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1 Transfer Balance Account Reporting

The introduction of the Transfer Balance Cap regime from July 2017 has brought new reporting obligations for all superannuation funds. This is in order for the Australian Taxation Office (ATO) to administer and maintain the Transfer Balance Cap for each individual.

The new reporting framework for all superannuation funds, including self-managed super funds (SMSFs) commenced on 1 July 2018. A superannuation fund is required to lodge a Transfer Balance Account Report (TBAR) when a relevant event occurs. The events that are required to be reported are events that impact the calculation of an individual's Transfer Balance Account (TBA) maintained by the ATO. The TBAR enables the ATO to record and track an individual's balance for both their transfer balance cap and total superannuation balance.

This paper specifically considers the reporting obligations of SMSFs.

1.1 What has to be reported

An SMSF must report events that affect a member's transfer balance. This includes:

- details of pre-existing income streams being received on 30 June 2017 that continued to be paid to them on or after 1 July 2017 and were in retirement phase on or after 1 July 2017
- details of new retirement phase income streams commenced after 1 July 2017
- details of new reversionary death benefit income streams commenced after 1 July 2017 (the start date will be the date on which the member died)
- details of new death benefit income streams commenced after 1 July 2017 (the start date will be date on which the death benefit income stream commences)
- details of limited recourse borrowing arrangement (LRBA) payments if the LRBA was entered into on or after 1 July 2017 and the payment results in an increase in the value of the member's interest that supports their retirement phase income stream
- compliance with a commutation authority issued by the ATO
- details of personal injury (structured settlement) contributions
- details of commutations of retirement phase income streams that occur on or after 1 July 2017.

It is important to note that if no event occurs the SMSF is not required to lodge a TBAR.

An SMSF is not required to report the following:

- pension payments made on or after 1 July 2017 (note all pension pyaments must be made in cash)
- investment earnings and losses that occurred on or after 1 July 2017

- when an income stream ceases because the interest has been exhausted
- the death of a member
- information that individuals are required report to the ATO using a Transfer balance event notification (TBEN) form

Certain superannuation events are required to be reported by the individual members (via a TBEN), these include:

- family law payment split fir a retirement phase income stream
- debit event from fraud, dishonesty, or bankruptcy
- structured settlement contributions made before 1 July 2007.

1.2 When to report

The obligation on SMSFs to report depends upon the total superannuation balance (TSB) of the SMSF members. A member's TSB comprises the sum of all accumulation and retirement phase superannuation interests (including any superannuation balances in transit between superannuation funds). This covers all superannuation interests across all superannuation funds. SMSF trustees will be aware of the all of the member's superannuation interests.

The measurement of a member's TSB for TBAR reporting purposes will be either:

- Their TSB at 30 June 2017 (if the member has an existing retirement phase income stream at that date); or
- On the 30th June immediately preceding the first TBAR event

If an SMSF have any members with a TSB of $1 million or more the SMSF must report events affecting members' transfer balances within 28 days after the end of the quarter in which the event occurs.

When all members of an SMSF have a TSB of less than $1 million, the SMSF can report the TBAR events on an annual basis, at the same time as the SMSF annual return is due.

Existing retirement phase income streams (at 1 July 2017) were required to be reported to the ATO by 30 June 2018. TBAR events that occurred during 2017–18 financial year are required to be reported when an SMSF's first TBAR is due.

An SMSF can choose to report events earlier or as they occur, and in some instances are encouraged to do so to avoid incorrect excess transfer balance determinations being issued. For example, where an SMSF member rolls their retirement phase income stream into an APRA-regulated fund a double-counting of the member's income streams may occur, as an APRA regulated fund is required to report TRBAR events on a more regular basis. In this instance, the SMSF should report the commutation as it occurs to avoid the double counting of the retirement phase income stream.

The quarterly reporting obligation for an SMSF Is not based on the first member to have a TBAR event. Where any SMSF member has a TSB of $1 million or more, the SMSF must report all events for all members within 28 days after the end of the relevant quarter. Even where the member reporting the event has a TSB of less than $1 million.

Once the reporting framework is set, SMSF trustees will not move between annual and quarterly reporting. The reporting timetable is locked in for the life of the SMSF.

