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‘Placeholder’ SMSF return completion triggers trustee penalties

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To ensure complying status (and, in turn, access to the concessionary 15 per cent income tax regime), the obligations imposed on trustees of SMSFs generally require strict compliance, as the decision in QQCS, CZMV, JRFK, PJXX and WHVG and Commissioner of Taxation (Taxation) [2026] ARTA 2159 starkly demonstrates.

In a sentence, the case confirms that deliberately inserting assumed or “placeholder” audit information into a self-managed superannuation fund (SMSF) annual return can support administrative penalties for all trustees jointly and severally for intentional disregard of the law.

This is so even where:

• No tax shortfall arises;

• The fund is not made non-complying;

• The trustees believe an audit will ultimately be completed;

• Replacement auditors are later engaged; and

• Some trustees or directors leave the preparation of the return entirely to another trustee.

Background

The case concerned administrative penalties imposed by the Tax Office relating to SMSF annual returns, where the fund had stated a registered SMSF auditor had completed and issued an unqualified audit report (which even claimed a deduction for fees 'incurred' for the non-existent audits).

The statements were held to be false or misleading. This was despite the claim by the relevant trustee that they expected the audits would be completed in due course. This expectation was argued to justify the use of the “placeholder” answers in the return – an approach claimed to be 'common practice' by the relevant trustee, who was also a member of the accounting profession and a registered tax agent and possibly a former registered SMSF auditor. The tribunal noted that no evidence was presented to demonstrate the claim that the use of placeholders was a common practice.

A key driver for lodging the false returns was admitted by the trustee as being the concern that failure to lodge returns might expose the fund to being treated as non-complying (and thus have its income taxed at 47 per cent instead of 15 per cent).

Material particular

The SMSF argued that the incorrect audit information was not false or misleading in a “material particular”.

The tribunal rejected the claim, confirming that the information in Box 6 of the return (about the audit certificate) was directly relevant to the regulatory architecture governing SMSFs. Including ensuring a fund retained its complying status (see Minister for Immigration and Ethnic Affairs v Dela Cruz (1992) 34 FCR 348).

The arguments of the SMSF in this regard were arguably also undermined by the tribunal's conclusion that the evidence of the key trustee lacked credibility, being inconsistent and occasionally false.

Intentional disregard

The Tribunal confirmed that intentional disregard requires actual knowledge and dishonesty. The relevant state of mind may be inferred from the surrounding facts.

Again, based on the evidence, the test was satisfied, not least due to the decision to lodge returns being based on a desire of the trustee to avoid potential adverse consequences to the fund's complying status.

The tribunal was also not persuaded by the assertion that lodging before receiving an audit report was "common practice" given no corroborating evidence was provided for the claim and, in any event, an asserted industry practice cannot override the statutory requirements or an approved form.

Responsibility of passive trustees

The decision also reinforces the risks faced by trustees and directors who leave all compliance work to one individual.

The other trustees argued that they:

• Did not prepare the annual returns;

• Did not know the audit information was incorrect;

• Relied entirely on the trustee who managed the accounting and tax affairs; and

• Had no practical involvement in the statements made.

The tribunal confirmed that the returns were statements made by the fund. The trustees were jointly and severally liable for the resulting penalties.

A trustee who did not personally enter or authorise false information was not relieved of liability merely because another trustee was permitted to manage the process.

Indeed, the tribunal described the position of the passive trustees as simply having "chose(n) not to know".

Remission

The tribunal confirmed that the discretion to remit is broad and does not require exceptional circumstances.

Despite this, in this case, the tribunal declined to remit any part of the penalties, noting factors including:

• The false statements were knowingly made over several years;

• There was no reliable evidence corroborating the claimed communications with the auditor's former firm;

• The applicants did not produce the later audit reports said to establish rectification;

• Available reports for later years were qualified and accompanied by auditor contravention reports;

• The relevant trustee's acknowledgement of the false statements supported, rather than displaced, the finding of intentional disregard;

• The relevant trustee's professional experience was relevant to consider – and counted against remission (see Weyers v Federal Commissioner of Taxation [2006] FCA 818); and

• The passive trustees had taken no steps to supervise or prevent the lodgements.

The tribunal also identified the steps that might have supported a different outcome, including (for example) the following (none of which were taken):

Notifying the Tax Office that the audit reports had not been received;

• Explaining that this was delaying lodgement;

• Engaging another auditor;

• Obtaining the completed audit reports before lodging;

• Ensuring the annual returns contained accurate information; and

• Seeking the Tax Office's guidance before repeating the 'placeholder' approach in later years.

Practical implications

Ultimately, the decision provides the following key reminders for SMSF trustees and their advisers:

• An SMSF annual return should not be lodged until the signed audit report has been received.

• Audit completion dates must be taken from the actual report. They should never be estimated, anticipated or completed by inserting "placeholders".

• The existence of an audit engagement does not establish that an audit was completed.

• A belief that an audit will be finalised does not permit the return to state that it has already been finalised.

• An absence of tax shortfall does not prevent penalties for a materially false or misleading statement.

• Later rectification of a misleading statement does not erase the original statement. It may be relevant to remission, but only if supported by clear evidence.

• Each trustee and director of an SMSF must actively supervise a fund's compliance. Reliance on a dominant or administratively experienced trustee does not provide a defence for a "passive" trustee.