



# THE 12<sup>TH</sup> ANNUAL SMSF AUDIT CONFERENCE



THIS CONFERENCE HAS  
BEEN ACCREDITED BY THE  
SMSF ASSOCIATION FOR CPD

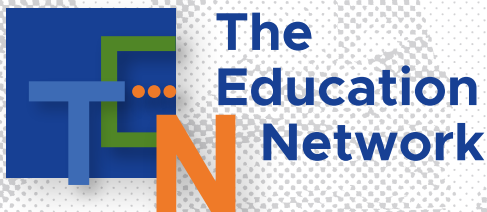
It Doesn't Always Pay to Keep it In-House  
Asset Valuations in an SMSF: When To Dig Deeper  
Have You Checked that the Assets Owned by an SMSF are owned by the SMSF?  
The Do's and Don'ts of Lending Funds To and From an SMSF  
Loss of Trustee Capacity: Navigating the Rocky Road Ahead  
Cases and Situations Involving SMSF Disputes: What Should the Audit File Look Like?  
Reporting of Contraventions: The When, How and Why it Matters  
Auditing Death Benefits: A Compliance Compass for Auditors  
Auditing Cryptocurrency and Other Digital Assets  
The SMSF as a Property Developer  
When the ATO Comes Knocking  
Q&A: A Panel Session

A Two-day Conference  
**Thursday 25 & Friday 26 July 2024**

Sofitel Gold Coast, Broadbeach

## Feedback from last year's conference:

- One of the best SMSF audit only CPD conferences available.
- I found every topic excellent and presented very well. I gained knowledge from every session and I was 100% happy (as usual) with the conference.
- Great speakers and topics once again. One of the best to date. Thank you.
- Excellent topics covered. Well presented and ample discussions on the issues.



**The professional development specialists**

# DAY 1 - THURSDAY 25 JULY 2024

## MORNING THEME: THE AUDITOR'S TOOLKIT

9.00 - 9.15am

### Introduction and welcome

9.15 - 10.00am

#### Session 1: It Doesn't Always Pay to Keep it In-House

High on the list of contraventions reported to the ATO by SMSF auditors is the breaching of the in-house asset rule. This session explores the expansive definition of an in-house asset and the implications if the allowed level of an SMSF's holding of such assets is exceeded, including:

- What assets and agreements are considered to be in-house assets?
- Can an investment in a related trust or company be excluded from the in-house asset definition?
- Does a contravention of the in-house asset rule occur if an SMSF has an unpaid distribution from a trust? (SMSFR 2009/3)
- Action a trustee is required to take if an SMSF's in-house assets exceed the allowed level, including:
  - determining in which financial year the breach occurred
  - complying with sec. 82 SIS Act 1993
  - the evidence an auditor should obtain in relation to that action
  - auditor reporting obligations
- When is the acquisition of new in-house assets prohibited (sec. 83 & 84 SIS Act 1993)
- What are the reporting requirements for in-house assets:
  - of 8% at 30th June?
  - of less than 5% at 30th June, however greater than 5% during the financial year?
- How the \$30,000 financial threshold test applies to in-house asset breaches
- Examples of whether the in-house asset test is breached by related party leases of business property (SMSFR 2009/1), including:
  - a farm with a water licence
  - residences used for both business and private purposes

*Speaker: Daniel Prunty, Director, Veritas Audit, Southport, Qld*

10.00 - 10.10am Panel Comments and Questions

10.10 - 10.55am

#### Session 2: Asset Valuations in an SMSF: When To Dig Deeper

The review of asset valuations by an SMSF auditor can be one of the more difficult tasks to ensure the required audit evidence is obtained, and depending on the asset involved, sometimes further digging is required. This session explores the various asset classes and the types of documentation an auditor may require to support the values provided, including:

