



FEBRUARY 2015

Welcome

Welcome to the February AIA 'Investor Update'. Only three articles this month, but considerable depth of interest. SMSF Succession Strategies are vitally important to all of us with SMSFs, and also an interesting article on agricultural leasing.

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SMSF Succession Strategies

DBA Lawyers

There are many strategies put forward on how to provide smooth and effective succession for a self managed superannuation fund ('SMSF') members. Fortunately, while there is no 'one size fits all' solution, there are a number of strategies that are simple and cost effective that can substantially bolster your position and set the 'foundation' for SMSF succession. It is important to obtain documents and advice from suppliers who have the appropriate expertise as the most appropriate strategy must have regard to the background circumstances of each member

Your personal estate planning must also be consistent with your SMSF succession plans. Obtaining expert advice and implementing a tailored succession plan is the best way forward for smooth and effective succession especially with the increased emphasis on technological development and commoditisation of the SMSF industry.

Upcoming Events

Geelong VIC Discussion Group

3rd March 2015 7.00pm

Perth Information Evening

'Me and My Portfolio'

3rd March 2015 7.30pm

Frankston South VIC Discussion Group

4th March 2015 1.00pm

Brisbane Information Evening

Estate Planning for SMSF

4th March 2015 1.30pm

Canberra Discussion Group

9th March 2015 7.30pm

Adelaide Information Meeting

'The Outlook for the Australian Share Market. 10th December 2014 7.30pm

Sydney North Shore Information Meeting

'The Share Market: Interesting Times'
11th March 2015 7.30pm

Chermside Equities Discussion Group

15th March 2015 7.00pm

Perth Equities Discussion Group

17th March 2015 7.00pm

SMSF Succession Strategies (Cont'd)

We now venture in to strategies that range from the basic to the more advanced stages of SMSF succession planning.

Sole purpose corporate trustee

We strongly recommend that an SMSF have a sole purpose corporate trustee rather than individuals as this greatly enhances succession. The up-front cost of establishing the company generally give long-term benefits that far outweigh the upfront cost. These are conveniently summarised in Annexure A.

Despite the numerous compelling reasons outlined in Annexure A, around 74% of SMSFs still have individual trustees. This is surprising considering the many long-term advantages from having a corporate trustee.

The introduction of the new administrative penalty regime in mid-2014 can now result in an administrative penalty ranging from \$850 to \$10,200 for each contravention. Importantly here, the penalties are imposed on a per head basis for individual trustees. In contrast, the directors of a company are only jointly liable to one penalty per contravention. Thus, if an SMSF loan is made to a member or related party, and there are two individual trustees, the minimum penalty is \$20,400 (compared to \$10,200 for an SMSF with a corporate trustee). Loans to members/related parties are consistently noted year after year by the ATO as one of the main contraventions in the 15,000 to 18,000 auditor contravention reports lodged with the ATO each year. Thus, for many SMSFs, it is not so much a question of not being subject to one of these penalties but is merely a question of when. In my view, this new penalty regime is the 'nail in the coffin' for SMSFs with individual trustees.

Moreover, when you consider various legal cases, the merits of having a corporate trustee become very clear. In *Katz v Grossman* [2005] NSWSC 934 a family relationship between two children (Linda and Daniel) was jeopardised as a result of Linda being admitted as a co-trustee on her mother's (Evelin Katz) death to satisfy the SMSF trustee-member rules. Linda used this power on her father's (Ervin Katz) subsequent death to pay herself approximately \$1.2 million of his death benefit.

Ervin and Evelin were the original trustees/members of their SMSF. After Evelin's death, Ervin appointed his daughter Linda as the other co-trustee. Shortly after Ervin's death, Linda appointed her husband (Peter

Grossman) as co-trustee and refused to follow her late father's non-binding nomination (an equal sharing between her and her brother Daniel).

This case could have easily been avoided if a corporate trustee had been appointed with Ervin gifting an equal number of shares (in the corporate trustee) to each child via his will. In addition, Ervin could have left a binding death benefit nomination ('BDBN') paying his death benefit to his deceased estate (ie, his executor as legal personal representative ('LPR')).

With so many SMSFs with individual trustees currently managed by mums and dads with children who are waiting in line for succession, *Katz v Grossman* is a great 'war' story to discuss to encourage families to commence their SMSF succession planning.

