

# client alert | explanatory memorandum

October 2018

## CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 21 September 2018.

## Claiming work-related expenses: ATO guides and toolkits

This year, the ATO has launched its biggest ever education campaign to help taxpayers get their tax returns right. The ATO says the campaign, which is running throughout tax time, includes direct contact with over three million selected taxpayers, as well as specialised guides and toolkits for taxpayers, agents, employers and industry bodies. A key component of the campaign is simple, plain English guidance for the most common occupations, like teachers, nurses, police officers and hospitality workers.

ATO Assistant Commissioner Kath Anderson said that last year work-related expenses totalled a record \$21.3 billion, “and we have already flagged that over-claiming of deductions is a big issue”. The most popular topics this year include car, clothing, travel, working from home and self-education expenses, and the guides for tradies, doctors, teachers, office workers and IT professionals have been a big hit, Ms Anderson said.

The ATO reminds taxpayers that a number of expense types cannot be claimed as work-related deductions, including:

- *Teachers* cannot claim the costs of home-to-work travel, costs of gifts or prizes they buy for students, or costs of attending functions.
- *Police* cannot claim the costs of haircuts, grooming, weight-loss programs or supplies, even though they may be covered by specific occupational regulations. They also cannot claim costs associated with attending social functions or fitness expenses unless their employment depends on maintaining a level of fitness well above ordinary police standards, such as special operations.
- *Hospitality workers* cannot claim the costs of ordinary clothes, like black pants or a white shirt, even if their employer told them to wear those clothes, and even if they only wear them for work. They can, however, claim the cost of uniforms that are unique and distinct to their employer or occupation-specific (like chef’s pants). They cannot generally claim the cost of trips between home and work, even if they live a long way from their usual workplace or have to work outside normal business hours (eg public holidays or night shifts).
- *Truck drivers* who receive a travel allowance from their employer are not automatically entitled to a deduction. They still need to show that they were away overnight, that they spent the relevant money themselves and that the travel was directly related to earning their income.
- *Retail workers* cannot claim a deduction for ordinary clothes or makeup that their employer tells them to wear (eg clothing from the latest fashion line), even if they work in a store that sells those items. They also cannot generally claim the cost of home-to-work travel, even if they have to work outside of normal business hours (eg late-night shopping shifts).
- *Nurses and carers* cannot claim the costs of home-to-work travel, ordinary clothes they wear to work (like closed-toe shoes or black pants), or of study that is not directly related to their current job.
- *Building and construction workers* usually cannot claim the costs of home-to-work travel, nor costs of clothes or shoes that are not uniforms or are not designed to provide them with sufficient protection from the risk of injury at their worksite, even where items are called “workwear” or “tradie wear” by the supplier.
- *Flight attendants* cannot claim a deduction for costs like hairdressing, cosmetics, hair and skincare products, even though they may be paid an allowance for grooming and be expected to be well groomed. Grooming product costs are considered by the ATO to be private expenses.

Source: [www.ato.gov.au/Media-centre/Media-releases/What-can-you-claim-if-you-re-a-flight-attendant,-police-officer-or-a-nurse/](http://www.ato.gov.au/Media-centre/Media-releases/What-can-you-claim-if-you-re-a-flight-attendant,-police-officer-or-a-nurse/).

## **Illegal phoenix activity: public examinations in Federal Court matter**

The ATO has announced that public examinations started in a Federal Court matter on 27 August 2018 in relation to a group of entities connected to a pre-insolvency advisor. The examinations will focus on the suspected promotion and facilitation of phoenix activities and tax schemes.

More than 45 service providers, clients and employees of pre-insolvency advisors, as well as alleged “dummy directors” of phoenix companies, will be examined, ATO Deputy Commissioner Will Day confirmed. He also said that the ATO has funded court-appointed liquidators, Pitcher Partners, to investigate the affairs and conduct of these entities before any further legal action by the Commonwealth is considered.

Source: [www.ato.gov.au/Media-centre/Media-releases/Public-examinations-to-identify-phoenix-activity-commence/](http://www.ato.gov.au/Media-centre/Media-releases/Public-examinations-to-identify-phoenix-activity-commence/);  
[www.comcourts.gov.au/file/Federal/P/VID282/2018/actions](http://www.comcourts.gov.au/file/Federal/P/VID282/2018/actions).

