



Australian Government
Australian Taxation Office

Updating Guidance Statement GS009
Auditing Self-Managed Superannuation Funds

ATO Submission
19 February 2019

Introduction

As a result of some recent guidance the ATO has issued on reciprocal auditing arrangements and the recent litigation cases of *Cam & Bear Pty Ltd v. McGoldrick [2018] NSWCA 110* and *Ryan Wealth Holdings Pty Ltd v. Baumgartner [2018] NSWSC 1502*, the ATO request that the AUASB look at updating *GS009 – Auditing Self-Managed Superannuation Funds* (September 2015) (“GS009”). We have outlined below some of the changes that are necessary by referencing the appropriate paragraph or Appendix within GS009.

Introduction

- **Paragraph 4** - This may need to be changed if the legislation is passed that increases members from four to six. This also affects paragraph 11.
- **Paragraph 5** – currently states that audits should be carried out on a yearly basis. This may need to be changed if the 3 year audit cycle proposal is introduced and passed as law.

Auditor’s Responsibilities

Conduct the Financial Audit in Accordance with the Auditing Standards

- **Paragraph 22 (e) ASA 230 – Audit Documentation**- could we add how important it is for auditors to make notes in their audit files about the conclusions they reached and provide an example eg. if you consider that rental income received by a fund is at arm’s length record this conclusion in your file.

Lack of documenting audit conclusions is an issue we constantly identify and refer to ASIC. This could be avoided if when the auditor considers the relevant legislation and regulations they record their findings/conclusions that helped reach their opinion in writing. (Maybe a few lines could also be added at para 103 relating to documenting their conclusions based on the evidence obtained and evaluation of that evidence/documents).

- **Paragraph 22 (h) ASA 260 – Communication with those charged with Governance** - it could be worth mentioning *McGoldrick* and *Baumgartner* in this paragraph as both cases are examples of why it is important for auditors to directly communicate with the trustees, especially with respect to significant issues.
- **Paragraph 22 (p) ASA 500 – Audit Evidence** - could we add further guidance here on the importance of obtaining and keeping the evidence in the audit file as this is an issue that we are consistently having to refer to ASIC. ie without evidence such as source documents, we have no evidence that the auditor has carried out an adequate and proper audit.... can we also expand a bit more on this issue at paragraphs 78 - 84 which goes into more detail relating to audit evidence and how important this is

Independence

- **Paragraphs 46 and 47** – we believe that a paragraph could be added between these two paragraphs that describes reciprocal auditing arrangements (ie the first arrangement being one involving two auditors who audit each other’s SMSF and how there would be no safe

guards that could be put in place to reduce independence threats. The second type being an arrangement involving two auditors who are also professional accountants and who prepare financial accounts and who directly swap each other's clients for the purpose of the SMSF audit. Appropriate safeguards being to spread the referrals to a number of different auditors so the one source is not relied upon.

- **Para 47** could include an extra bullet point:
 - 'Ceasing a reciprocal auditing arrangement where two auditors had entered into an arrangement to audit each other's SMSF'.
- **Para 130** – this paragraph talks about the requirement to have an actuarial certificate, as there are changes to these requirements from 1 July 2017 this para will need re-wording

Valuation and Allocation of Assets

- **Paragraphs 163 – 171** – this relates to valuation of assets. Given the Baumgartner case, can we add something here to remind auditors that if they do not get evidence from the trustees to support the market value reported in the financials that they should report (if it meets the reporting criteria) this to the trustees in writing and to the ATO in an Auditor/Actuary Contravention Report (ACR). Regulation 8.02B is the most common contravention included in our referrals to ASIC so reinforcing and clarifying this requirement is important.
- **Paragraph 169** – consider adding an example such as 'For example, where a fund has an unlisted share or trust investment, the auditor should modify their opinion if they are unable to obtain satisfactory confirmation of the value of the investment'. (relevant in light of the recent *Baumgartner* and *McGoldrick* cases).