Thus, in summary, a corporate trustee is an essential step in the process of SMSF succession planning.

Why is succession to control so important?

Many lawyers swear by the old saying that possession is 9/10ths of the law. This general expression reflects the fact that even if you do have legal rights, having to enforce these rights causes great expense, time delay and uncertainty. In many legal battles, many give up soon after receiving a number of invoices from their lawyers, unless they are seeing some tangible progress. Entering the steps of a Supreme Court typically involves a substantial outlay.

The recent decision of *Wooster v Morris* [2013] VSC 594 is the most important decision ever regarding SMSF succession planning. Namely, what really matters in SMSF succession planning is the identity of who controls the fund on loss of capacity or death.

Mr Morris ('the deceased') had two adult daughters from a previous marriage (Mrs Wooster and Mrs Smoel; being the plaintiffs). He also had a second wife, Mrs Morris. The deceased and Mrs Morris were the members and trustees of the SMSF. The deceased made a BDBN in favour of his two daughters.

After his death, Mrs Morris appointed herself as the sole director/shareholder of a corporate trustee. She decided the BDBN (in favour of Mr Morris' two daughters) was not binding and, as sole director of the corporate trustee, decided to pay herself the \$924,509 death benefit.

The plaintiffs issued court proceedings seeking declarations that the BDBN was binding. A 'special

referee' found in favour of the plaintiffs, holding the BDBN binding and that the plaintiffs were entitled to be paid the death benefit plus interest. (The parties agreed to be bound by the referee's findings.) A further legal battle over what amounts were available to be paid as a deceased member's death benefit meant that the case then ended up in the Supreme Court. The main lessons from this case are summarised below.

Lesson 1 — LPR does not automatically become a trustee

Wooster v Morris clearly dispels the myth that when a person dies their executors (LPRs) automatically become a trustee in the deceased's place. Here, the plaintiffs were the deceased's executors but they did not become trustees. This point was also confirmed in *Ioppolo & Hesford v Conti* [2013] WASC 389 where the deceased member's two executor-children were unsuccessful in their case against their mother's second spouse to be appointed as SMSF trustees following their mother's death.

The identity of trustee on death is ultimately determined by the SMSF deed. Unfortunately, there are very few SMSF deeds that appropriately distribute the power to appoint a trustee upon death or loss of capacity. I will return to this point later.

Lesson 2 — BDBNs are only a partial solution at best

There is a misconception that SMSF succession planning is handled by making a BDBN. *Wooster v Morris* clearly dispels this myth as well. In *Wooster v Morris* the deceased had made a BDBN but the plaintiffs still had to spend years in legal battles to obtain any money. While a BDBN can be important, it will not necessarily be complied with. However, there is a much greater opportunity for a BDBN to be effective if an intended successor can, in essence, 'stand in the shoes' of the deceased to ensure that the control of the fund is not simply left to the surviving member(s). Accordingly, while a BDBN can be an important tool in SMSF succession planning, the 'control' of the fund is more crucial.

Lesson 3 — what really matters is who controls the fund

Wooster v Morris clearly demonstrates that far more important than a BDBN is the identity of who controls the fund on a member's death or loss of capacity. As stated above, this depends to a very large degree on what the SMSF deed. In *Wooster v Morris* the trustee's legal fees in defending the claim were \$302,699 in one year as reflected in the fund's 2013 accounts.

Thus, it is crucial that SMSF trustees and members plan succession to the trustee role to cover loss of capacity and death.

How to plan for control of an SMSF with a corporate trustee

One key planning strategy for covering risks on loss of capacity or death is to have a trusted person 'stand in your shoes' as your successor director. This requires planning in advance to ensure the smooth transition to an SMSF. To ensure that this occurs, amongst other things, the following matters need to be considered:

- Whether the use of successor director is appropriate and, if so whether the constitution of the corporate trustee company allows for successor directors at all. Most constitutions (especially older ones) will not have mechanisms for successor directors.
- The identity of the person who is to become a successor director. One must ensure they are willing to act and that there are sufficient instructions/wishes documented for them on what needs to be done.
- Consideration of whether the will and enduring power of attorney ('EPOA') nominates the appropriate person that the person wants to stand in their shoes. (Basically, an attorney under an EPOA while a person is alive and the executor of a deceased person's will is their LPR who can act for them in legal and financial matters.) This can often impact whether fund remains a SMSF.
- Check the SMSF deed and the constitution to the corporate trustee to see what steps and documents need completing to appoint that person. Typically, in addition to that person consenting in writing, they may need to satisfy some other hurdles and better to discover these now; otherwise it may be too late.
- It is important to note that if someone has more than one LPR and they wish to nominate more than one, that the voting and decision provisions of the relevant SMSF deed and constitution should be carefully examined. This is because unless there are special provisions to equalise voting, each attorney/executor may have one vote per head. However, for the sake of fairness, the joint LPR who is standing in for the incapacitated/deceased member should only assume this (one) person's voting capacity. Thus, if there are two attorney/executors nominated to act jointly, the joint LPRs should only have the equivalent of one vote.
- Note that in the case of a corporate trustee, the decision making depends in the first instance on what is

in the constitution (and not what is in the SMSF deed even though many deeds seek to cover this). In most constitutions, directors usually have an equal vote regardless of the number of shares they hold or their account balance in the Fund. The casting or deciding vote is generally given to the chairperson of the meeting. (In a mum and dad company, this is generally inappropriate and such constitutions should be avoided.) Given that most mum and dad companies do not comply with formalities, there is generally no practical mechanism to work through potential deadlocks. One solution could be, for instance, if there is a deadlock the person with the most voting shares can have a casting vote. Again, the shares on issue or the constitution could be tailored to provide such a mechanism.

- In so checking the deed/constitution it is important to check what voting mechanism applies, eg, are decisions determined by the number of directors, member account balances, shares held in the corporate trustee or via some other method. This is important as the constitution and/or the SMSF Deed may need amending if it is not appropriate. For example, if the relevant member has the lion's share of the fund, and voting is based on the number of directors, then this could give rise to an imbalance if the member with the greater fund balance wants control over the company's decisions. One mechanism to work through this type of deadlock would be to give member with the greater fund balance the majority of voting shares and ensuring the constitution reflects this voting power in director and shareholder decisions. If the constitution is not appropriate, then it should be tailored accordingly.

- There are numerous advantages for using a corporate trustee compared to individuals as trustees. However, ultimately a well-designed SMSF deed is also required. In many SMSF Deeds, the majority of members hire and fire the trustee. Under this type of deed, the company could be removed by a majority of members which does not reflect any member's account balance in the fund. Thus, it is crucial that you check the mechanism for changing a trustee to ensure a smooth and planned succession occurs. For example, if you have nominated someone to become your nominated successor director, then the corporate trustee and therefore this person could be voted out soon afterwards if the SMSF deed allows the other member(s) by way of a majority vote.

- It is also important to consider who will be the successor shareholder as the shareholders generally hire and fire the directors of a company. (Thus as you can readily see from the above analysis, SMSF succession

involves a review of both the SMSF deed and the constitution and these two need to be consistent in design and the implementation of the succession strategy to overcome any conflicts between them arising).

- Note, the ATO in SMSFR 2010/2 confirm that a member can nominate more than one LPR to stand in their shoes as a director. However, if there is more than one attorney/executor, your nomination should specify who has first go or you should specify whether they are to act jointly or jointly and severally. Also, a nominated person could well be disqualified if they are bankrupt or if they have ever been convicted of an offence involving dishonesty. Accordingly, one or two substitutes should also be nominated just in case.

On the death of a member, the trustee is responsible for administering the fund. On the death of a member, if the member did not make a BDBN, the decision on how to pay death benefits is generally left to the trustee's discretion. Accordingly, in the case of a second spouse, who is left running the fund, they will have discretion as to how to manage the fund and pay out any death benefit.

Conclusion

Smooth and efficient SMSF succession planning requires quality documents and advice. Unless appropriate prior planning is in place, who ends up controlling your super and with your super moneys largely depends on trust and, if the trusted person is not willing to implement your wishes, then your super is subject to a great deal of uncertainty.

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Note: DBA Lawyers hold SMSF CPD training at venues all around Australia and online. For more details or to register, visit www.dbanetwork.com.au or call Marie on 03 9092 9400.