## **Banking Royal Commission: possible super contraventions**

On 24 August 2018, the Royal Commission into banking, superannuation and financial services misconduct released the closing submissions setting out possible contraventions by certain superannuation entities. The evidence surrounding these alleged breaches was revealed during the fifth round of public hearings (conducted 6–17 August 2018). During that time the Counsel Assisting, Ms Rowena Orr QC and Mr Michael Hodge QC, grilled high-level executives of some of the largest superannuation funds about practices that may involve misconduct or fall below community expectations.

### **Superannuation hearings**

Mr Hodge QC opened the super hearings on 6 August 2018 by asking the underlying question, “What happens when we leave these trustees alone in the dark with our money? Can they be trusted to do the right thing?”

Unlike the Royal Commission’s earlier hearings, which exposed horror stories about the personal devastation suffered by some individuals who received inappropriate financial advice, this fifth round of hearings focused on evidence about corporate governance and structural failures within the super system. While they lacked the drama of the earlier hearings, which brought home the human cost of misconduct and poor business practices, the fifth round of hearings was more about extracting evidence to make findings on structural issues that equally undermine outcomes for super fund members.

The Commission heard evidence about fees-for-no-service conduct and conflicts of interests which hamper some trustees from ensuring that they always act in the best interests of members. Counsel Assisting was particularly interested in how trustees supervise the activities of a fund and respond to queries from the regulators. Executives were also quizzed on how they justified expenditure on advertisements and sporting sponsorships as being in the best interests of members. Finally, the Commission turned its attention to the effectiveness of the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) as regulators.

### **Alleged breaches by super entities**

The 222 pages of closing submissions, published on 24 August 2018, set out the relevant evidence in relation to each of the 17 superannuation entities that were the subject of the case studies before the Royal Commission. The submissions go on to address specific findings about misconduct (or conduct falling short of community expectations) that Counsel Assisting contend are open to Commissioner Hayne. This includes allegations that some of the entities may have breached various provisions of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act), the *Corporations Act 2001* (the Corporations Act) and the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) in relation to the alleged conduct. For example, Counsel Assisting said that the fee-for-no-service conduct admitted by certain entities may have breached ss 1041H and 912A(1)(c) of the Corporations Act, s 12DA of the ASIC Act and ss 29E(1)(a) and 52(2) of the SIS Act. Other entities may have breached ss 29E(1)(a) and 52(2) of the SIS Act in relation to the use of tax surpluses and the transition to MySuper.

Counsel Assisting also made salient observations about ASIC and APRA in relation to the cultural and governance practices in the super industry. Importantly, at least one of the case study entities (EnergySuper) was totally cleared by Counsel Assisting, which concluded that it was not open to make any findings of misconduct or conduct falling short of community expectations.

### **Political advertising by super funds**

In relation to AustralianSuper’s investment in *The New Daily*, and its political advertising campaign (the “Fox and Henhouse”), Counsel Assisting said it was not open to the Commissioner to find that any of the conduct by AustralianSuper constituted misconduct or conduct falling short of community expectations. However, Counsel Assisting said there was a broader policy question about whether political advertising is consistent

with the intention behind s 62 of the SIS Act, and whether a legislative amendment was warranted. Counsel Assisting also submitted that there is a policy question about whether there is identifiable detriment (or benefit) to consumers from advertising by super funds or particular advertising (such as the “Fox and Henhouse” campaign).

### **Insight from leading practitioners**

While the mass media has provided saturation coverage of the Royal Commission, perhaps the most insightful and refreshing observations, from a practitioner’s perspective, have come from Michelle Levy, Andrew Maher and Simun Soljo, partners at Allens Linklaters. Commenting on the closing submissions by Counsel Assisting, Ms Levy said it was significant that the submissions do not contain any legal analysis to support these very serious allegations. “Counsel Assisting seems to be saying that the conduct speaks for itself”, she said.

Ms Levy noted that the laws that have allegedly been breached “are not easy to interpret, and some of them have never or rarely been considered by a court”. “These are not matters that can be determined on the facts alone in the same way that, say, a breach of a driving speed limit might be”, she said. According to the partners at Allens Linklaters, the interpretation that Counsel Assisting has presumably given the provisions, in some cases, appears inconsistent with the courts’ interpretations of them. No doubt subsequent submissions from the impacted parties may provide some assistance to the Commission on these important matters.