Receivables and Prepayments

- **Paragraph 179** – include a reference to SMSFR 2009/3 *Self-Managed Superannuation Funds: application of the SISA to unpaid trust distributions payable to an SMSF*. Link: <http://ato.gov.au/law/view/document?DocID=SFR/SMSFR20093/NAT/ATO/00001&PiT=99991231235958>

Liabilities

- **Paragraph 184** – could include an extra bullet point 'Loan documents for LRBAs do not specify the loan is limited in recourse'

Reserves

- **Paragraphs 192 to 200 and 351** – in response to the new measures and the potential to circumvent the caps through the use of reserves, the ATO published SMSF Regulator's Bulletin SMSFRB 2018/1 *The use of reserves by self-managed superannuation funds*

<http://ato.gov.au/law/view/document?DocID=SRB/SRB20181/NAT/ATO&PiT=99991231235958>

The Bulletin states that we think it is inappropriate for a SMSF to have an investment reserve and so we should make this clear.

- **Paragraphs 199 & 338** – there will no longer be a need for a SMSF to have an anti-detriment reserve. This is because the deduction is no longer available in relation to super lump sums paid to a spouse, former spouse or child of the deceased member on or after 1 July 2019 or where the deceased member died on or after 1 July 2017.

Contributions and Transfers In

- **Paragraph 204** – some of these contributions such as directed termination payments are no longer available and there are new contribution such as the downsizer housing contribution that could be added here.

Investment Strategy

- **Paragraphs 280 – 283** – consider whether it could be worthwhile making reference to Baumgartner’s Case here as highlighting the importance of the need for an auditor to verify that the Fund’s investments are in line with its strategy.

Contribution Restrictions

- **Paragraphs 342 – 347** – will need updating if law is passed relaxing the work test for those over 65 years of age.

Appendix 3 – checklist – E1 – contributions

- Need to ensure all information is correct and add downsizer contributions

Appendix 4

- Need to ensure all info is still current and correct
 - **At C1 (Clerical accuracy and note references)** – add in a bullet point ‘Assets and liabilities are correctly classified and valued in the financial statements’ (could reference *McGoldrick* case where non-cash assets were classified as cash assets and were not recorded at the correct values).

Appendix 5

- Update to Include examples on two types of reciprocal auditing arrangements that we believe give rise to independence threats

The ATO issued guidance on Reciprocal auditing arrangements on 7 December 2018.

<https://www.ato.gov.au/Super/Sup/Reciprocal-auditing-arrangements/>

These arrangements either involve two SMSF auditors who audit each other’s SMSF or arrangements whereby two professional accountants who are also SMSF auditors and who prepare the accounts for a number of SMSFs, enter into an arrangement to audit each other clients’ SMSFs.

When applying *Accounting Professional and Ethical Standard (APES) 110 Code of Ethics for Professional Accountants*, potential threats to independence in these types of reciprocal auditing arrangements may include self-interest threats, familiarity and intimidation threats.

The ATO and ASIC view is that there are no safeguards that can be put in place to eliminate independence threats in relation to a reciprocal arrangement involving two SMSF auditors who audit each other's fund. However ATO records show that almost 700 auditors (350 reciprocal arrangements) could be involved in these types of reciprocal auditing arrangements.

Responses to a recent survey sent to 100 auditors who had entered into this type of reciprocal auditing arrangement suggested that some auditors believed that independence threats arising from this type of arrangement could be safeguarded against.

In which case, it is considered that amending Appendix 5 in GS009 to include an example of these types of arrangements breaching independence guidelines would provide further guidance and clarity to auditors.

- We also recommend that the reference to reciprocal arrangements in examples 2 and 4 make it clear that any resulting arrangement should be spread amongst a number of auditors and not just the one auditor.
- Also include a scenario for a family relationship between the auditor and the accountant.
Eg:
 - Scenario – An auditor is asked by an accounting firm to accept the audit work of their SMSF clients. The principal in the accounting firm is the auditor's son.

We encountered this real scenario when reviewing an auditor's file. Both the father and son had separate businesses. We couldn't locate any paragraphs within APES 110 that directly applied, however there is an issue with independence 'in appearance' as per the Independence Guide issue by the Joint Accounting bodies. There are also threats in paragraphs 100.12 of APES 110 such as self-interest threats, familiarity threats and intimidation threats.

Other recommendations

New terms to be introduced - The superannuation new measures introduced new terms and rules about Transfer Balance Caps, Total Superannuation Balance, Commutation authorities, Transfer Balance Account Reporting, and release authorities for Excess Transfer Balance Determinations. These new terms should be introduced at relevant parts of the Guidance Statement.