

06 OCT 2021

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Australian Government
Australian Taxation Office



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THE TRUSTEE FOR CINDERLAKE
SUPERANNUATION FUND
PO BOX 83
MOUNT GRAVATT QLD 4122

Our Reference: SMSF RDF High
Client ID: 70 484 806 324

29 September 2021

Loan repaid in full in 21FY
- Contravention Rectified

You need to rectify your self-managed super fund's contraventions of superannuation law

To whom it may concern,

We are following up on a recent auditor contravention report (ACR) for THE TRUSTEE FOR CINDERLAKE SUPERANNUATION FUND. In this ACR, your auditor reported that your self-managed superannuation fund (SMSF) contravened superannuation laws during the 2020 financial year and that the contraventions remain unrectified.

We have reviewed the ACR and it has come to our attention that your compliance behaviour has been unsatisfactory for multiple years.

What you need to do

You must rectify the reported contraventions as soon as possible as you are placing your fund's compliance status in jeopardy.

You should consider talking to your tax agent or an SMSF specialist, to get help with:

- › rectifying the contraventions, and
- › developing strategies and implementing processes to prevent contraventions from happening in the future.

What happens next?

If we select your fund for audit, we are required by law to impose administrative penalties of up to \$12,600.00 per contravention for certain contraventions which occurred after 1 July 2014. You will be personally liable to pay the administrative penalties as the penalty cannot be paid or reimbursed from the assets of the fund.

An audit of your SMSF may also result in additional serious outcomes including:

- › a direction to rectify the contraventions
- › your disqualification as a trustee which will require you and any other disqualified trustees to remove yourselves from the fund, rollover all existing benefits to an APRA regulated fund and it will also prevent you from acting as a trustee of another SMSF in the future
- › issuing a notice of non-compliance to remove the fund's tax concessionary status resulting in the fund being taxed at 45%
- › civil and/or criminal prosecution.

NEED HELP?

If you have any questions, you can phone us on **13 10 20** between 8:00am and 6:00pm, Monday to Friday.

If you have been affected by COVID-19, bushfires or other disasters

- › visit ato.gov.au/disasters
- › phone our Emergency Support Infoline on **1800 806 218**.

MORE INFORMATION

You can find more information on our website about:

- › trustee obligations
ato.gov.au/SMSFadmin
- › how we deal with non-compliance
ato.gov.au/SMSFnoncompliance
- › attending an approved trustee education course
ato.gov.au/SMSFcourses
- › winding up your fund if you're not able to meet your obligations
ato.gov.au/SMSFwindup
- › using our SMSF early engagement and voluntary disclosure service to make a disclosure of any unrectified regulatory contraventions
ato.gov.au/SMSFdisclosure
- › to access our voluntary disclosure form go to;
ato.gov.au/Forms/SMSF-regulatory-contravention-disclosure/

Take action now as your fund's compliance status is at risk, however we acknowledge the current economic environment created by COVID-19 and the impact it is having on people. We understand this may be a challenging time for you to work through your ongoing trustee obligations and we want to help.

Go to our website for answers to frequently asked questions on the impact that COVID-19 may have upon your SMSF, plus there is information regarding the Government's economic response to COVID-19.

If you have not yet rectified your contraventions and need assistance to resolve your situation act now. We strongly recommend you use our SMSF Early Engagement and Voluntary Disclosure Service to submit the details of the contraventions and your rectification proposal so that we can assist and help you.

For information about your rights and obligations go to **ato.gov.au/taxpayerscharter**

Yours faithfully,
Emma Rosenzweig
Deputy Commissioner of Taxation

Superannuation Industry (Supervision) Act 1993



- C2021C00018

In force - Latest Version

[View Series](#)

74 Historical cost ratio of fund's in-house assets

For the purposes of this Part, the historical cost ratio of a fund's in-house assets is the percentage worked out using the formula:

$$\frac{\text{Number of whole dollars in cost of in-house assets of the fund}}{\text{Number of whole dollars in cost of all the assets of the fund}} \times 100$$

75 Market value ratio of fund's in-house assets

- (1) For the purposes of this Part, the market value ratio of a fund's in-house assets is the percentage worked out using the formula:

$$\frac{\text{Number of whole dollars in value of in-house assets of the fund}}{\text{Number of whole dollars in value of all the assets of the fund}} \times 100$$

- (2) Where, because of subsections 72(4) and (5), this Part applies separately to each of the corresponding classes of in-house assets of a superannuation fund, the market value ratio of the in-house assets of each corresponding class is a percentage worked out using the formula:

$$\frac{\text{Number of whole dollars in value of in-house assets of corresponding class} + \text{Number of whole dollars in value of in-house assets that do not correspond to one or more employer-sponsors of the fund}}{\text{Number of whole dollars in value of all the assets of the fund}} \times 100$$

82 All funds—market value ratio for the 2000-2001 year of income and later years of income

- (1) This section applies to a regulated superannuation fund.
- (2) If the market value ratio of the fund's in-house assets as at the end of:
 - (a) the fund's 2000-2001 year of income; or
 - (b) a later year of income;exceeds 5%, the trustee of the fund, or, if the fund has a group of individual trustees, the trustees of the fund, must prepare a written plan.
- (3) The plan must specify the amount (the *excess amount*) worked out using the formula:
$$\left[\begin{array}{l} \text{Market value ratio of fund's} \\ \text{in-house assets as at the end of} \\ \text{that year of income} \end{array} - 5\% \right] \times \begin{array}{l} \text{Value of fund's} \\ \text{assets as at the end of that} \\ \text{year of income} \end{array}$$
- (4) The plan must set out the steps which the trustee proposes, or, if the fund has a group of individual trustees, the trustees propose, to take in order to ensure that:
 - (a) one or more of the fund's in-house assets held at the end of that year of income are disposed of during the next following year of income; and
 - (b) the value of the assets so disposed of is equal to or more than the excess amount.
- (5) The plan must be prepared before the end of the next following year of income.
- (6) Each trustee of the fund must ensure that the steps in the plan are carried out.

In 19 FY:

- no S82, until 30 June 2020.

- Need written plan;

***to disposed of asset during the next following year of income and
value disposed of = excess.***

Must be prepared before the end of the following year

- Excess amount:

in 19 FY = \$388,368.93 (short by \$347,753.93. Only repaid \$40,615 in 20FY)

in 20FY = \$403,712.68

In 20FY:

Breach S82

83 Certain new in-house asset investments prohibited

- (1) This section applies to a regulated superannuation fund.
- (2) If the market value ratio of the fund's in-house assets exceeds 5%, a trustee of the fund must not acquire an in-house asset.
- (3) If the market value ratio of the fund's in-house assets does not exceed 5%, a trustee of the fund must not acquire an in-house asset if the acquisition would result in the market value ratio of the fund's in-house assets exceeding 5%.
- (4) For the avoidance of doubt, a reference in this section to acquiring an in-house asset includes a reference to making an investment or a loan, or entering into a lease or a lease arrangement, if the resulting loan or investment, or the asset subject to the lease or the lease arrangement, would be an in-house asset.

S83 breach in 19FY & 20FY