In terms of the Commission’s focus on the best interests duty, Allens Linklaters have observed that the witnesses were often asked how certain conduct was in the best interests of beneficiaries. However, the legal obligation of a superannuation trustee to comply with the best interests duty in s 52(2)(c) of the SIS Act is concerned more with “process not outcome”: *Breen v Williams* (1996) 186 CLR 71. Asking a witness how their conduct was “in the best interests of beneficiaries” is clearly not a question that invites an answer about proper process, Ms Levy said.

### **Interim report due by September 2018**

The Royal Commission’s interim report is due by the end of September 2018, with the sixth round of public hearings taking place on 10–21 September 2018. This round of hearings is investigating conduct in the insurance industry by reference to case studies involving certain entities. To help inform these hearings, the Royal Commission has released four background papers covering life insurance, group life insurance, reforms to general and life insurance (Treasury) and features of the general and life insurance industries.

Source: <https://financialservices.royalcommission.gov.au/public-hearings/Pages/round-5-hearings.aspx#closing-submissions>.

### **SMSF issues update: ATO speech**

ATO Assistant Commissioners Superannuation Tara McLachlan and Dana Fleming recently spoke at the Self Managed Superannuation Fund (SMSF) Association Technical Days in various capital cities. The speech was mainly about practical considerations to be taken into account when setting up a new SMSF and during the first year of its operation. Other issues raised included:

- *SMSF registrations*: For 2017–2018 there were about 26,000 SMSF registrations, with 2,100 of these subject to further review. Of those reviewed, 621 (29%) had their Australian Business Number (ABN) cancelled and 336 (16%) had their details withheld from Super Fund Lookup.
- *SMSF annual return lodgments*: By the deferred deadline of 30 June 2018, 90% of SMSFs (as at 30 July 2018) had lodged their 2016–2017 SMSF annual return, and 3% had received a deferral based on the particular circumstances of the fund. Around 44,000 SMSFs made an election in their annual return to apply the transitional capital gains tax (CGT) relief in relation to the pension reforms.
- *SuperStream for SMSFs*: The ATO is working with industry on implementing the 2018–2019 Budget proposal to extend SuperStream to include SMSF rollovers. The measure is expected to start in late 2019.
- *Exempt current pension income and actuarial certificates*: 2016–2017 was a transitional year for exempt current pension income (ECPI), as some SMSFs went from using the segregated method to using the proportionate method (requiring an actuarial certificate). From 2017–2018 there will generally only be a few circumstances where an SMSF needs to get an actuarial certificate to claim ECPI, as follows:
  - when the SMSF is paying a pension that is not an account-based pension;
  - where the SMSF is required to use the proportionate method because a member has a total super balance above \$1.6 million; and
  - where the SMSF has a mix of accumulation and retirement-phase interests and chooses not to use the segregated method.

Source: [www.ato.gov.au/Media-centre/Speeches/Other/Fledgling-SMSFs---the-first-18-months-of-an-SMSF-s-life/](http://www.ato.gov.au/Media-centre/Speeches/Other/Fledgling-SMSFs---the-first-18-months-of-an-SMSF-s-life/).

## **ATO data analytics and prefilling help tax return processing**

The ATO reports that a record number of tax returns were finalised in the first two months of tax time this year, thanks to the ATO's data prefilling arrangements and correction of mistakes using analytics and data-matching. Over \$11.9 billion has been refunded to taxpayers, and errors worth more than \$53 million were detected and corrected before refunds were issued, Assistant Commissioner Kath Anderson has reported.

The ATO has prefilled over 80 million pieces of data from banks, employers, health funds and government agencies to make tax time easier for taxpayers and agents. However, some people are still getting it wrong. Ms Anderson said the ATO's advanced analytics allow it to scrutinise more returns than ever before, and make immediate adjustments where taxpayers have made a mistake.

### **Mistakes in returns**

In the first half of tax time, the ATO automatically adjusted more than 112,000 tax returns to correct mistakes in returns, totalling more than \$53 million. Most of the income adjustments made by the ATO were for simple mistakes, like leaving out bank interest or salary and wages. But for some, the ATO suspects, peoples' priority was on generating a refund rather than getting it right, as they deliberately ignored the prefill information that was available at the time of lodgment, Ms Anderson said.

The ATO welcomes that so many people are confident to lodge early, but reminds them to use the prefilled data available. Taxpayers who may be tempted to bend the rules and deliberately leave out income (or over-claim deductions) should remember that the ATO's analytics and data-matching setup is likely to pick that up, Ms Anderson said, warning that penalties between 25% and 75% can apply. Anyone who realises that they have made a mistake or left something out should lodge an amendment online or via a tax agent to minimise any penalties and interest charges.

