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Australian Taxation Office

ATO Regulation of SMSFs

Kasey Macfarlane, Assistant Commissioner, SMSF Segment, Superannuation, ATO Address to the Chartered Accountants Australia and New Zealand SMSF Conference RACV Royal Pines, Gold Coast, 14 September

Introduction

Thank you for inviting me to speak at your conference. We always welcome the opportunity to engage and listen to stakeholders in the SMSF sector. The ATO appreciates and relies on the support of professional associations and organisations such as CAANZ to help us to maintain integrity within the SMSF sector, ensuring that it achieves its sole purpose to build and safeguard retirement incomes. One of the key ways that the ATO, as regulator of SMSFs, does this is through working with professionals such as yourselves to help support and educate SMSF trustees.

An important part of the ATO's role as regulator of SMSFs is to forecast and treat existing and emerging risks within the industry. Today I'd like to give you an insight into how we do this, by taking you through our compliance focus and approach, and explaining how the Commissioner's new regulatory compliance powers are working.

Compliance focus

Whilst we continue to focus on educating and assisting SMSF trustees with their compliance obligations, you can expect to see us taking stronger compliance action against serial non-compliers, in particular SMSF trustees who don't deliver on agreements in enforceable undertakings. In these circumstances, the powers we gained on 1 July 2014 (direction to rectify, education and SMSF administrative penalties) will increasingly come into play. I'll talk more about these later.

We also have a number of issues on our radar for 2015-16, they include:

- individuals who enter the sector with poor personal taxation lodgment histories and no or limited income
- SMSFs with overdue annual returns
- breaches reported in auditor contravention reports that have not been rectified
- SMSFs that have significant changes in assets and income, outside the previous pattern of the fund and without obvious reason
- possible non-commercial related-party investments or transactions
- non-compliance with pension rules
- inappropriately claimed tax deductions when a fund is in pension phase.

Before I move on to talk in more detail about the broader aspects of our compliance approach and risk framework and their interaction with the Commissioner's new regulatory compliance powers, I want to take the opportunity to highlight some key messages, from the perspective of the regulator, about aggressive tax planning arrangements involving SMSFs.

Aggressive tax planning – what attracts our attention?

As the regulator of SMSFs, we are very focused on ensuring integrity within the sector and I want to make it clear that we will take firm action in the small minority of cases where individuals are deliberately not complying or intend to use an SMSF as a vehicle to obtain present-day benefits or to gain inappropriate access to tax concessions. In this regard, we work collaboratively with law enforcement and Australian government agencies, such as ASIC, as well as across the ATO, to detect and act against people and organisations promoting unacceptable arrangements and schemes.

Aggressive tax planning often entails artificial and contrived arrangements that are designed to avoid tax or deliver a tax benefit. We will take very strong enforcement action in relation to these types of arrangements. ATO Commissioner Chris Jordan was quoted as recently as last Monday (7 September) in the West Australian newspaper warning trustees and

advisers that the use of SMSFs as 'avoidance' vehicles rather than 'retirement' vehicles is 'outrageously bold and is just straight up and down not on'.

Trustees and advisers promoting arrangements that use SMSFs to inappropriately access tax concessions or to deliver present-day benefits should be on notice that they will be dealt with, with the full force of the law. Moreover, the income tax and regulatory issues associated with these arrangements will not be treated in isolation. Trustees engaging in tax-minimisation schemes also face the strong likelihood of being disqualified from being an SMSF trustee.

By identifying and treating these types of arrangements early we can educate the community to recognise, reject and report aggressive tax planning arrangements. If you have been offered or are aware of these types of arrangements or schemes, you can email us at reportataxscheme@ato.gov.au (mailto:reportataxscheme@ato.gov.au) or call us anonymously on 1800 177 006.

You only need to be suspicious that an arrangement doesn't seem quite right. Your assistance in reporting information helps to prevent the outbreak of unacceptable tax avoidance schemes as well as keeping the tax system fairer for everyone.

Dividend stripping arrangements – Taxpayer Alert TA 2015/1

Dividend stripping arrangements are an example of an aggressive tax planning arrangement, often involving SMSFs, that has been a keen focus of ATO scrutiny following the release of TA 2015/1 earlier this year. These arrangements involve related-party transactions designed to deliver tax benefits to an SMSF in the form of franking credits, following the transfer of shares in a related company, often at significantly reduced values.

