



## SMSFS – ON THE ATO RADAR?

The ATO will be conducting audits of SMSFs in 2009/10.

Recently, the ATO has released various material regarding SMSFs. Taxpayers should be aware of this material and the possible implications for their SMSF.

The hot topics on the ATO's radar at the moment include:

- PAYG obligations – where a benefit is paid, SMSFs may have PAYG withholding obligations. SMSFs do not have to withhold from all payments. However, if the SMSF fails to withhold where it is required to do so, penalties may be imposed.
- Related party agreements – SMSFs need to be aware of the “in-house assets” rule which may be breached where SMSFs enter into arrangements (e.g. investments or loans) with related parties. If the SMSF breaches the in house assets rule, the fund may become non-complying.
- Use of negotiable instruments (e.g. promissory notes, cheques to pay contributions) – the ATO is targeting the non-commercial use of negotiable instruments in transactions involving SMSFs (e.g. using a promissory note or cheque without intending to exchange money or assets). The ATO is concerned that SMSFs may be using such instruments to avoid liquidating assets, to change the timing of transactions or obtain tax advantages.
- Unpaid trust distributions – the ATO has issued a ruling in relation to whether an SMSF breaches the superannuation laws where it is entitled to distributions from a related trust but it has not received the payments. The ATO's ruling examines whether the in-house assets rule, arm's length rule and / or sole purpose test will be breached by such arrangements.
- Enduring powers of attorney – the ATO has issued a draft ruling in relation to the requirements to remain an SMSF if an enduring power of attorney is entered.

If you would like further information or require assistance in relation to the above please do not hesitate in contacting our office on 02 9555 1309.

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