### **Deductions for insurance premiums**

Insurance premium deductions have also become a focus area for the ATO after it identified some taxpayers who were over-claiming deductions. "Just to be clear", Ms Anderson said, "premiums for income protection insurance are tax deductible, but premiums for other insurances like life, permanent disability and trauma are not".

While life and permanent disability insurance premiums are not deductible for individual taxpayers, certain death and disability insurance premiums are deductible for complying superannuation funds (ss 295-460 and 295-465 of the *Income Tax Assessment Act 1997*).

### **Tax time numbers**

According to the ATO, young people seem to be getting in early, with 17% of returns coming from 18- to 24-year-olds and the majority using myTax:

- 5,775,000 taxpayers or their agents lodged a tax return in July and August;
- 977,000 (17%) were aged between 18 and 24 years old;
- almost 5,155,000 refunds have been issued, totalling more than \$11.9 billion.

Source: [www.ato.gov.au/Media-centre/Media-releases/Data-and-analytics-generating-faster-refunds-this-tax-time/](http://www.ato.gov.au/Media-centre/Media-releases/Data-and-analytics-generating-faster-refunds-this-tax-time/).

## **Parliamentary committee recommends standard tax deduction, "push return" system**

The report of the House of Representatives Standing Committee on Tax and Revenue into Taxpayer Engagement with the Tax System has been tabled. This is a significant report, also covering issues that have been canvassed in previous tax reform reports such as the Australia's Future Tax System Review and the Henry Review.

In its inquiry, the Committee examined the ATO's points of engagement with taxpayers and other stakeholders, and reviewed the ATO's performance against advances made by revenue agencies in comparable nations. The inquiry asked what taxpayers should now expect from a modern tax service which is largely or partly automated.

During the inquiry, the Committee received extensive evidence from the ATO about its "reinvention" as a modern automated tax administration system. However, the inquiry also raised alarms that the Committee said it was compelled to explore. In particular, the Committee was concerned that complexity in Australia's tax system is impeding the ATO's transformation into a fully automated and intuitive service. Australia's complex system for claiming workplace-related deductions, for example, was highlighted during the inquiry as being out of step with approaches in most other advanced nations, which had almost universally standardised their approach. The Committee concluded that, under Australia's self-assessment model, more should be done to make tax obligations easier for taxpayers to understand and simpler to comply with.

## Recommendations

In its 242-page report, the Committee made 13 recommendations, including:

- that a review of Australia’s tax system should be undertaken before 2022, with the purpose of making recommendations on how to simplify the present tax system, in order to both reduce the quantum of tax law and improve comprehension and compliance by people without expertise in taxation law;
- more immediate tax reform to close up tax loopholes, and to meet new challenges evolving with the increase in freelance and contracting work – in particular, the Committee called for introduction of a standard workplace expenses deduction scheme (as proposed by the Australia’s Future Tax System Review), with individuals allowed to claim above the set amount by providing full substantiation through a tax return process;
- that the ATO should continue to expand availability of technical initiatives such as prefilling, simplified electronic lodgment systems for business and individuals, and online assessment tools to facilitate Australia’s transition to a “push return” tax system – the Committee supports these developments, but wishes to uphold individuals’ choices to manage their own tax affairs, using ATO or commercial products, and to seek professional advice from tax professionals enabled by efficient online lodgment services;
- based on the New Zealand system, that Treasury should consider an Australian Business Number (ABN) withholding tax system at source for all industries, with the potential for industry-specific rates;
- that the ATO should adopt a roadmap for the abolition of paper-based returns, including testing and trialling with user groups, although for the foreseeable future the Committee recommends that the ATO maintains the paper-based return service on request;
- that the ATO should review the functionality of the contactor assessment tool for accuracy and utility to taxpayers by reference to the functionality of the tool deployed in the United Kingdom, and report to the Committee on its progress;
- that the ATO should continue to deploy behavioural insights approaches to increase taxpayer engagement;
- that the ATO should make greater use of behavioural insights techniques – such as randomised controlled trials – before full implementation of new initiatives, to determine if such changes are indeed better than current practices, and which changes are the most effective;
- that the ATO should conduct a comprehensive review of its high-level mission statements to devise a single, cohesive and easily understood framework – “a regulatory philosophy” – that clearly and simply outlines the rights and obligations of both the ATO and taxpayers in the tax engagement process; and
- that the ATO should engage with all service providers according to the principle of competitive neutrality, allowing taxpayers the ultimate choice of which channel of access or service to use, and which channel is in their own best interests.

