



## THE NEW ATO PENALTY REGIME How will this affect my SMSF?

### **The Benefits of a Corporate Trustee**

In light of the new Australian Taxation Office (ATO) penalty regime that will apply to Self Managed Superannuation Funds (SMSF) Optima Partners highly recommend assessing a move from individual trustees to a corporate (company) trustee.

The new penalty regime has the ability to levy penalties of \$10,200 on all trustees, so if an SMSF has four members and the trustees are individual members then the total penalties imposed would be \$40,800 as opposed to \$10,200 where the trustee is a company.

Apart from the changes in the penalty regime there are additional benefits in having a company act as trustee. In a document published this year, ASIC provided five reasons why a corporate SMSF trustee is better than individual trustees.





- 1 There is limited liability for directors. Individual trustees can be personally liable for decisions they have taken or in relation to action taken relating to a fund asset.
- 2 Simpler segregation of SMSF assets
- 3 Administration efficiencies for changes in members. This principally relates to having to alter the names of the individual trustees on every fund asset when there is any change in the members of a SMSF. With a corporate trustee there is no change to assets ownership, just a change in the directors of the company.
- 4 Simpler trustee succession, that is, a corporate trustee will continue in the event of a member's death and there is no uncertainty or doubt in dealing with fund assets.
- 5 Access to limited recourse borrowing arrangement because lenders often insist an SMSF has a corporate trustee.



Starting at \$1,500+GST which includes the cost to purchase the company, legal fees to amend the trust deed and Optima Partners fee to instruct lawyers, update ATO registers and co-ordinate execution of the documents.

Ongoing annual fees for having a company act as trustee including the annual ASIC fee will be \$286 including GST.

Should you wish to discuss changing your SMSF trustee to a corporate please contact our office.





## **NEW SMSF PENALTY REGIME**

### **New Penalty Regime for SMSF from 1 July 2014**

A new Penalty Regime for SMSF's was introduced for contraventions that occur on or after 1 July 2014.

Previously the Commissioner had the following option when dealing with a SMSF non compliance issue:

- Making an SMSF non-complying for taxation purposes
- Applying to a court for civil penalties to be imposed. A person may also face criminal penalties for more serious breaches of the law.
- Accepting an enforceable undertaking in relation to a contravention; and disqualifying a trustee of a SMSF

These new measures provide the ATO, as the Regulator of SMSF's with greater flexibility when dealing with a funds non compliance with the law including:

- Rectification and education directions for contraventions of the Super Law.
- An administrative penalty regime for SMSF trustees for certain contraventions of the SIS Act





Section & Rule	Administrative Penalty
<b>s.35B</b> – Failure to prepare Financial Statements	\$1,700
<b>s.65</b> – Prohibition on lending or providing financial assistance to members & their relatives	\$10,200
<b>s.67</b> – Prohibition on super fund borrowing, except as permitted, eg limited recourse borrowing arrangement	\$10,200
<b>s.84</b> – Contravention of In-House Asset rules	\$10,200
<b>s.103(1) &amp; (2)</b> – Failing to keep trustee minutes for at least 10 years	\$1,700
<b>s.103(2A)</b> – Failure to maintain a s.71E election, where applicable, in relation to a fund with an investment in a pre 11/8/99 related unit trust	\$1,700
<b>s.104</b> – Failing to keep records of change of trustees for at least 10 years	\$1,700
<b>s.104A</b> – Failing to sign Trustee Declaration within 21 days of appointment and keeping for at least 10 years	\$1,700
<b>s.105</b> - Failing to keep member reports for 10 years	\$1,700
<b>s.106</b> – Failing to notify ATO of an event that has significant adverse effect on the fund's financial position	\$10,200
<b>s.106A</b> – Failing to notify ATO of change of status of SMSF, eg fund ceasing to be a SMSF	\$3,400

Section & Rule	Administrative Penalty
s.124 – Where an Investment Manager is appointed, failing to make the appointment in writing	\$850
s.160 – Failing to comply with ATO Education directive	\$850
s.254(1) – Failing to provide the Regulator with information on the approved form within the prescribed time upon establishment of the fund	\$850
s.347A(5) – Failing to complete a form with requested information provided by the Regulator as part of the Regulator’s Statistical Program	\$850



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