ANNEXURE A**Corporate versus individual trustees**

Corporate Trustee	Individual Trustees
Estate planning flexibility A company offers greater flexibility for estate planning, as the trustee does not change as a result of the death of a member.	Extra administration and costs The death of a member gives rise to considerable administrative work and costs at an inopportune time.
Lower penalties The administrative penalty regime that commenced from 1 July 2014 typically only applies to a company once for each contravention.	Higher penalties A penalty can be imposed from 1 July 2014 on each individual trustee for each contravention. Thus, having two individual trustees can double the administrative penalty that would otherwise apply to a corporate trustee.
Sole member SMSF You can have an SMSF where one individual is both the sole member and the sole director.	Sole member SMSF A sole member SMSF must have two individual trustees.
Administrative efficiency On the admission or cessation of membership, that person becomes or ceases to be a director of the company. Thus, the title to all assets remains in the company's name.	Extra and costly paperwork The admission or cessation of a member requires that person to become or cease to be an individual trustee. As trust assets must be held in all trustees names, the title to all assets to be transferred to the new trustees.
Continuous succession A company has an indefinite life span; in other words, it cannot die. A company makes succession to control more certain on death or incapacity.	Ceases upon death Timely action must be taken on death to ensure the trustee/member rules are satisfied. (SMSF rules do not allow a sole individual trustee/member SMSF.)
Greater asset protection As companies have limited liability, they provide greater protection where a party sues the trustee for damages.	Less asset protection If an individual trustee suffers any liability, the trustee's personal assets are also exposed.

Agricultural leasing provides attractive yields*David Bryant*

The Australian commercial property sector is well serviced with fund managers and investment funds designed to meet the needs of tenants and investors. In contrast the agricultural sector, though of comparable scale, has only one fund designed for this purpose: the Rural Funds Group (ASX: RFF).

A calculation of the total value of Australia's investment grade commercial property indicates that this asset class has a total value of around \$280 billion. This figure was derived from national data relating to floor area multiplied by market values per square metre. Investment grade properties in this case, were properties valued greater than \$10 million. Figure 1 sets out this data and demonstrates that the level of institutional ownership is on average 70%, with the balance owned privately. Interestingly, retail property is approximately 95% institutionally owned, while industrial property has a lower level of investor ownership (47%), though this figure is changing rapidly with the expansion in number and scale of Real Estate Investment Trusts (REITs) focusing on this segment.

Figure 1: Summary of the Australian property investment market

	Property Investment Market Size Total Value AU\$b	Institutionally Owned Property Total Value AU\$b	Market Coverage by Institutional Investors
Core Property Sector			
Office Investment Market	111	63	56%
Retail Investment Market	112	106	94%
Industrial Investment Market	55	26	47%
Total	280	195	70%

NB: the above values have been rounded to one decimal place.

These statistics relating to commercial property are interesting for two reasons. Firstly, if 70% of these properties are owned by investors, it means that at least 70% of these assets are leased by tenants. Therefore, leasing commercial property is a very common practice among Australian businesses. Reasons why businesses lease premises, rather than own them, include the flexibility that leasing provides as business space requirements expand or contract.

Leasing, rather than ownership also allows a business to more efficiently use its scarce capital. Rather than tying up equity in a building that could be rented for say 10%, many business owners choose to invest the money into expanding their business operations, where they may hope to make a return of 20%.

The second reason why the data in Figure 1 is interesting is that it demonstrates a large commercial (\$195b) property funds management sector, owned either by REITs, whose securities are traded on the ASX, wholesale funds, typically targeting large superannuation funds, or property syndicates, that would tend to be owned by retail investors and their self-managed super funds.

From this statistical snap shot of Australia's commercial property, a picture emerges of a funds management sector that has grown to meet the needs of business. The success of this sector could not have occurred unless it delivered a product that both improved the bottom line and flexibility of businesses, while simultaneously delivering investment returns that satisfied the expectations of investors. In this respect a property fund manager is straddling two markets - the rental market for tenants, and the equity market for owners.

An analysis of these two markets and how they relate to agriculture reveals a very different picture – and an opportunity.

Australian agriculture utilises 405 million hectares of land, which is 53% of the country's total land area. The industry is relatively fragmented with 120,000 businesses reporting that farming is their principle business. Rural Funds Management (RFM) has estimated that the total value of the land and improvements of these businesses is just over \$200 billion³.

Added to this are substantial processing and infrastructure assets, typically owned by food processors and agricultural commodity marketers, whose total assets add tens of billions to the value of the agricultural property sector.

