

2<sup>nd</sup> April 2015

## SMSF trustees – this is the Tax Office calling

From [Townsend's Business & Corporate Lawyers](#)

You have your own SMSF and you're therefore a trustee of the fund. The phone rings late one afternoon. You answer the phone. It's the ATO wanting to discuss a recent breach of superannuation law by your fund. What to do next?

### First – Don't Panic.

Under its new approach to SMSF compliance, the ATO is actively calling trustees when relatively minor breaches have occurred, to try and work through the solution together in order to prevent the fund from requiring a full audit.

### Second – Play Nice.

The ATO has stated that it is looking to work with funds rather than point the finger with a "got you" call. Funds willing to rectify the breach and co-operate with the ATO are more likely to have a positive outcome. The ATO has said that if they are satisfied, they may close the relevant auditor contravention case with no penalties applied.

Alternatively, being defensive or simply refusing to deal with the ATO or the problem is almost certain to land the trustee and the fund in hot water. The ATO says if the trustee doesn't co-operate fully then it will have no choice but to escalate the matter to a full audit of the fund. It's important to note that every breach uncovered under these comprehensive audits will have penalties applied in full. Once an ATO audit is started it cannot be stopped.

### Third – Know your stuff.

Whilst the ATO is looking to achieve a positive outcome, a trustee who cannot show they understand their obligations is going to ring alarm bells. A trustee should be up-to-date with their fund's activities and details or at the very least have records which they can look back on and check. Answers such as "I don't know, my wife/husband takes care of all that super stuff" or "I have no idea, I just do what the rest of my family tells me to" are unlikely to see the call end well.

Comments like those will likely see you disqualified as a trustee for not having the requisite knowledge. You will then have to do a trustee education course and prove to the ATO you have enough knowledge to be allowed to run your own super fund with your own money in it.

## Finally – have your game plan ready.

Remember that this is not just a friendly notice from the regulator – the ATO is expecting you to be working on a way to rectify the identified problems. Anyone who receives a phone call should be ready to outline what they are doing to fix the issues as soon as possible. Simply being “too busy to fix it right now” is not good enough and will likely see your matter escalated.

Presumably you will know in advance that your fund auditor put a contravention report in and so you and your advisers should have worked out the solutions. You should understand those solutions and perhaps have advice from your advisers on hand to refer to when the ATO rings.

So don't get nervous should the ATO call, just remember the handy tips above and you will be well on your way to achieving a productive and positive outcome for you and your fund.

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