

ATO warns SMSFs regarding excess contributions and release authorities

A warning was recently issued to SMSF trustees about the correct use of release authorities for taxpayers with excess superannuation contributions.

In an SMSF news alert, the ATO reminded trustees to carefully follow the directions provided in the release authority letter, where it requires superannuation money to only be released to the ATO, rather than to the member.

The ATO says that the trustees will need to take recovery action to rectify the error in the event that the SMSF has made an incorrect payment. Administrative penalties can apply in some cases.

There are as many as 8 types of release authorities issued by the ATO (although some of those release authorities only apply in relation to previous income years).

The 4 most relevant release authorities (and the trustees' obligations under them) are summarised in the following table.

Release authorities and trustees' obligations

Release authority type	Lodge statement and pay within	Make payment to
Excess CCs (as from 2013/14 income year)	7 days	ATO
Refund of excess NCCs (as from 2013/14 income year)	21 days	Individual
Division 293 tax (as from 2012/13 income year)	30 days	ATO or individual
Division 293 tax – Commissioner's authority (as from 2012/13 income year)	30 days	ATO

For more information regarding these release authorities, please refer to the ATO website.

If you are considering making a large level of contribution to your super fund, please contact our office before you do so. This way we can check your position and hopefully avoid the need to pay excess contributions tax.

Binding death benefit nominations – what you definitely need to know.

When a member of an SMSF dies, they generally believe that the remaining trustees will direct any benefit as intended.

However it may be that payment of those death benefits does not reflect the member's wishes.

The only way that a member can be certain their benefits will be paid the way they intend, is if they have made a valid binding death benefit nomination (BDBN). If this does not exist, payment will be at the discretion of the surviving trustee(s).

When considering making a BDBN, a member should consider these points into account:

- ◆ The trust deed for the superannuation fund should specifically allow for the making of BDBNs (if it does not, any BDBN that the member makes may not be valid);
- ◆ Superannuation benefits on death generally can only be paid to one or more "dependants" of the member as defined in the superannuation legislation (which includes a spouse or child), or to the member's legal personal representative to be dealt with according to the member's Will;
- ◆ Any BDBN they make does not conflict with any arrangements already in place with their superannuation (such as a reversionary pension that is already being paid); and

- ◆ A BDBN may be drafted to provide for benefits to be paid either as a lump sum or as a pension (or both), (although a member's superannuation death benefits generally cannot be paid as a pension to the member's child).

Further, members of superannuation funds also should be aware that:

- ◆ their superannuation benefits generally do not form part of their estate to be dealt with according to their Will; and
- ◆ superannuation legislation requires that a deceased member's benefits be paid out of the fund "as soon as practicable" after their death.

A member's personal situation can have a bearing as to whether or not to use a BDBN, as can the structure and relationship of fellow trustees.

Because of this, such arrangements are generally not a "one-size-fits-all" situation. At your next appointment let's discuss whether a BDBN might be suitable for your arrangements.

Christmas – a time for reflection

The time leading up to Christmas is usually very busy getting ready to take a break from our regular commitments. Many of us will have time to sit back and reflect on the year past and what we have achieved.

This time can also be used productively by the trustees of SMSFs. With a little down time in our lives we can just perform a quick check to make sure that we have our "house in order" when it comes to meeting our SMSF obligations.

A quick checklist is provided here to help guide your thoughts:

Contributions

- My contribution amounts will be below the maximum cap level so I don't have to pay excess contributions tax.
- I know the amount I will have to contribute as a lump sum in June to make sure I contribute the maximum amount.
 - Concessional (before tax) - \$
 - Non-Concessional (after tax) - \$

Investment Strategy

- My investment strategy for this year is documented.
- The investment strategy covers all the types of investments that are currently held in the fund.

- Each member of the fund has considered whether they should have personal insurance as part of their fund, and this has been documented.

Operational

- All taxation requirements are in order and ready to be lodged with the ATO.
- The fund cash account holds a sufficient amount to meet the funds regular expenses and other liquidity requirements.
- If the cash account needs 'topping up' where will this amount come from?
- Where a Binding Death Benefit Nomination is in place, this nomination is still current and valid (it nominates a "dependant").
- The fund trust deed is current and does not require updating at this time.

Where you are unable to tick any of the above boxes, contact our office so we can organise a time to clarify the position with you.

With Christmas upon us once again we take this opportunity to wish you and your family a very happy and safe Christmas and New Year. We look forward to assisting you with your superannuation needs when we return in 2016.