RFM estimates the total value of investment grade assets in Australian agriculture is of the order of \$150 billion, making it a larger sector than the office, retail or industrial property sectors detailed in Figure 1.

Despite the scale of the agricultural sector, it is estimated that only 4% of agricultural property in Australia is leased compared to around 40% for the US and many European countries. Why is Australia's leasing

rate so low, and why has there been no equivalent emergence of property fund managers facilitating property leasing?

The main reason is the relatively low lease rentals paid by broadacre⁴ farm enterprises. Broadacre farms can be leased at a rental yield of 5% of the capital value of the farm. This compares with an office building in the centre of our cities that would lease on a yield of 6-7%, and industrial warehouses on the fringe of our cities that lease for around 9%. On the surface then, leasing commercial property would appear more attractive.

However, higher lease rentals on commercial property may be due to the depreciation occurring on the structure or building that makes up the majority of a commercial property's asset value. In contrast to commercial property, broadacre farms have much lower levels of depreciating infrastructure installed on them. In fact, modern cropping properties often have no fences, no buildings and just a few dirt access roads.

As a consequence the asset is an almost pure natural resource with no wasting infrastructure detracting from long term returns.

While broadacre lease rentals may not be diminished by depreciation, the fact remains that the net yield generated by these assets is too low to compete with the investment yields historically generated by fund managers of commercial property. The Rural Funds Group (ASX: RFF) has addressed this dilemma by accumulating a mix of agricultural assets, that include the natural resources of land and water, but also substantial infrastructure capable of generating higher yields. As a consequence of this asset mix, RFF is able to distribute investment yields that exceed the majority of REITs.

RFF then is uniquely placed. Just as commercial property fund managers have provided a service that assists Australian business, while meeting the expectations of their investors, RFF has become Australia's first agricultural REIT to serve Australian farm businesses and meet the expectation of its owner - the RFF unitholders.

David Bryant is the Managing Director Rural Funds Management

Addressing problem SMSFs - are there reasons to help the tax man do his job?

David Oon and Bryce Figot

Once it is clear that a SMSF has run into problems, it seems counter intuitive to some trustees to assist the ATO in investigation or in prospectively rectifying issues. However, a Federal Court case along with recent ATO comments, suggest this can assist in mitigating the consequences.

2015 Federal Court case

The recent Federal Court case of *Olesen v Early Sunshine Pty Ltd* [2015] FCA 12 ('*Early Sunshine*') involved multiple contraventions of the *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA') for which the Court was asked to make declarations and impose penalties.

Early Sunshine Pty Ltd was the trustee of a SMSF. The company had three directors, who were also the members of the SMSF. George MacDonald & Sons Pty Ltd (GMS) carried on a freight trucking business. The members of the SMSF were also the directors of GMS. Due to financial stress experienced by GMS, the trustee of the SMSF made a total of \$553,568.20 in loans to GMS from June 2007 to June 2011 (in total, 71 discrete loans to GMS were made). A small loan was also made to Vertu Pty Ltd, a company controlled by one of the members. Each of the loans was ultimately repaid in full.

Prior to the Federal Court decision, the ATO and the people involved in the SMSF had agreed on what contraventions had occurred, as well as to the amount of the civil penalties. In particular, the parties had cooperated and produced a set of agreed facts and a proposed set of penalties. However, because of the requirements of the 'old' civil penalty regime (which is still in force in addition to the 'new' administrative penalty regime) the Court still had to be asked to decide whether the agreed penalties were appropriate.

It was agreed that the trustee of the SMSF had contravened the:

- sole purpose test (by making loans to the two related companies);
- requirement to take all reasonable steps to ensure that the in-house asset requirements are complied with (by making loans to the two related companies that exceeded the relevant limits); and
- arm's length rule (by loaning money to GMS on terms more favourable to GMS than would have been arm's length - the loans were interest-free).

The agreed penalties were that each director would pay \$13,000 and \$5,000 of the ATO's costs in bringing the case (totaling \$39,000 in penalties and \$15,000 in costs).

Judicial comments on cooperation in *Early Sunshine*

Justice Foster made telling comments. In particular, he referenced earlier cases and principles, which noted that 'contravening conduct under the Act may be difficult to detect and its investigation can be complex and expensive'.