That is, a private company has significant previously taxed profits which could be paid to shareholders as franked dividends (these would ordinarily be subject to 'top-up' tax at the individual shareholder's marginal rate). A shareholder in the company transfers their shares in the company to an SMSF of which the shareholder or their associate is a member. The trustee of the SMSF treats the shares as supporting the payment of pensions to the member(s) of the SMSF (and therefore all or part of the income from the shares is regarded as exempt income of the SMSF). After the SMSF has satisfied the 45-day holding period rule, the company distributes its accumulated profits to the SMSF as fully or partially franked dividends. The SMSF trustee treats the franked dividends and the attached franking credits as exempt income, entitling the SMSF to a refund of the unused franking credit tax offsets. The company is placed into liquidation and/or deregistered after the value of the shares is reduced to nil by the payment of the franked dividends.

Of the dividend stripping arrangements detected and identified so far, our view is that none are effective at law. However it appears that some participants in these schemes are taking a very narrow interpretative approach to the law and ATO publications. I say this because we have seen several variations on the specific arrangement described in TA 2015/1, and it has been put to us that these varied arrangements are okay because they differ from the one described in TA 2015/1. However, we take the view that none of these variations are effective at law either. In the near future we will be publishing an addendum to TA 2015/1 to highlight that these varied arrangements raise exactly the same concerns for us as the arrangement that is described in the taxpayer alert.

I'd like to emphasise that taxpayer alerts are an early warning system that we use to signal to industry that we are concerned about particular arrangements. Just because an arrangement may not be on 'all fours' with the arrangement described in a taxpayer alert doesn't mean that it will escape ATO scrutiny and that the anti-avoidance provisions and relevant regulatory provisions won't apply.

ATO approach to SMSF compliance

Risk-management framework

Our overarching SMSF risk-management framework is one of supporting SMSF trustees to comply with SISA and income tax obligations. We focus primarily on awareness, education and support for trustees attempting to do the right thing. Obviously some trustees make mistakes or struggle to comply and therefore the annual independent audit of SMSFs is a key integrity check. Accordingly we review and consider action on all reported contraventions. By taking action against those who repeatedly have difficulty complying and those who intentionally fail to comply our audits and reviews aim to ensure a level playing field.

We select SMSFs for audit and review using risk models, intelligence or referrals from other state or commonwealth departments and law enforcement agencies. We have two primary automated risk models: when an SMSF is established and when it's operating.

Our risk-management efforts start as soon as an SMSF applies for registration. The SMSF establishment model focuses on the compliance history of the trustees/directors, the individual's debt and lodgment history, their super balance and whether they're receiving Commonwealth benefits. We phone trustees and ask them about key obligations and concepts (the sole-purpose test for example). Depending on their answers we may allow registration or we'll put conditions in place.

Once the SMSF is operating, a number of other risks become important. The risk model that we use for operating SMSFs looks at the income tax and regulatory history of the SMSF. For this we primarily use the SMSF annual return and auditor contravention report but we do have many other data sources. We rate over 40 different attributes, with the weighting of an attribute based on our experience when we've audited SMSFs in a similar situation. Basically, you can be assured that if we determine an SMSF is 'high risk' we're doing so with a great degree of certainty, there is a high likelihood of a breach or breaches occurring and our penalty and enforcement powers will come into play.

We also initiate investigations and audits based on intelligence and referral – this is a manual process. We get referrals from other commonwealth and state government agencies including law enforcement and share intelligence across the ATO. Additionally, we receive 'dob-ins' from the general public and related parties of SMSF trustees and directors and we manually review alerts and information in databases like RP Data and AUSTRAC.

Many SMSF professionals use the Super P2P service. We expect though that in most instances where a trustee or auditor identifies an issue or contravention, they can rectify it without ATO assistance; the auditor would likely report the contravention and the rectification and this would generally be enough to satisfy us. We encourage all trustees and their advisers to adopt this type of approach, ie to take steps to rectify a breach as soon as it is identified. In those circumstances, we'd be unlikely to apply further sanctions unless other factors are identified, such as if the same or a similar contravention frequently arose.

The role of independent SMSF auditors

The annual independent audit that all SMSFs are required to undergo is a key compliance and integrity measure. Therefore, we're continuing our focus on the critical role of SMSF auditors in collaboration with ASIC, working together to engage with associations and ensure that SMSF auditors get the guidance and support they need to fulfil their role appropriately.

