Top 100 SMSFs worth $79m each on average

DIY super

Tim Mackay

We all love reading top 100 lists. We argue over who should be in the Triple J's Hottest 100 list. We avidly read the Financial Review Rich List to see who are Australia's 76 billionaires.

The Australian Taxation Office has announced it has a self-managed super fund top 100.

The 100 funds with the largest asset balances combined control more than $7.9 billion. That's an average fund balance of $79 million each, an impressive sum. These funds control 1 per cent of all SMSF funds, which total $755 billion.

If you're on the list, congratulations. However, your SMSF is now firmly on the ATO's radar.

While most readers won't fall into this group, it is still fascinating reading. It also adds flavour to little nuggets of information that have trickled out of the tax office.

For instance, in 2016 the ATO revealed six funds hold more than $100 million each. We don't know who they are, due to privacy rules, but I'd guess we would recognise the surnames of those who have been on the AFR Rich List the longest (it takes time to contribute to your SMSF).

The ATO also revealed in 2018 that 5600 SMSF members have a balance of more than $5 million. So we have some understanding of the top end of the SMSF market.

The SMSF Top 100 list was one of the fascinating insights revealed by Dana Fleming, the tax office assistant commissioner for self managed superannuation, in a speech. These are facts the ATO knows intimately but for us it is a rare glimpse of the tax office's more detailed, confidential data.

For 20 years now the ATO has regulated SMSFs, so they know more about SMSFs than anyone. On the few occasions the ATO speaks publicly, I heed the advice from the TV show *'Allo 'Allo:* "Listen very carefully, I shall say zis only once."

The tax office announced that it is using its SMSF Top 100 list to target aggressive tax planning arrangements. Working in a co-ordinated way, the private wealth and the SMSF areas of the ATO are ensuring wealthy individuals are adhering to all the rules in their entire tax affairs.

Of the SMSF top 100, the ATO has identified 35 funds deserving a deeper analysis. Of these, the ATO private wealth area identified 13 funds with members who were taxpayers of interest based on their overall tax affairs; while 16 reported contraventions in their SMSF audit.

Others are targeted due to their use of Limited Recourse Borrowing Arrangements (LRBA); their use of non-arm's length arrangements; and, most interestingly, what Ms Fleming termed funds with "rapid and excessive asset growth rates" of 10 per cent over the past four years. We are talking about SMSFs with an average fund balance of $79 million so "excessive asset growth rates" will involve significant sums. While there can be good reasons for rapid growth, the ATO lists some factors that could be behind "excessive" growth.

Running a property development business in the SMSF is one of the ATO's red flags. Another is revaluation of assets (listed and unlisted securities). It is difficult to guess what the problem may be with revaluing listed investments (they are marked-to-market, which should be fairly objective) but the subjective valuing of unlisted investments can give greater scope for creative accounting.

Another is the use of "LRBAs to acquire commercial properties sitting outside the SMSF but within the group", according to Ms Fleming. For example, this could cover a property unit trust structure.

The tax office is coy on revealing more on their excessive asset growth rates analysis as this is a live project into wealthy taxpayers who retain excellent lawyers. "Several [have been] identified for escalation to review or audit", so watch this space.

Even if you haven't made the Top 100, you should be mindful of the areas of concern raised by the ATO – LRBAs; property development; unlisted investments; and non-arm's length transactions. SI

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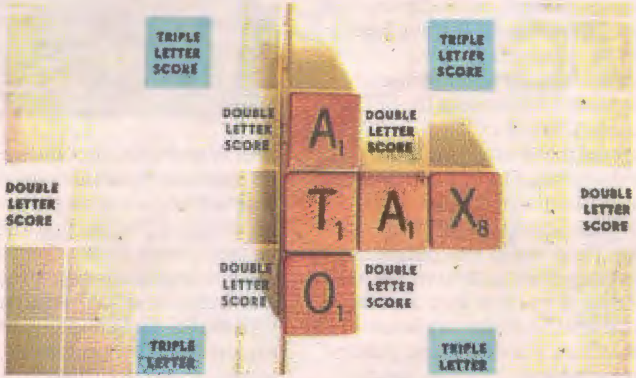

A look at the ATO's more detailed, confidential data on self managed super funds makes fascinating reading. PHOTO: GABRIELE CHAROTTE

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