

Self Managed Super Fund Penalties



What are the penalties for SMSF non-compliance?

The ATO can apply administrative penalties if they contravene provisions within the *Superannuation Industry (Supervision) Act 1993 (SIS)*. Individual trustees and directors of corporate trustees will be personally liable to pay the penalties. Each penalty point is worth \$275 and the penalties range from 5 penalty units (\$1,375) for not providing information to the regulator to 60 penalty points (\$16,500) for lending funds to members or relatives.

Importantly, if there are individual trustees, each trustee will pay the penalty.

For example, Bob and Jane are individual trustees who do not prepare financials. They will each pay \$2,750. If a company is trustee then the directors will pay (but are jointly or severally liable, meaning the fine is paid once). This is another reason why a corporate trustee may be more appropriate than individual trustees. It is also important to note that the penalty cannot be paid or reimbursed from the assets of the Fund.

Provision in SISA	Description	Administrative penalty
Subsection 34(1)	Operating standards	20 penalty units
Subsection 35B(1)	Accounts and statements	10 penalty units
Subsection 65(1)	Lending to members and relatives	60 penalty units
Subsection 67(1)	Borrowings	60 penalty units
Subsection 84(1)	In-house assets	60 penalty units
Subsection 103(1)	Duty to keep minutes	10 penalty units
Subsection 103(2)	Duty to keep minutes of meetings	10 penalty units
Subsection 103(2A)	Retention of copy of section 71E election	10 penalty units
Subsection 104(1)	Duty to keep records of changes of trustees	10 penalty units
Subsection 104A(2)	Declaration of recognition of obligations and responsibilities	10 penalty units
Subsection 105(1)	Duty to keep and retain member or beneficiary reports	10 penalty units
Subsection 106(1)	Duty to notify of significant adverse events	60 penalty units
Subsection 106A(1)	Duty to notify of change in status of entity	20 penalty units
Subsection 124(1)	Written appointment of investment managers	5 penalty units
Subsection 160(4)	Education direction	5 penalty units
Subsection 254(1)	Information to be given to the Regulator	5 penalty units
Subsection 347A(5)	Participation in the Regulator's statistical program	5 penalty units

How the ATO deals with non-compliance

The ATO may impose one or more of the following treatments to SMSF trustees who have not complied with super laws:

- education direction
- enforceable undertaking from the trustee to rectify the contravention
- rectification direction
- administrative penalties
- disqualification of a trustee
- civil and criminal penalties
- allowing the SMSF to wind-up
- issuing an SMSF with a notice of non-compliance
- freezing SMSF assets if there is a risk of the members' benefits being eroded.

It is more important than ever to ensure that your SMSF is running correctly and remains compliant at all times. If you are in doubt about something, please call us, so we can discuss your options.

Contact us

Please contact our Wealth Management team if you would like more information on any SMSF issues, whether they be simple or complex.



Kylie Wright

SARN: 245052
(07) 4154 0427
kwright@ulton.net



Jes Wilkinson

SARN: 378670
(07) 4154 0424
jwilkinson@ulton.net

Brisbane
Bundaberg
Fraser Coast
Gladstone

Business Advisors
Chartered Accountants
Wealth Managers

(07) 4154 0425
wealthmanagement@ulton.net
ulton.net

For what matters