The ATO monitors SMSF auditor compliance and independence through a range of compliance activities and where we have concerns we will refer these to ASIC for consideration and possible enforcement action. You will have seen ASIC's media release regarding the disqualification of one auditor; although this is the only disqualification to date arising from one of our referrals, several other ATO referrals have resulted in ASIC taking other actions with SMSF auditors.

Specific indicators of risk we investigate include:

- where our data shows a personal or business relationship between the auditor and any of the trustees
- where our data indicates that there is potential for self-review threat in that the SMSF auditor appears to provide advice accounting services to the fund; this is a new focus for us and we plan to approach about 1,000 auditors this year
- where we become aware of reportable regulatory breaches that were not identified and/or reported by the auditor; this can arise from ATO fund audits as well as intelligence from internal and external sources
- where we analyse our data on the SMSF auditor and the clients they audit and identify risks such as low ACR rates when the clients audited have indicators that show a high likelihood of contraventions.

In addition to this risk-based work, we're also currently verifying the performance of high-volume SMSF auditors (those who audit over 1,000 funds). This involves checking the processes and practices of the auditor and reviewing five of their fund audits. This check recognises the significant role these high-volume SMSF auditors play in maintaining the integrity of the sector.

The Commissioner's new enforcement powers

We now have three new compliance tools available to treat contraventions that occurred on or after 1 July 2014: education directions, rectification directions and administrative penalties.

Education directions

When a contravention of the SIS Act or regulations occurs due to a lack of knowledge or understanding by the trustee, an education direction may be appropriate. A trustee who receives an education direction is required to complete an ATO-approved education course within a specified time and provide us with a copy of the completion certificate. A trustee may be directed to undertake education in addition to other compliance action. For example, they could be directed to undertake education, to rectify the contravention and potentially also have an administrative penalty imposed.

A trustee who continues to breach regulatory requirements after being issued with an education direction will face stronger enforcement action, including non-remission of administrative penalties and, in cases of serious non-compliance, possible disqualification as a trustee and/or the fund being made non-complying.

Rectification directions

Previously, rectification of contraventions commonly occurred with trustees initiating an enforceable undertaking with the ATO. We could then accept or decline the enforceable undertaking. This process was often inefficient and time-consuming. For contraventions of the SIS Act or regulations occurring on or after 1 July 2014, we can now direct trustees to rectify a contravention with specified action and to provide evidence of compliance with the direction. Rectification includes establishing managerial or administrative arrangements that could reasonably be expected to ensure there are no further similar contraventions. Generally, we allow six months to rectify an issue, but in limited circumstances a slightly longer period may apply.

However, this doesn't prevent us accepting an enforceable undertaking from a trustee if offered. We still have the power to accept a court-enforceable undertaking from trustees of contravening funds. But trustees must initiate the undertaking with us before we issue the rectification direction.

We may give a rectification direction if we reasonably believe that a person who is a trustee or a director (of a body corporate that is a trustee) of an SMSF has contravened the SIS Act or regulations. When considering issuing a direction, we take into account:

- any financial detriment that might reasonably be expected to be suffered by the fund as a result of the person's compliance with the direction
- the nature and seriousness of the contravention
- any other relevant circumstances.

Failure to comply

If a trustee fails to comply with a rectification direction within the specified period, then they have committed an offence of strict liability and are liable for a penalty of $1,800 (10 penalty units). Failure to comply may also lead to a trustee or director being disqualified or a notice of non-compliance being issued; this may result in a significant tax penalty for the SMSF.

A trustee may request the terms of the rectification direction be varied; for example, more time to complete the rectification. We must make a decision on this request within 28 days or will be taken to have refused the request. The trustee may object to the ATO decision to give a rectification direction or refuse to vary a rectification direction.

Administrative penalties

Where a trustee contravenes a specific provision of the SIS Act, an administrative penalty will automatically be imposed as set out in s166. From 31 July 2015, the Commonwealth penalty unit increased from $170 to $180. This applies to offences occurring after this date. In the case of contraventions by a corporate trustee of an SMSF, the directors are jointly and severally liable for the one administrative penalty imposed whereas individuals will each receive a separate administrative penalty.

Who the penalty is imposed on

To illustrate who receives the penalty, I'll give an example where the lending rules, in accordance with section 65(1) of the SIS Act, have been contravened. If the trustee is a body corporate, the directors are jointly and severally liable to pay the penalty. This means the ATO may collect the entire penalty from any one of the directors of the corporate trustee or from all directors in various amounts, until the penalty is paid in full.

