



SuperGuardian

Implications of late lodgement of your SMSF Annual Return

The SMSF Annual Return is an important document that covers the income tax return, regulatory information and member contribution reporting; and also enables trustees to pay the SMSF supervisory levy to the ATO each year. Where you fail to lodge your SMSF Annual Return on time there can be penalties applied and SMSF tax concessions can be lost.

When are SMSF Annual Returns due for lodgement?

If lodged through us as your tax agent, the due date is one of the following:

31st October

Annual Returns where the trustee has been advised of the date, or one or more prior year Annual Returns were outstanding as at 30th June. Where all outstanding prior year tax returns have been lodged by this date, the most current Annual Return will be due as per the normal lodgement program.

This date also applies for SMSFs prosecuted for non-lodgement of prior year returns and advised of this due date applying.

28th February

Annual Returns and payments where required for newly registered SMSFs - both taxable and non-taxable (unless advised of a 31st October due date when the SMSF was reviewed at registration).

15th May

Annual Returns where not required to be lodged earlier and also not eligible for the 5th June lodgement concession. Payment where required is also due.

5th June

Annual Returns for SMSFs that were non-taxable or received a refund for the last year lodged and are non-taxable or will receive a refund for the current year.

We can confirm the due date that applies to your SMSF's circumstances.

What happens if you fail to lodge on time?

Super Fund Lookup Status

Where the SMSF Annual Return is more than 2 weeks overdue, the compliance status of the fund can be changed to 'Regulation Details Removed' on the Super Fund Lookup website. With this compliance status, the SMSF is unable to receive superannuation guarantee payments from employers and rollovers from other superannuation funds. Any super guarantee payments from employers would need to be paid into an alternative super fund until the matter is resolved.

Once the SMSF Annual Return is lodged the status is updated to 'Complying' on either the first day of the month, the 15th calendar day of the month or the first business day after these dates. For SMSFs that are Complying they are able to receive superannuation guarantee payments and rollovers; and qualify for a concessional tax rate of 15%.

Failure to Lodge (FTL) Penalty

FTL penalty is one penalty unit for each period of 28 days (or part thereof) that the Annual Return is overdue up to a maximum of 5 penalty units. A penalty unit is currently worth \$313 (on or after 1 July 2023) so the failure to lodge penalty could be \$1,565 for the fund depending on how late it is. FTL penalty is also not a deductible expense for the SMSF.

Administrative Penalties

Individual trustees and directors of corporate trustees are personally liable to pay these penalties where they contravene certain provisions of the Superannuation Industry (Supervision) Act 1993. These are levied on the trustees and cannot be paid from the SMSF. They are also levied for each trustee. Therefore, if there are individual trustees, each individual trustee will be liable for the penalty amount. In contrast for a corporate trustee there will be a single penalty amount.

Subsection 35B(1) of the SIS Act requires the trustee to prepare accounts and statements. Failure to comply with this requirement could give rise to an administrative penalty of 10 units which equates to \$3,130 per trustee. If there are 6 individual trustees, then the penalty for non-compliance could be \$18,780.

Other Penalties and Consequences of Non-Compliance

There are also a number of other courses of action the ATO can take to deal with trustees who do not comply with the superannuation laws. The type of action taken depends on the severity of non-compliance but can include the following:

- Notice of non-compliance – This is a significant penalty to impose as for every year that the SMSF is non-complying, the assessable income is taxed at the highest marginal tax rate. Additionally, in the year it becomes non-complying, an amount equal to the market value of the fund's total assets less any non-concessional contributions is included in assessable income where it is taxed at the highest marginal tax rate.
- Enforceable undertaking
- Rectification direction
- Disqualification of a trustee
- Civil and criminal penalties
- Allowing the SMSF to wind up
- Freezing an SMSF's assets

A critical part of an SMSF trustee's legal responsibilities is lodging SMSF Annual Returns on time. To avoid any penalties applying you should aim to meet your lodgement obligations or seek a deferral where possible before the due date.

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