## Other points from the report

Among other things, the report also noted the following:

- While the trend towards electronic payments and “tap-and-go” contactless cards in Australia is strong, some jurisdictions overseas are more advanced in implementing financial technology developments that support the shift away from cash. For example, Sweden has mandated for implementation of certified cash registers to provide real-time information to the Swedish Taxation Authority (STA) on sales transactions.
- Australia has one of the highest levels of reliance on tax practitioners of any OECD country. At hearings, the ATO advised that Australia’s reliance on agents is second only to Italy’s – in Australia, 74% of all tax entities (individuals and businesses) employ a tax professional to help them comply with their obligations.
- Mr Graeme Davis, Treasury’s Acting Division Head, Tax Framework Division, conjectured that tax complexity may be one cause for Australia’s very high reliance on tax agents compared with other nations. However, he emphasised that “there doesn’t seem to be a direct correlation” between tax complexity and agent usage, citing the lower tax agent usage in the United States, which is not known for having a simple tax system.
- The Australian tax system supports the use of taxation intermediaries (tax practitioners), as it provides taxpayers with a deduction for the cost of managing tax affairs (irrespective of complexity). The Committee heard evidence that this was inefficient, and that the calibration of the tax system towards overpayment of taxes with refunds provided for workplace deductions, for example, is fuelling a costly “refund churn” while supporting late lodgment and late payment of tax obligations.

Source: [www.aph.gov.au/Parliamentary\\_Business/Committees/House/Tax\\_and\\_Revenue/completed\\_inquiries](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/completed_inquiries).

## 12-month extension of \$20,000 instant asset write-off

The *Treasury Laws Amendment (Accelerated Depreciation for Small Business Entities) Bill 2018* has now passed through both houses of Parliament without amendment. This uncontroversial and widely supported Bill was originally introduced on 24 May 2018, so it is unusual that the process has taken almost four months.

The Bill amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to extend the period during which small business entities can access expanded accelerated depreciation rules for assets costing less than \$20,000 by another 12 months, to 30 June 2019 (the threshold amount was due to revert to \$1,000 on 1 July 2018).

Among other things:

- Small business entities will be able to claim an immediate deduction for depreciating assets that cost less than \$20,000, provided the asset is first acquired at or after 7.30 pm (ACT legal time) on 12 May 2015, and first used or installed ready for use on or before 30 June 2019. Depreciating assets that do not meet these timing requirements continue to be subject to the \$1,000 threshold.
- Small business entities will be able to claim an immediate deduction for depreciating assets that cost less than \$1,000 if the asset is first used or installed ready for use on or after 1 July 2019.
- Further, small business entities will be able to claim a deduction for an amount included in the second element of the cost of depreciating assets that are first used or installed ready for use in a previous income year. The total amount of the cost must be less than \$20,000 and the cost must be incurred at or after 7.30 pm (ACT legal time) on 12 May 2015, and on or before 30 June 2019. Costs that are incurred outside of these times continue to be subject to the \$1,000 threshold.

Currently, assets that cost \$20,000 or more, and costs of \$20,000 or more relating to depreciating assets, can be allocated to a small business entity's general small business pool and deducted at a specified rate for the depletion of the pool. This does not change.

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, welcomed the passing of the Bill but said, "We will still continue to push for embedding the instant asset write-off in legislation and raising the threshold to at least \$100,000". She said that for capital-intensive businesses the \$20,000 threshold is too low; for example, if you're a farmer and you want to buy an asset like a tractor, "you're not going to get one for anywhere near the \$20,000 threshold".

Ms Carnell said small businesses and family enterprises need to remember that this is a tax deduction, not a rebate – so they need to make a profit to be eligible to claim the benefit.

Source:

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;page=0;query=BillId%3Ar6118%20Reconstruct%3AAbillhome>.

## Cryptocurrency and tax: updated guidelines

The ATO says that for those carrying on a business that involves transacting with cryptocurrency, the trading stock rules apply, rather than the capital gains tax (CGT) rules.

The ATO's guidelines on the tax treatment of cryptocurrencies have recently been updated, following feedback from community consultation earlier this year. The ATO has provided additional guidance on the practical issues of exchanging one cryptocurrency for another, and the recordkeeping requirements. The ATO received about 800 pieces of individual feedback and submissions.