The ATO has published the following table to assist SMSF trustees to work out their TBAR obligations:

TBAR Event	Amount of member's TSB	TBAR due date
A voluntary member commutes an income stream in response to an excess transfer balance (ETB) determination	Not applicable, as member has exceeded their TBC	Within 10 business days after the end of the month in which the commutation occurs
A response to a commutation authority	Not applicable, as the reporting obligation is set by legislation	Within 60 days of the date the commutation was issued
Any other TBA event	When the first member started a retirement phase income stream during a year, and all members of the SMSF had a TSB of less than $1 million as at 30 June immediately before they started their income stream	No later than the due date for lodging the SMSF's annual return for the financial year in which the event occurs
Any other TBA event	When the first member started a retirement phase income stream during a year and the SMSF had any member with a TSB of $1 million or more as at 30 June immediately before they started their income stream	28 days after the end of the quarter in which the event occurred. For 2017-18 TBA events, this will be 28 October 2018.

The ATO is currently taking an educative and supportive approach where TBARs are lodged late. This will allow SMSF trustees and their administrators, accountants and tax agents to put appropriate systems and procedures in place to ensure on time reporting. If an SMSF does not lodge a TBAR by the required date, a member's transfer balance account may be adversely affected and the SMSF may be penalised.

There are currently several ways for SMSF trustees to complete their TBAR lodgements. These include:

- completing an online form

- Bulk data exchange, by submitting a data file through the file transfer facility in the ATO's business portal or tax agent portal
- completing the recognised spreadsheet (for SMSF tax agents)
- mailing a paper report.

2 Non Arms Length Income/Expenses

The 2017 Federal Government Budget announced changes to the Non Arms Length Income (NALI) rules. In January 2018 Treasury issued a consultation paper that included new measures regarding the interpretation of when NALI would be assessed by the ATO.

Currently NALI is taxed at the top marginal tax rate (rather than the concessional superannuation tax rate of 15%). The current AO interpretation and application is assessed when related parties have not dealt with each other on an arm's length basis and is assessed when income from a transaction is not on an arms length basis.

In June 2018 the proposed changes were outlined Treasury Laws Amendments (2018 Superannuation Measures No. 1) Bill 2018. This bill expands the application of NALI when:

- An SMSF incurs a loss, outgoing or expense that is less than might have been expected if the parties had been dealing at arm's length; or
- There is no loss, outgoing or expense incurred by an SMSF where one would have been expected if the parties had been dealing at arm's length

The proposed amendments also include transactions where no loss, outgoing or expenditure has been incurred at all but would be expected to have been incurred if the transaction were conducted on an arm's length basis [proposed paragraph 295-550(1) of the ITAA97]

This interpretation has been applied by the ATO specifically in relation to related party limited recourse borrowing arrangement (LRBA) since January 2017. The ATO released *PCG 2016/5 "Income tax - arm's length terms for Limited Recourse Borrowing Arrangements established by self managed superannuation funds"* outlining what they believe constitutes an arm's length related party LRBA. SMSF trustees have been applying this ATO guidance since January 2017.

The draft legislation now appears to take this interpretation further, applying to all SMSF investments and expenses that relate to these investments.

The most common example of where the new NALI rules apply, is where the SMSF has a rental property and rather than using an external property manager for the management of the rental property, the SMSF trustee undertakes the management of the property themselves. The SMSF trustee are unlikely to charge a fee to the SMSF. In this scenario the NALI rules are intended to apply and this would mean that the net income from the rental property, including any capital gain on disposal, would be taxed at the top marginal rate.

The changes are not just limited to property management but also to the management of any SMSF investment. The changes could be applied to the management of a listed equities portfolio. While many SMSF trustee will outsource the management of their portfolio to a financial advisor or broker, equally many SMSF trustee make these decision themselves with no paid advice being sought.

The application of the draft legislation would imply that any income arising from a listed equities portfolio would be NALI.

It should be noted that these scenarios may conflict with the Superannuation Industry (Supervision) Act 1993 [SIS Act}. Generally a trustee of an SMSF is prevented from charging for the services or functions that it undertakes in its capacity as a trustee [s.17A(1)(f) of the SIS Act]. However, s.17B of the SIS Act allows a trustee to charge up to an arm's length amount for duties or services performed other than in the capacity as a trustee, where those services are performed by the trustee in their ordinary course of business. The conditions imposed by s.17B include:

- the trustee is appropriately qualified, and holds all necessary licences, to perform the duties or services; and
- the trustee performs the duties or services in the ordinary course of a business, carried on by the trustee, of performing similar duties or services for the public; and
- the remuneration is no more favourable to the trustee than that which it is reasonable to expect would apply if the trustee were dealing with the relevant other party at arm's length in the same circumstances

The Explanatory Memorandum to the Bill makes it clear that the NALI rules do not apply in respect of internal arrangement of the SMSF. The example in the Explanatory Memorandum is where an SMSF trustee undertakes bookkeeping activities for no charge in performing their trustee duties. These expenses do not constitute a scheme between parties and do not attach specifically to individual SMSF investments.