This differs from individual trustees, where each trustee is required to pay the full amount of the penalty. For example if an SMSF with four individual trustees breached the lending rules prior to 31 July 2015, all four trustees are each liable to pay a $10,200 penalty.

Only in exceptional circumstances would a penalty be imposed on specific trustee/s only. The burden will be on the other trustee/s to, for example, prove that fraud was committed against them.

Considering remission

Each case is different and will be considered in light of the full range of compliance treatments available. When considering remission, we will take into account compliance history, rectification action and any other relevant circumstances.

Trustees may object to our decision not to remit or not to remit in full the administrative penalty. It's unlikely that a trustee will be given more than one penalty remission as multiple breaches demonstrate poor compliance history.

As we can only apply the penalties for breaches made on or after 1 July 2014, only a limited number of cases have so far warranted the use of our new directions and SMSF administrative penalty powers. However, as we audit more SMSFs for breaches made since 1 July 2014, you can expect to see increasing application of SMSF administrative penalties over the next 18 months, with requests for remission being denied in instances of serious and/or repeated non-compliance.

Our approach to the new powers

I want to emphasise that we will use the new powers and penalties to drive compliance, not to increase revenue. So while you can expect to see us actively using the directions powers in a large percentage of cases, our application of SMSF administrative penalties will be more judicious – in particular for first offences. Also, as a result we will now rarely take action using civil penalties.

The best way to avoid the more serious outcomes is firstly to ensure you are compliant, and secondly if you do identify a failure – take early action, ideally before we have contacted your client. Engage with us, work with professionals, for example the SMSF auditor, to rectify and put processes in place to ensure future compliance.

I want to remind you that we do need to confirm a contravention before we apply a penalty. We don't intend to automatically apply penalties to all contraventions reported to us. We must impose the SMSF administrative penalty when we confirm an eligible breach during an ATO audit, so it's best to avoid the audit by taking steps to rectify the breach before we're involved. Also please note that the penalties are levied on the trustees and can't be paid from fund holdings; this would be a very serious contravention in itself.

Recent case decisions

I'd now like to move on to a quick update and briefly mention some of the case outcomes handed down since February 2014 for clients appealing ATO decisions. Although these decisions relate to matters arising before the Commissioner's regulatory enforcement powers came into play, the facts of several of these cases provide further insight into the circumstances and nature of contraventions where the ATO will seek to take stronger enforcement action.

Mourched v Commissioner of Taxation [2014] AATA 223 (https://www.ato.gov.au/law/view/document?DocID=JUD/*2014*AATA223/00001)

This was a favourable decision handed down by the AAT NSW on 16 April 2014. The AAT affirmed the Commissioner's decision to disallow an application made for a waiver of the applicant's disqualified status under subsection 126B(4) of the SIS Act. The decision was made on the basis that the waiver application was brought outside the prescribed 14-day period.

The fundamental issue is whether exceptional circumstances existed so as to allow the application for waiver of that disqualified status to be considered after the review period has expired.

The applicant was the director of a company which acted as a corporate trustee for his SMSF. The applicant pleaded guilty to the offence of 'Publishing a False Statement for a Financial Advantage', pursuant to section 178BB of the Crimes Act 1900 (NSW). The applicant was convicted of the offence by the Chief Magistrate of the Local Court of New South

Wales, who sentenced the applicant to 15 months imprisonment. As a result of this conviction the applicant was a disqualified person pursuant to section 120(1) of the SIS Act. The sentence was later altered to be served by way of home detention.

Outside the relevant period, the Commissioner received the applicant's application for waiver of his disqualified status and the Commissioner advised that he would not allow longer than 14 days to make the application for the waiver, as he was not satisfied there were exceptional circumstances which prevented the applicant from making the application within that period.

The Deputy President affirmed the decision stating the exceptional circumstances test sets a very high threshold which cannot be easily satisfied. The applicant cited exceptional circumstances, including his and his wife's ongoing medical issues, his ignorance of the 14-day requirement and his professional adviser failing to notify him of the requirement.

The trustee for the Payne Superannuation Fund v Commissioner of Taxation [2015] AATA 58 (https://www.ato.gov.au/law/view/document?DocID=JUD/*2015*AATA58/00001)

The applicant argued that the Commissioner applied an incorrect interpretation of s 36-20 of the Income Tax Assessment Act 1997 (ITAA 1997) such that the SMSF annual returns were amended disallowing carried-forward losses to be offset against the fund's exempt income.

