

Tax Office gets serious with trustees

DIY super

John Wasiliev

The Australian Taxation Office has revealed that it expects to make 20 do-it-yourself funds non-compliant over the next month, reinforcing its tougher line against the sector.

Trustees will lose not only their right to be involved in DIY super but their funds will be hit with crippling penalty taxes. The announcement follows news that eight funds have had non-compliance imposed on them since July 1.

This means that the number of funds made non-compliant in the first quarter of this financial year exceeds the 24 funds that suffered the same fate in the whole of 2007-08. And it will be seven times the four funds that were made non-compliant in 2006-07.

"Anyone who thinks the Tax Office is not serious about stricter regulatory supervision had better think again," warns Graeme Colley, of DIY super administrator Super Concepts. He is also chairman of the Self Managed Super Funds Professionals Association (SPAA).

The individual member's balances face a 45 per cent penalty tax, although non-concessional or after-tax contributions are not counted. In addition, the investment income earned by the fund in the year it is made non-complaint is also taxed at 45 per cent.

"What the penalties are designed to do," Colley says, "is take away any incentive that has been given to the funds by the tax system."

Colley says that as well as the ATO becoming more willing to



Graeme Colley of Super Concepts . . . 'anyone who thinks the Tax Office is not serious had better think again'.

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impose tougher penalties on trustee breaches it is also becoming more open about what it is doing. "There is no doubt they are more active," he says.

At an SPAA technical conference in Adelaide last week, ATO assistant deputy commissioner Ian Read not only revealed the latest action but also signalled where the regulator's emphasis will be this year.

The front lines for ATO attention will be funds that attract an auditor

contravention report as well as funds that lodge their returns late. Another area of investigation is an estimated 11,000 members who appear to have made excessive contributions in the 2006-07 year, including the \$1 million non-concessional contribution limit.

Read revealed that last year the ATO sent out 140,000 letters to DIY super funds covering issues such as the late lodgement of required returns. At present only about 60 per cent of

funds lodge their returns on time. The lodgement total rises to 85 per cent within two months of the required time. The ATO has begun imposing fines on funds that are serious late lodgers. A total of 94 funds were fined last year for lodgement breaches with the largest fine of \$20,000.

The ATO has also set a 2009-10 target of encouraging 94 per cent of funds to lodge their returns on time, which is stricter than the lodgement goals for income tax returns.

Serious contraventions ultimately attract an audit by the ATO and this year it expects to conduct about 14,000, up from 11,000 in 2007-08 and less than 4000 in the previous year. As far as identifying breaches are concerned, the ATO has refined the contraventions it will audit, although lesser breaches will still attract some attention.

The ATO has introduced certain rules for common mistakes, such as failing to sign a trustee declaration on time. These must be signed by all new trustees as a measure to indicate they are aware of their role and responsibilities. The required period is 28 days from the time the fund is set up, but trustees have been given an extra 14 days before this becomes a reportable breach. In the past the 28 days was the strict limit.

Another rule is the 7 per cent or \$30,000 tolerance for breaches of the in-house asset rules that apply to investments where there is a link to a fund member, such as a fund leasing a work of art to a member. Where a member makes some use of a fund asset, the value of the assets cannot normally be more than 5 per cent of the total fund assets.

The strict rule has been that as soon as it exceeds 5 per cent, this must not only be corrected but also reported as a breach. The tolerance permits the value of the in-house assets to climb to 7 per cent, so long as this does not represent more than \$30,000 of value. Colley says what this suggests is that minor breaches will be tolerated as far as being reportable. "It only wants to be investigating major or material breaches," he says.