The draft legislation also extends this interpretation where the SMSF derives income as a beneficiary of a trust through a fixed entitlement to income, where as a result of a scheme, the parties to the trust transactions are not dealing with each other on an arm's length basis. This again applies not just to trust income to trust expenses, losses or outgoings [Schedule 3 – changes to ITAA97 s.295-550(5)].

The proposed changes to the ITAA97 are intended to apply to the 2018-2019 financial year. However, at the date of writing the current Bill has not yet been passed by parliament. The potentially accelerated Federal Government Budget and election timetable make it questionable whether this legislation will be passed before 30 June 2019.

3 SG Amnesty

In May 2018, the Government announced a one-off, 12-month Superannuation Guarantee Amnesty (the SG Amnesty), and introduced legislation into Parliament. [*Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018*] The legislation allows non-complying employers to self-correct any unpaid superannuation guarantee (SG) amounts dating back to 1992.

Under s. 17 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA), if an employer has one or more individual SG shortfalls for a quarter, the employer is liable for the SG charge (SGC) comprising:

- the total of the employer's individual SG shortfalls (based on total salaries and wages) for the quarter;
- the nominal interest component for the quarter; and
- the administration component for the quarter.

In addition, the employer also incurs:

- a Part 7 penalty for failing to lodge an SG statement, equal to double the amount of the SGC, i.e. 200 per cent of the SGC payable (the penalty may be partially remitted); and
- a general interest charge (GIC) on the unpaid amount.

Aside from the GIC, any amounts payable are not deductible expenses of the employer.

If the legislation is passed the SG Amnesty will be available from 24 May 2018 to 23 May 2019. The SG Amnesty will apply to previously undeclared SG shortfalls for any quarter from 1 July 1992 to 31 March 2018.

It is proposed that the SG Amnesty will operate so that employers who voluntarily disclose previously undeclared SG shortfalls during the SG Amnesty period (24 May 2018 and 23 May 2019) and before the commencement of an SG audit will have the following concessions applied:

- they will not be liable for the administration component and penalties that may otherwise apply to late SG payments; and
- be able to claim a deduction for catch-up payments made in the SG Amnesty period.

The SG Amnesty does not remove an employers obligation from paying all employee entitlements. This includes the unpaid SG amounts owed to employees; the nominal interest; and any associated GIC.

If the legislation is passed, the SG Amnesty will apply retrospectively once enacted (i.e. from 24 May 2018), and the concessional treatment outlined above will be available to the employer if they disclose and pay during the SG Amnesty period.

The ATO has advised that they will not require payment of the administration component until the outcome of the legislation is known.

Where an employer makes a payment under the SG Amnesty:

- directly to a superannuation fund — they are making contributions and claiming the late payment offset under s. 23A of the *SGAA*. The contributions reduce their 'potential liability for SGC'; or
- to the ATO — these are 'payments of shortfall components' under Part 8 of the *SGAA*.

3.1 Specific considerations for the SG Amnesty

3.1.1 Aged based conditions

The SG Amnesty payments are mandated employer contributions so the age of the employee or their circumstances will not prevent the superannuation fund from accepting SG Amnesty payments.

An employer can either pay the SGC to the ATO or make an offsetting contribution directly to the superannuation fund under s.23A of the SGAA. The ATO recommends that where an employer can pay the full SG shortfall amount for a period they should pay the amount directly to the employee's superannuation fund. But where the employer is not able to pay the full SG shortfall amount for a period, they should pay the amount to the ATO.

3.1.2 Non resident former employees

How SG Amnesty payments are treated in relation to employees who are now non-residents depends on the employees residency status at the time the SG liability was incurred.

If the employee was a former temporary resident, the SG Amnesty amount paid to the ATO is treated as though it were paid as unclaimed money [s. 65AA of the *SGAA]*. In this case, the ATO can pay this amount directly to the employee as a departing Australia superannuation payment (DASP).

