

Self-Managed Superannuation Fund (SMSF) Asset Valuations & Contribution Caps



Asset valuations and the contribution caps are both contentious issues, with many SMSFs failing to regularly update their asset valuations and some auditors turning a blind eye. And SMSF auditors who do the wrong thing in relation to valuations may also find themselves facing action by ASIC.

The new contribution caps require that assets of the fund, as at 30 June 2017, must be properly valued to determine the fund's total asset value.

If assets are overvalued this may tip a member over their cap, and if the ATO considers the assets have been deliberately undervalued to keep a member under the cap, then it has the power to take a range of penalty actions.

Generally speaking, assets do not need to be valued by a qualified independent valuer except as indicated below — however this does not mean the trustees cannot just determine any value they like. It must reflect a fair market value of the asset at the time of the valuation, and documentation as to how the valuation was determined should be kept by the fund, so it can provide this to its auditor as well as to the ATO should it seek proof of how valuations were determined.

Valuing different types of assets

Shares: For a lot of assets, valuation is generally easy, such as when dealing with shares and bank account balances for example. The market price of the share at the end of the year is easy to determine by looking at the stock price at the day, and the same goes for the value of an Exchange Traded Fund (ETF).

Real Property: Real estate can be particularly difficult to value for an SMSF. While the value of the property needs to be recorded as at 30 June each year, this valuation need not be through a qualified independent valuer. Valuations can be done by any of the following:

- Qualified independent valuer (recommended every three years)
- A real estate agent
- Trustee (they must document how they came to the valuation, and it must be a reasonable valuation – for example, the average value of similar houses sold in the suburb in last 12 months or last valuation increase by average house price rise in the same suburb), or online property valuation tools.

It is highly recommended you get a qualified independent valuer if you have not had a proper valuation done for some years (more than three), particularly if you are close to the contribution cap. The reason for this is the ATO will be looking at valuations of property to determine if they are genuine. While a trustee can technically determine their own valuation using approved methods, and many real estate sites now have general valuation tools, these are likely to be imprecise and subject the fund to ATO scrutiny if it is concerned that the property may have been deliberately undervalued.



The gold standard, of course, is an independent valuer, but if you can't afford such an expense, then many real estate agents will do a free valuation for you — although this will generally be expressed as a range of values rather than a set value. Just remember if you choose to value your property using one value within a range, you need to be consistent in the application of that valuation. What this means is if you use the lowest valuation for determining the asset value to keep under the cap but use a higher valuation, say for insurance purposes, then this may attract the attention of the ATO.



Furthermore, if the property is a commercial property leased to a related party, this must be valued by a qualified independent valuer.

Equipment and machinery: These assets must be valued at 30 June and should be a fair market value as well as reflect the effects of depreciation on the value of the assets. While the values need not be made by a formal valuer, a professional valuer is recommended if there has been a significant event that has affected the value of that asset. The insurance value of the assets may also be a means of determining fair value.

When valuing equipment and machinery, you also need to take into account depreciation on these assets. The normal ATO rules on depreciation should be followed, and the ATO has some useful guides on the depreciation rates of various types of equipment and machinery.

Unlisted trusts/companies: If an SMSF has unlisted investments such as an unlisted unit trust or an unlisted company, the ability to value the assets can be very difficult. The ATO guide says that unlisted trusts and companies should be valued according to:

- The value of the assets in the entity, and
- Consideration paid on acquisition of the unlisted securities or units.

The first action will be to review the financial statements of the unit or company. This may be more difficult than it sounds however, as many may not provide a market valuation of the assets they hold. Where the assets are property, then the previous statements about real estate should also be followed.

An alternate method for valuations is where units/shares have recently been traded. Then it is appropriate to use the price of the units/shares sold as the value for the SMSF, however given the infrequency of such sales this may not always be available.

Collectables/personal use assets: For collectables and personal use assets such as vintage cars, wine holdings, jewellery and so on, valuations must be done by a qualified independent valuer when those assets are disposed of to a related party of the fund.

For the purpose of annual valuation though they do not need to be valued by a qualified independent valuer. Instead they should reflect a reasonable value of those types of assets and mirror any market movements.

In-house assets: All in-house assets need to be valued at the end of the year, and while such valuations do not need to be by a qualified independent valuer, they do need to reflect a fair value of those in-house assets supported by documentation as to how those valuations were reached. If the in-house asset is property, make sure you follow the rules set above.



