prohibition to the acquisition of assets from a related party.

Definition of Related Party 'all member/ trustees, standard employer-sponsors and all Part 8 associates of these (including, but not limited to, relatives, partners, companies where the members or their associates have a significant influence and majority voting interest or control a trust)'.

The Approved Auditor should satisfy him/herself that the trustee(s) did not acquire any assets from any related party, apart from the exceptions allowed under section 66 of the SISA.

Section 67

The trustee(s) of a regulated superannuation fund must not borrow or maintain an existing borrowing of money except in limited circumstances, which include the temporary borrowing:-

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- (a) *to pay a beneficiary, limited to 10% of the value of the fund and must not exceed 90 days,*
 - (b) *to cover superannuation surcharge debts, limited to 10% of the value of the fund and must not exceed 90 days, and*
 - (c) *to meet the settlement of security transactions, limited to 10% of the value of the fund and must not exceed 7 days.*

The Approved Auditor should satisfy him/herself that the trustee(s) did not borrow any moneys or enter into an overdraft position at any time during the financial year, except for the purposes and under the conditions outlined above.

Sections 69 to 71E, 73 to 75, 80 to 85

Subject to grandfathering and transitional provisions, the trustee(s) of a regulated superannuation fund must not make a loan to, invest in, or lease fund assets to a related party of the fund, including a related trust of the fund, that causes the total in-house asset ratio to exceed the specified limits (currently 5% of the market value of the fund's assets).

The trustee(s) must not intentionally enter into or carry out a scheme which would have the effect of artificially reducing the market value ratio of a fund's in-house assets.

The Approved Auditor should examine all loans, investments, and leases to determine whether these were made to related parties or a related trust. If made to related party or related trust of the fund the Approved Auditor should satisfy himself/herself that the total in-house asset ratio does not exceed the current limit of 5% of the total market value of the fund's assets.

Section 109

The investments made by the trustee(s) or investment manager must be made and maintained on an arm's length basis.

The Approved Auditor should satisfy himself/herself that all the fund's investment transactions have been made and maintained at arm's length. When assessing whether a transaction is on an arm's length basis, the Approved Auditor should consider the following:

Purchase or sale of assets

- the purchase/selling price was at a fair market value (valuation reports to be sighted where possible),
- money actually paid - bank accounts statements to be sighted.

Lease arrangements

- written contract to be drawn up and sighted,
- the investment was entered into and maintained on commercial terms,
- lease payments and residual value to be at market value,
- lease payments have been made - bank account statements to be sighted.

Loans

- written contract and repayment schedule have been drawn up, and sighted,
- the terms of the loan agreement are commercial including the term of the loan, repayments, interest rate,
- repayments have been made - bank account statements to be sighted.

Investments in entities

- realisation of investments, shares issued, units allocated at market value,
- commercial rate of return on investments,
- investment returns have actually been paid (eg. trust distributions, dividends, etc) - bank account statements sighted.

Regulation 13.14

The trustee(s) must not give a charge over, or in relation to, an asset of the fund.

The Approved Auditor should be satisfied no investments by the fund have resulted in a charge being given over, or in relation to any asset of the fund.

A charge is defined as including a mortgage, lien or other encumbrance. It is an arrangement where one party has a right to hold or use as security an asset of the party that has effective ownership of the asset until a debt is repaid [Regulation 13.11 of the SISR].

Regulation 13.14 of the SISR prevents the trustee(s) of the fund from using the assets of the fund or their future benefit as security for personal loans, mortgage or other type of encumbrance.

4. Contributions and Preservation Standards

Regulation 5.08

The trustee(s) must ensure that a member's minimum benefits in the fund (as defined) are maintained in the fund until the benefits are cashed, rolled over or transferred as benefits of the member.

Regulation 6.17

Subject to the preservation rules, members' benefits in a fund may only be paid in accordance with certain conditions of release.

In addition, under certain circumstances benefits must be paid to members.

Regulation 7.04

Trustee(s) may only accept contributions in circumstances as specified.

5. Administrative Requirements

Section 103

The trustee(s) must keep minutes of all meetings for at least 10 years.

The Approved Auditor should confirm that the minutes of all trustee(s) meetings have been kept and retained for a minimum of 10 years or since the establishment of the fund, if less than 10 years.

Section 111

The trustee(s) must keep accounting records, and retain them for at least 5 years.

The Approved Auditor should confirm that accounting records have been kept for a minimum of 5 years or since the establishment of the fund, if less than 5 years.

Section 112

The trustee(s) must ensure that the accounts and statements are completed. The statements to be prepared must include, at least, a Statement of Financial Position and an Operating Statement or Statement of Cash Flows.

The Approved Auditor should confirm that the accounts and statements have been maintained and prepared in accordance with accepted Australian accounting principals and practices.

Section 113

The trustee(s) must appoint an Approved Auditor within the specified period and make available all documents relevant to the audit of accounts and statements.

The Approved Auditor should be satisfied that the trustee(s) have made all arrangements and provided the necessary support to enable the audit to be conducted in a professional and timely manner.

The Approved Auditor must ensure that the audit is completed within the specified period.

Section 124

Appointment of investment manager must be in writing.

The Approved Auditor should sight the written contract of appointment of all investment managers.