Through the feedback, the ATO identified the five most frequently raised issues and its current response to these issues, as follows:

- *Issue 1:* In many situations, cryptocurrency transactions cannot reasonably be accounted for on a transaction-by-transaction basis, and the only reasonable approach is taxing on a fiat-in and fiat-out basis.

*ATO response:* The normal recordkeeping rules under the tax laws apply to cryptocurrency transactions as with any other transactions involving the disposal of property. As part of the ATO's research, it discovered low-cost software solutions that can both record each cryptocurrency transaction (including cryptocurrency-to-cryptocurrency transactions) and convert the value of the proceeds into Australian dollars.

- *Issue 2:* High fluctuations in values make it difficult to value cryptocurrency.

*ATO response:* The ATO heard that high fluctuations in value could create large changes in the "paper" value of cryptocurrency portfolios, compared to realised gains. As cryptocurrencies are generally CGT assets, any gains are not realised until the time of disposal. This is an issue in all investments, and managing this risk falls into the realm of tax planning.

- *Issue 3:* Records have not been kept, and we can't reconstruct them now.

- *Issue 4:* It is hard to keep records of high volume trades, particularly in ascertaining value for each trade.
- *Issue 5:* There is difficulty in accessing the data required for proper recordkeeping.

*ATO response to issues 3, 4 and 5:* The normal recordkeeping rules under the tax laws apply to cryptocurrency transactions, as with any other transactions involving the disposal of property. As part of the ATO's research, it discovered low-cost software solutions that can both record each cryptocurrency transaction (including cryptocurrency-to-cryptocurrency transactions) and convert the value of the proceeds into Australian dollars. The software can take information directly from the exchange or a digital wallet and do the calculations, which helps alleviate the issues with recording trades and accessing data. This type of software may be suitable for cryptocurrency recordkeeping. In most cases, it may be possible to reconstruct records through historical information available from digital currency exchanges, wallet transactions or even normal bank account transactions. Market values of various cryptocurrency can also be obtained from a reputable online exchange.

*Source: [www.ato.gov.au/Business/Large-business/In-detail/Business-bulletins/Articles/Cryptocurrency-and-tax/](http://www.ato.gov.au/Business/Large-business/In-detail/Business-bulletins/Articles/Cryptocurrency-and-tax/).*

## **The ATO as SMSF regulator: observations**

In the opening address to the Chartered Accountants Australia and New Zealand National Self Managed Superannuation Fund (SMSF) Conference in Melbourne on 18 September 2018, James O'Halloran, ATO Deputy Commissioner, Superannuation, shared some observations and advice from the ATO's perspective as regulator for the SMSF sector. The address included the following points:

- The ATO aims to address behaviour that seeks to take advantage of the closely held and concessionary nature of an SMSF or seeks to undermine the retirement system by accessing savings in circumstances not allowed under the law.
- The role of trustees is a crucial one. For example, they must act honestly in all matters concerning the fund, must act in the best interests of all fund members when making decisions and must manage the fund separately from their own affairs.
- The ATO estimates that about 1,900 SMSFs reported reserves in their 2016–2017 annual returns, totalling \$375 million.
- As at 30 July 2018, some 90% of SMSF returns for the 2016–2017 financial year were lodged on time.
- Some 27,000 registered SMSFs have not lodged since their establishment, including some 8,900 funds that registered in the 2016–2017 financial year and have not yet lodged their 2016–2017 return.
- Events likely to attract close scrutiny from the ATO include any unexplained increase in new reserves, increases in the balances of existing reserves, or allocation of amounts from a reserve directly into the retirement phase.
- Where an SMSF does have reserves, the ATO will be looking to see whether they're being maintained by a trustee in line with the sole-purpose test.
- Another emerging issue is the use of multiple SMSFs to manipulate tax outcomes. Given the recent introduction of the transfer balance cap and disregarded small fund assets provisions, the ATO will closely scrutinise arrangements where an individual with multiple SMSFs acts within these funds to circumvent the intended outcomes of these measures. At a baseline level, the ATO believes there are some 13,600 trustees who have more than one SMSF, and 35 trustees who have more than five SMSFs.

*Source: [www.ato.gov.au/Media-centre/Speeches/Other/Trust-and-confidence-in-self-managed-superannuation-funds--our-common-purpose/](http://www.ato.gov.au/Media-centre/Speeches/Other/Trust-and-confidence-in-self-managed-superannuation-funds--our-common-purpose/).*

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