The Small Tax Claims Tribunal found in favour of the Commissioner. The Tribunal agreed with the Commissioner's interpretation of the provisions of s 36-20(1) of the ITAA 1997 and the submissions that the applicant can't carry forward the excess of losses and outgoings related to the applicant's exempt income as a carried-forward loss to be offset against the applicant's exempt income in a future year.

AAT Decision [2015] AATA 0288 - Shaw v Commissioner of Taxation (https://www.ato.gov.au/law/view/document?DocID=JUD/*2015*AATA288/00001)

This was a favourable decision handed down on 1 May 2015. The applicant was convicted in the Supreme Court of Tasmania on five counts of conspiracy and as a result of his conviction for dishonest conduct he became a disqualified person under section 120(1)(a)(i) of the SIS Act.

Due to the accumulation of excessive demerit points arising from six speeding offenses over two years the applicant elected to be of good behaviour for 12 months to avoid suspension of his driver's license. During those 12 months he entered into a conspiracy with several people whereby he falsely declared that those people were driving and they accepted the demerit points and fines. He was charged with the offences and initially pleaded not guilty, later changing this to a guilty plea. The court affirmed the ATO's decision not to waive the applicant's status as a disqualified person.

The ATO began an audit into the SMSF and found the trustee of the fund had contravened various provisions of the SIS Act which were subsequently rectified. However despite several requests, beginning on 23 July 2012, Mr Shaw didn't remove himself as trustee until May 2013. During the hearing Mr Shaw contended that he struggled with mental illness at that time. Senior Member Cunningham considered each of the factors listed in

ss 126D(1A) and found:

- the nature of the offences display serious poor judgement and are fundamentally contrary to the standards expected of a trustee
- the applicant's history of non-compliance and earlier breaches of the SIS Act weigh against the applicant
- the applicant's attempted explanation and excuses for the actions that gave rise to the offences did not persuade the AAT that he is unlikely to contravene the provision of the Act.

Deputy Commissioner of Taxation (Superannuation) v Graham Family Superannuation Pty Limited [2014] FCA 1101 (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2014/1101.html?stem=0&synonyms=0&query=Graham%20Family%20Superannuation%20Fund)

The Federal Court has approved civil penalties totalling $50,000 for the trustees of an SMSF in relation to loan breaches of the SIS Act. The members of the SMSF were husband and wife directors of the corporate trustee of the fund. Over a four-year period, the SMSF made 80 loans to the members totalling $134,418. The money was used by the members to purchase items including a caravan, stud cattle and motor vehicles. These 'loans' breached sections 62, 65, 84 and 109 of the SIS Act. In addition, the SMSF had purchased a residential property and leased it to the members' son, including $48,500 of furniture purchased by the fund. However, the rent required under the lease was not paid by the son.

While a maximum penalty of $220,000 could apply for each contravention, the Court ordered the husband trustee to pay a total penalty of $30,000 (and the wife $10,000), together with $5,000 each for the Commissioner's costs. In handing down the penalties the Court noted that the trustees (who have since been disqualified) had shown remorse, remedied their conduct, made early admissions and co-operated with the Commissioner.

Deputy Commissioner of Taxation v Lyons [2014] FCA 1353 (https://www.ato.gov.au/law/view/document?DocID=JUD/*2014*fca1353/00001)

On 12 December 2014, the Federal Court ordered that the trustee of an SMSF pay a penalty of $32,500 (plus $5,000 in costs) for contraventions of the SIS Act relating to making six loans to a relative of a member of the fund. The loans, totalling $190,000, resulted in 97.96% of the fund's assets being non-recoverable.

Neil Olesen v Early Sunshine Pty Ltd [2015] FCA 12 (https://www.ato.gov.au/law/view/document?DocID=JUD/*2015*fca12/00001)

On 23 January 2015, the Federal Court issued reasons for imposing civil penalties of $13,000 (plus $5,000 in costs) for each of the three directors of the corporate trustee of an SMSF for breaches of the SIS Act involving short-term loans to a related business. The orders were originally made on 6 August 2013.

Over four years, the fund made 71 loans totalling $553,568 to a related business. The loans were repaid in full but no interest was paid and the loans were unsecured. This resulted in the SMSF breaching sections 62 (sole purpose), sections 82 and 84 (in-house asset rules) and section 109 (arm's-length dealings) of the SIS Act.

The court agreed that the contraventions were serious as they involved deliberate, repetitive breaches over four years. Although the corporate trustee was the primary contravenor of the SIS Act the court accepted there was no point imposing a civil penalty on the corporate trustee and held that the three directors were liable for the penalty.