He also noted that the contraventions were serious, deliberate, repetitive and took place over four years. On the other hand, he noted that all the respondents 'admitted all of the contraventions ... pressed by the Commissioner and cooperated fully with the Commissioner both at the investigation stage and in the proceeding.' Interestingly, immediately before writing as to declarations and final orders, his Honour stated:

When first informed of the quantum of the pecuniary penalties which the parties had agreed, I initially felt that the quantum of those penalties was insufficient. However, upon more mature reflection and having regard to all of the relevant circumstances, I formed the view that the quantum of those penalties was appropriate.

This tells firstly of the ATO's apparent willingness to impose relatively lenient penalties in the case of cooperation, which no doubt saves public servants considerable time in resolving contravention scenarios. Secondly, the decision suggests that Courts are not inclined to tinker with outcomes that are agreed on by the parties who have spent considerable effort in forming an agreement.

The prohibition on loans and financial assistance

It is also interesting to note that the Commissioner abandoned his claim that the trustee had contravened s 65 of the SISA (the prohibition on loans or financial assistance to members or relatives of members). While the conclusion involves conjecture, this suggests that a loan to a related party (who is not a member or relative of a member) will not be enough to enliven this contravention (unless, for example, the money or financial assistance was directly passed on to a member or relative of a member).

ATO comments on SMSF cooperation

ATO commentary also indicates that the willingness of SMSF trustees to self-rectify situations will affect how they are treated by the ATO (and may affect whether the

ATO imposes penalties). This is particularly relevant in light of the new ATO penalty regime that is currently in force.

The ATO's Matt Bambrick (Assistant Commissioner, Self-Managed Superannuation Funds Segment) stated in a July 2014 speech that all SMSFs reported by way of auditor contravention reports will be contacted by the ATO and assessed as either high, medium or low risk.

Bambrick stated that all high risk funds will face a comprehensive audit. He further stated that:

[The ATO's] discretion on whether or not to apply a penalty is limited. ... Not every ACR will lead to a penalty, but every ACR that leads to an ATO audit that then confirms an eligible breach will result in an SMSF administration penalty imposed on the trustees.

Bambrick stated that medium risk funds will receive a phone call, with the ATO being 'generally willing to give the fund an opportunity to self-address identified issues with no penalties applied'. He further stated that:

[For medium risk funds] we aim to achieve voluntary and timelier resolution of compliance issues, thus avoiding costly and complex audits further down the track...

But, if trustees fail to engage with us and fail to self-address the issues raised or if further compliance issues arise we will very likely consider these funds for audit, possibly imposing penalties, among other firm outcomes.

Lastly, he stated that low risk funds will receive a tailored advice letter reminding trustees of their obligations and encouraging compliance in future. The issue reported in the ACR will be closed with no penalties applied. However, if trustees fail to rectify all issues in full or if further compliance risks arise, these funds may be considered for compliance action.

The key points in Bambrick's comments are that high risk funds that demand immediate audit can expect penalties for contraventions. On the other hand, medium risk funds are generally left to rectify the

situation themselves, if they prove engaged and cooperative.

Members who prefer to take a back seat

For SMSF members who do not wish to take on the obligations of the trustee of a SMSF (or a director of the corporate trustee), there may be sense in that member making an enduring power of attorney in favour of another person who remains in the trustee role, and then resigning from the trustee or director position themselves. Section 17A(3)(b) of the SISA allows this structure to remain a self managed superannuation fund.

In the current climate of the ATO's increased flexibility to enforce superannuation law, it is worth remembering that the law does not allow a 'passive' trustee to get 'let off the hook' merely because they allowed another person to make decisions (see, eg, *In the Estate of William Just deceased (No 1)* (1973) 7 SASR 508, 513). Matt Bambrick's speech also echoed this sentiment, with Bambrick stating:

All trustees and directors are liable for the actions of their fellow trustees and directors. This might have an impact on the willingness of trustees who are not members from continuing in a trustee role.

Conclusion

Where SMSF trustees take an attitude of 'let the tax man do his job to catch me', it is not hard to imagine that the decision-makers may be more inclined to let the full penal force of the law bear down on the people behind the contraventions, particularly in order to compensate the ATO for having to perform investigations that are more 'taxing' on public servants.

Accordingly, SMSF trustees who are 'on the ATO radar' should be equipped with the knowledge that how they respond to ATO contact may affect the outcome.

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