If the employee was originally a permanent resident, the ATO will need to pay the amount to a complying superannuation fund for the employee, or to the Superannuation Holding Accounts Special Account (SHASA) if the ATO cannot identify a fund for the employee. The ATO will take steps to identify a superannuation fund for the employee, or information for direct payment where appropriate.

3.1.3 Deceased employees

The payment of SG Amnesty amounts for employees who are now deceased can be even more complicated.

Even when an employee is deceased, the employer remains liable for the SGC for a shortfall that relates to a deceased employee [ATO ID 2014/31]. The death of an employee subsequent to when the original SG shortfall arose doesn't prevent the employer from being eligible for the SG Amnesty in respect of that employee.

Where an employer pays the SGC to the ATO, and the relevant employee is deceased, the ATO pays the money directly to the employee's legal personal representative (LPR) [s. 67 of the *SGAA]*.

Accordingly, where an employer makes an SG Amnesty payment to the ATO in respect of a now deceased employee, the ATO will pay the amount directly to the employee's LPR.

An amount paid to the LPR of the deceased under s. 67 of the *SGAA* is a superannuation death benefit (item 7 of the table in s. 307-5 of the *ITAA 1997*), even though it is paid directly to the LPR and not the superannuation fund.

As estate and trust law are stated based law, there may be specific stated based legal requirements that impact the payment of SG shortfall and SG Amnesty payments and the administration of those payments. These considerations are outside the scope of this paper and specific advice should be sought in these circumstances.

3.1.4 Indirect Wage Taxes

It is expected that SG Amnesty payments will constitute 'taxable wages' for payroll tax and WorkCover purposes. This could lead to additional wage tax liabilities for employers. The correct payment of SG contributions at the time may not have caused the employer to exceed the payroll tax threshold in earlier income years, however a large one-off SG Amnesty payment may cause an employer to exceed the relevant tax threshold in 2018–19 financial year which would otherwise not have been exceeded.

3.1.5 Arm's length employers

The Bill does not appear to limit the availability of the SG Amnesty to employers who have only arm's length employees. Therefore, a closely held employer who may have paid salary or wages, or directors' fees to the business owner but not paid SG contributions should be able to access the SG Amnesty.

If there is written evidence of a genuine salary/wage or director's fee, the employer should be able to make an Amnesty payment that is fully deductible.

3.2 Conclusion

There is much confusion among tax practitioners and their clients regarding the proposed SG Amnesty. At the time of writing this paper the draft Bill has not yet been passed. This is providing significant confusion for employers, as making voluntary disclosure before the Bill has passed does not provide access to the proposed SG Amnesty if the Bill fails. If the law does not pass, employer who disclosures during the SG Amnesty period may receive a better outcome from the ATO with regard to the imposition of penalties, rather than not making voluntary disclosure.

However, as the SG Amnesty period is drawing to a close, employers are running out of time to make voluntary disclosure.

However, the SG Amnesty measures are not yet legislated. The Bill is currently before the Senate and may still be defeated or lapse when a Federal Government election is called.

4 Auditor Reporting

2018 saw two successful legal cases against SMSF auditors, with the SMSF auditor being held liable for losses incurred by the SMSF. While most auditors agree that there were deficiencies in the audit evidence obtained and the audit procedures in these specific cases, most auditors do not agree with all of the findings of the judgements. The outcomes have led to many auditors refocussing their audit processes and it is expected that many more SMSF audit reports will be qualified as a result of these cases.

4.1 *Cam & Bear Pty Ltd v McGoldrick NSWCA [110]*

In this case the auditor (McGoldrick) was responsible for auditing the financial reports and superannuation compliance of the SMSF. The trustee of the SMSF was Cam & Bear Pty Ltd, the directors of which were Ms Campbell and Dr Bear. The audits subject to the litigation were the financial years 30 June 2003 to 30 June 2008. The auditor did not qualify his audit report throughout this period. The trustee of the SMSF claimed that the unqualified audit report misrepresented the nature of certain assets. The trustee claimed that they had relied upon the liquidity of the SMSF and losses were incurred as a result of the unqualified audit report. It was claimed that the auditor breached his duty of care and/or was negligent in the performance of the SMSF audit.