Before concluding today, I'd like to take the opportunity to talk about a couple of issues that may not always be at the forefront of our minds but are nevertheless important to consider.

PAYG withholding obligations

Following reviews of super benefits paid to members, we've identified that some SMSFs are not fulfilling all of their PAYG withholding obligations. Some common omissions we've seen include:

- failure to provide a payment summary to the member where the taxed component is less than the low-rate cap. The member is required to declare this benefit on their income tax return
- failure to withhold from super benefits and provide a payment summary to the member
- failure to complete the annual PAYG withholding reporting to us and provide copies of the payment summaries.

When paying a super benefit to a member it may be necessary to withhold an amount to meet PAYG withholding obligations. You can go to our website for information on PAYG withholding obligations (/super/self-managed-super-funds/paying-benefits/lump-sum-and-income-stream-%28pension%29/payg-withholding-obligations/).

Reminders for SMSF professionals

Resources

SMSF professionals should consider attending (or later reviewing online) one of our regular SMSF Professional webinars: www.ato.gov.au/smsfwebinars (/smsfwebinars). These cover our most current concerns so are a great way of keeping up-to-date with key issues. And as the sessions are live, you can engage directly with our senior executives in the Q&A sections.

Another way to stay informed is through our free online newsletter SMSF News (/Super/Self-managed-super-funds/In-detail/News/Subscribe-to-SMSF-News/). Or receive daily, weekly or monthly email updates on the topics of your choice by subscribing to our website at www.ato.gov.au (/Subscription.aspx).

And if you've not seen them already, I urge you to take a look at the latest videos in our SMSF education series:

- SMSF – What happens if your fund breaches the law? (https://www.youtube.com/watch?v=NbJJzVyzkU0)

- SMSF - Paying an income stream Part 2 (https://www.youtube.com/watch?v=6nPMM5q-7AM)

Planning ahead – cognitive decline

While on the subject of education, I'd like to touch on the increasingly important topic of cognitive decline. As a society, it's essential that we come to grips with the reality of this issue. Dementia is on the rise and currently affects one in 10 people over 65 and three in 10 over 85. Even mild dementia will affect a person's ability to make financial decisions. SMSF numbers continue grow, SMSFs are in reality usually managed by one trustee and require a high level of financial decision making. While many trustees remain perfectly capable of effectively managing their financial affairs well past retirement age, there is a risk that some with diminished capacity to effectively manage their fund may nevertheless continue to do so. Most don't have a plan for what to do if they get to this point. As my colleague Matthew Bambrick said back in March, 'These issues are a time bomb waiting to go off if not addressed now'. [Tax Institute 12th Annual Superannuation Intensive, 12 March 2015]

It's essential to ensure that all trustees are genuinely involved in managing SMSF funds, to agree in advance about decision points and exit decisions, to have a will and appoint an enduring guardian and power of attorney.

Limited AFS licence

Before I wrap up on education and professional development, I'd like to pass on a reminder from our colleagues at ASIC. Currently, accountants are allowed to provide limited advice on SMSFs without the need for an Australian Financial Services (AFS) licence. Accountants without an AFS licence, or who don't intend to become an authorised representative of an AFS licensee, need to apply for a limited AFS licence now if they want to keep giving SMSF advice after 30 June 2016.

'Accountants should ensure they've allowed enough time to properly prepare an application and to undertake any relevant training. Where an application is in good order ASIC can assess the application within four weeks, but if further details are required because the information provided is insufficient this will take longer.' [ASIC Deputy Chairman Peter Kell, Media Release 25 August 2015]. Accountants who don't lodge applications which meet ASIC's requirements by 1 March 2016 run a significant risk their application will not be assessed before 30 June 2016.There are no proposals to extend this cut-off date.

Conclusion

In conclusion, the key points I hope I have conveyed today are that SMSFs are vehicles for retirement; the tax concessions afforded to SMSFs are directed towards that sole purpose. Those using SMSFs for tax avoidance purposes will be dealt with. If you are approached about an arrangement that seems too good to be true it probably is. Trustees should seek independent professional advice or advice from the ATO before taking a path they may regret and that could have significant financial impacts for them and their fund.

In other cases where trustees are complying with their obligations and make an inadvertent mistake or slip up the best thing that they can do is take early action to rectify any contraventions and engage with us. The outcome in those cases in terms of ATO enforcement action is likely to be much more favourable than if it is left to the ATO to detect a contravention through an audit or review.

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