Loans: The value of all loans made by the SMSF must be valued each year and reflect market value, which in relation to a loan is determined by its “recoverability”. That is the ability of the person who borrowed the money to repay the loan and the value of any collateral held by the fund. This valuation must be reasonable and documented, but does not need to be provided by a formal valuer.

Assets supporting a pension: Other than the annual valuation of assets and the need to value assets on sale, the other time trustees must seek a valuation of assets is on the creation of a pension where those assets are used to support the pension. These valuations are vital in order to determine the minimum and maximum pension amounts with precision. The assets must be valued at the date the pension commences, and for ongoing pensions valued at 1 July of the financial year that the pension is paid.

While ongoing valuations do not need to be by a qualified independent valuer, it is recommended where possible one is used for the initial valuation. Without a proper valuation of assets underpinning a pension this can lead to mistakes in determining how much pension to draw down.

What happens if valuations are not done properly?

Improper valuations can have an impact on both the trustees of the fund and the SMSF auditor.

For the trustees (or directors of a corporate trustee) they face a fine of 10 penalty units (about \$2,100) for each trustee for any failure to value an asset as required by the law. Furthermore, s103 of the SIS Act provides an offence of strict liability for failing to keep proper accounting records, which includes the need to have a valuation for assets as at 30 June each year. The fine here is 50 penalty units (about \$10,500) per trustee.

Furthermore, if the ATO determines that assets are undervalued for the purpose of the contribution cap rules, then it can take further action against the trustees as well as determine that they are in excess of the contribution caps with all that entails.

For SMSF auditors, the valuation spotlight will be on them for the 2017-18 income year. The ATO will be undertaking reviews of auditors where it suspects that assets have been undervalued. Therefore, auditors must ensure they review the valuations given to them by trustees and the paperwork used to determine those valuations. Where there are problems they should report these to the trustees, and where there is a material issue arising from a valuation they need to inform the ATO.

The new era

The days of a lax approach to valuations are over. While in the old days the ATO had little it could do against SMSF trustees, the current penalty rules provide the ATO with much greater firepower. In particular, be careful in the valuation of assets for determination of whether a member is or is close to being in excess of contribution caps. The ATO has signalled this is an area it will police for 2017-18.



Selling a business? Don't forget the "going concern" GST exemption

The concept of a "going concern" exemption for the purposes of the goods and services tax (GST) can still cause confusion when businesses are sold.

The sale of a business may be GST exempt if the enterprise is deemed to be a "going concern" — which refers to an enterprise's ability to continue trading. The ATO says a supply of a going concern occurs when:

- "A business is sold, and that sale includes all of the things that are necessary for the business to continue operating", and
- The business is carried on, "up until the day of sale".



The GST exemption has its advantages — a buyer of a business does not have to find extra funds to cover the GST that is added to the purchase price. And while the buyer (if registered for GST) is entitled to get the tax back via the input tax credit system, this cannot happen until some time after the completion of the transaction. It should also be remembered that while the GST will eventually be refunded, any stamp duty that is payable on the sale of a business will include the amount for GST.

What are the requirements for the exemption?

Business owners may be aware of the existence of a GST exemption but not completely understand the way it operates. The GST legislation says that the sale of a going concern will be GST-free if:

- The sale is "for consideration"
- The purchaser "is registered, or required to be registered" for GST, and
- "The supplier and the recipient have agreed, in writing, that the supply is of a going concern".

The sale of business contract will usually specify that the business (that is, the "supply") is a going concern when the contracts are exchanged. This is critical, because it shows that all parties to the sale acknowledge that the business is a going concern.

A vendor is required to supply "all of the things that are necessary" for the continued operation of the enterprise. This does not mean everything that is owned by the business. It does however mean those things without which the enterprise could not function. Generally, this includes the necessary assets such as premises, plant and equipment and customer contracts. It can also include arrangements such as ongoing advertising.

The legislation requires the vendor to carry on the business "up until the day of sale", with the business deemed to be transferred on the date on which "effective control and possession" of the business is handed over to the buyer. While this date generally refers to the settlement date, "the day of sale" may occur before or after the settlement date.

The tax liability risk (in case the ATO does not view the sale as a supply of a "going concern") ultimately lies with the seller, as the seller is the "supplier" in any transaction that is required to remit GST to the ATO.

Some vendors seek to avoid this tax liability risk related to the business by including a clause in the sale contract requiring the buyer to indemnify the vendor for any GST that may be payable in the event that the ATO does not view the transaction as one of a going concern.