The facts of the case can be briefly outlined as:

1996	The SMSF entered into an agreement with Lewis Securities Ltd (owned and controlled by the SMSF's advisor, Mr Lewis) in relation to an investment portfolio & a plan of investment (custodial arrangement)
	The SMSF administration was undertaken by Databank Investment Services Pty Ltd (of which Mr Lewis owned 35%)
	SMSF was invested in cash & listed shares
	LSL Holdings Pty ltd was the custodian and held the cash for the SMSF (LSL Holdings Pty Ltd was owned by Mr Lewis)
	Financial statements of LSL Holdings Pty Ltd showed "Loan – Lance Bear SMSF"
2005	SMSF Investments were restructured to hold more cash (at instigation of Dr Bear)
2008	Dr Bear wanted to withdraw cash from the SMSF
	Mr Lewis' response "its not a good idea to withdraw cash from the Fund"

2008	Lewis Securities Ltd and LSL Holdings Pty Ltd were placed into voluntary administration & subsequently liquidated

The key issue arising from this case was that there were amounts described in the financial statements of the SMSF as "Cash - LSL Holdings P/L", purporting to be bank balances. These balances were in fact described in the financial statements of LSL Holdings Pty Ltd as 'unsecured loans' from the SMSF. LSL Holdings Pty Ltd was a private company through which the SMSF had invested, it purported to be a custodial service for investments in cash, deposits and listed equities.

The SMSF trustee made the following assertions:

- that he had signed the trustee declaration attached to the financial statements of the SMSF based on his reliance on the audit report
- that he relied on the auditor to tell him about the financial position of LSL Holdings Pty Ltd (an entity into which the SMSF was invested)
- that he expected the auditor would have examined bank statements in relation to items listed as "Cash - LSL Holdings"

The auditor made the following assertions

- the auditor enquired of the SMSF's financial advisor (Mr Lewis) what documents were available to confirm 'Cash – LSL Holdings'
- the auditor asserted that Mr Lewis said he would show him the computer records for the accounts
- The auditor enquired why the funds held with LSL Holdings Pty Ltd were described as 'cash'
- The auditor asserted that Mr Lewis confirmed that this how the cash was held for the fund
- The auditor asserted that Mr Lewis confirmed that the SMSF trustees were happy that the SMSF financials described the money in that way

At no time did the auditor make further independent enquiries or obtain independent confirmation of the 'cash' balances held by the SMSF. The auditor was aware that the SMSF had no other bank account, and he was of the opinion that 'Cash – LSL Holdings' was in the category of 'cash equivalents'. The auditor relied on the fact that the trustee and the advisor were very good friends

The court heard from Independent Audit Experts, in summary, the independent experts found that:

- The financial statements are the responsibility of the trustee
- The auditor's responsibility is to ensure the financial statements are presented fairly
- Financial statements of LSL Holdings Pty Ltd showed increasing deficiencies in assets over the years and should have caused significant doubt as to recoverability of balances in LSL Holdings Pty Ltd

- The verbal confirmation by Mr Lewis was insufficient audit evidence
- Auditor should have sought the financial statements of LSL Holdings Pty Ltd

The Independent Expert testified that the auditor's enquiries should have included:

- communication with the trustees as well as administrators and investment managers as considered necessary
- request and review any agreements relating to the balance, to understand the arrangements including the rights and obligations of the parties
- request and review the financial reports of LSL Holdings Pty Ltd
- enquiries about the financial condition and going concern of LSL Holdings Pty Ltd, with corroborative evidence and cash flow projection
- written representations from the administrator, custodian, investment manager and Trustee
- the existence of any financial guarantees or letters of financial support, verifying the existence of undertakings between corporate bodies upon which the Fund would need to rely
- communication with the Trustee to alert them to any concerns arising from the audit procedures and the potential impact on the accounts and auditors report from such concerns

The original judgment in the NSW Supreme Court, held that, the auditor breached his duty of care and that the auditor was negligent and entered into misleading or deceptive conduct. The court further held that the SMSF losses were not the result of unqualified audit reports but as a result of inappropriate level of trust by the trustee in Mr Lewis (the advisor). The court further stated that if the court is wrong as to causation, the auditor would be 22% liable (with the trustee 35% liable and the advisors and the administrators 43% liable)

The trustee of the SMSF appealed the decision to the NSW Court of Appeal, on the basis that the NSW Supreme Court erred on the issue of causation and findings on contributory negligence. The NSW Court of Appeal agreed with the trustee and the losses were finally apportioned 10% to the trustee and 90% to the auditor.

4.2 *Ryan Wealth Pty Ltd v Baumgartner NSWSC [1502]*

The SMSF trustee claimed that the SMSF suffered losses from failed investments as a result of inappropriate audit processes. The SMSF audits examined in this case were for the financial years 30 June 2007 to 30 June 2009. The auditor (Baumgartner) issued unqualified audit reports for these periods.

The SMSF trustee had consulted Mr Moylan an accountant and financial advisor and on his recommendation had made substantial investments in private trusts and private loans. The accountant/financial advisor to the SMSF was also associated with the entities into which the SMSF made investments, and in many cases managed or controlled the investee entities.

In 2013 the SMSF trustee became aware of the failure of some of the SMSF investments, as a result of the failure of the underlying assets of the private trusts and immediately commenced action to recover SMSF investments. The SMSF trustee was successful in recovering some of the SMSF investments, but not all investments. The SMSF trustee claimed that that the losses were as a result of unqualified audit reports for the years in question. The SMSF trustee claimed that they would have commenced proceedings to recover investments in earlier years, if they had been aware of underlying issues of liquidity and recoverability of the SMSF investments.

The NSW Supreme Court found that that auditor was 90% liable for the losses incurred by the SMSF.

The court found the following key deficiencies in the audits:

- Unsecured loans to and investment in unlisted trusts were not recoverable. The financial statements of the SMSF disclosed in Note 1 to the financial statements that the assets/investments were carried at 'net market value'. However, the audit file did not contain any documentation obtained by the auditor to support the 'net market value' of the investments. The auditor had not obtained any financial reports of the investee entities therefore making it difficult to establish that the auditor had examined the market value of the fund's investments.

- The auditor obtained a trustee representation letter in connection with the SMSF audit, however, on at least one occasion the trustee representation letter was signed by the SMSF's accountant/adviser. The accountant/adviser was not a director of the corporate trustee, nor did they hold an Enduring Power of Attorney. The auditor failed to identify the incorrect signature attached to the trustee representation letter.

- The accountant/financial adviser was a director of many of the entities into which the SMSF had invested and in many instances executed investment documents for the SMSF. The court identified that this was a conflict of interest between the accountant/advisors role as advisor and that of the manager or controller of the investee entity. Court held that auditor should have identified conflict of interest to SMSF trustee

- The Investment Strategy did not support or match the SMSF member's needs and requirements. Specifically, the member was in pension phase and relied on pension for income support, the court held that that there was not adequate consideration of liquidity in the investment strategy. In addition, the court identified that there was no adequate consideration of the increased risk of the SMSF making investments in non-listed entities. The court held that the auditor should have advised SMSF trustee that Investment strategy did not adequately consider their personal investment needs

4.3 Practical outcomes

Many SMSF auditors have always conducted SMSF audits in accordance with Australian Auditing Standards and all the requirements of those standards. These auditors are unlikely to change their approach to SMSF audits.

However, itt is expected that many SMSF auditors will either change or augment their audit procedures as a result of these cases. In particular, the ability of an auditor to obtain sufficient

appropriate audit evidence as to the market value of private investments or the recoverability of private loans is likely to result in an increase in qualified audit reports.

It is not a case of the auditor 'disbelieving' SMSF trustee assertions or representations it is the inability to be able to independently obtain evidence to support those assertions or representations which will lead to qualified audit reports.

The SMSF auditor's obligation with regard to the Investment Strategy of an SMSF is to check compliance with Regulation 4.09 of the *Superannuation Industry (Supervision) Regulations 1994*. This requires that the SMSF trustee:

- has an Investment Strategy (that the Investment Strategy exits)
- ensures that the Investment Strategy considers risk, return, diversification & liquidity
- ensures that the Investment Strategy is reviewed regularly
- ensures that the Investment Strategy considers personal insurances of members
- has invested in accordance with the Investment Strategy

Many auditors have questioned whether it is their obligation or even in their ability to be able to adequately comment on whether or not a SMSF's Investment Strategy meets the needs of the members. The judgment in *Ryan Wealth Pty Ltd v Baumgartner NSWSC [1502]* will likely lead to auditor's in some part disclaiming their audit opinion, either in the audit report or in their report to the trustees with regard to the Investment Strategy.

A criticism of auditors arising from both cases, was the lack of direct communication between SMSF trustees and the auditor. Most auditors will liaise via the SMSF accountant or administrator to obtain information and to provide their final reports. This is usually done as a matter of expediency and to ensure that the accountant or administrators relationship with their client is maintained. However, the auditor's engagement is with the SMSF trustee and many auditors will now required direct access to SMSF trustees, both to make appropriate enquiries and to make their final reports, to ensure that the SMSF trustee is aware of the outcome of the audit.