- When is the opinion of a qualified independent valuer required?
- The specific valuation requirements for:
  - listed and unlisted securities in companies and unit trusts
  - real property, both residential and commercial
  - related party transactions
- Common issues the auditor encounters with obtaining valuations and tips and strategies to get over the hurdles
- Practical examples where valuations fall short and the auditor's obligations when those situations occur, with regard to:
  - issuing a qualified or unqualified audit report
  - lodging an ACR
  - reporting in the management letter
- Is there a gap being experienced in practice with the ATO's compliance approach to the auditor's valuation evidence?
- Applying professional scepticism with valuations and understanding the mischief that can drive under or overvalued assets, including in the context of the proposed \$3 million super tax involving unrealised gains
- The type of asset valuation discrepancies being referred to ASIC
- Case study - how far do you go for a fund's investment in an unlisted unit trust that:
  - owns a property?
  - conducts a business?

*Speaker: Belinda Aisbett, Director, Super Sphere, Melbourne, Vic.*

10.55 - 11.05am Panel Comments and Questions

11.05 - 11.30am Networking Break and Morning Tea

# DAY 1 - THURSDAY 25 JULY 2024

## 11.30am - 12.15pm

### Session 3: Have You Checked that the Assets Owned by an SMSF are owned by the SMSF?

Regulation 4.09A of the SIS Regulations 1994 requires a trustee of an SMSF to keep the money and other assets of the fund separate from money and assets held by the trustee personally. This session is designed to assist the SMSF auditor with ensuring that this obligation is being met, including:

- Asset ownership requirements for:
  - individual trustees
  - a corporate trustee
  - a change of trustee
- Audit procedures to carry out if an SMSF's investments are held in:
  - the trustees names alone without reference to the fund's name
  - unlisted entities
- When and how often should ownership confirmation be obtained directly from:
  - performing a title search
  - financial institutions and share registries
- Auditing requirements when a trustee provides:
  - a declaration of trust
  - an acknowledgement of trust
- Are there any stamp duty traps when using declarations or acknowledgements of trust?
- Auditing requirements for an SMSF's investments held jointly or as tenants in common with another entity
- Traps with correct ownership of assets acquired using limited recourse borrowing arrangements
- Checklist of audit procedures for the varying asset classes to ensure reg. 4.09A SISR 1994 has been adequately covered

*Speaker: Shirley Schaefer, Partner - Superannuation, BDO, Adelaide, SA*

## 12.15 - 12.25pm Panel Comments and Questions

## 12.25 - 1.10pm

### Session 4: The Do's and Don'ts of Lending Funds To and From an SMSF

Whilst there is no blanket rule that says an SMSF can't be a party to a borrowing arrangement, the trustees and auditors need to be very careful about the circumstances of such loans to ensure the arrangement doesn't fall foul of the SIS rules. This session explores the issues, including:

- Situations where you can and can't lend SMSF funds
- When are temporary borrowing arrangements allowed?
- The issues with an SMSF providing financial assistance to a member or related party, including:
  - how to determine who is a "Part 8 associate" of a member and why it matters
  - whether SMSF funds can be used to guarantee loans (SMSFR 2008/1)
- Audit evidence that supports an allowed loan and the record keeping time limit requirements
- How ATO are applying scrutiny to SMSF lending practices, including TA 2010/5
- Auditor reporting requirements for loan breaches
- Case study

*Speaker: Belinda Aisbett, Director, Super Sphere, Melbourne, Vic.*

## 1.10 - 1.20pm Panel Comments and Questions

## 1.20 - 2.15pm Luncheon

# DAY 1 - THURSDAY 25 JULY 2024

## AFTERNOON THEME: AUDITING WHEN THINGS GO PEAR-SHAPED

### 2.15 - 3.00pm

#### Session 5: Loss of Trustee Capacity: Navigating the Rocky Road Ahead

Once an SMSF member loses capacity, they can no longer be a trustee of their fund or a director of a corporate trustee of the fund. The consequences of remaining in the roles whilst incapacitated can be extremely costly. However, loss of capacity isn't necessarily here one day and gone the next. As such, numerous issues can arise, which this session explores, including:

- The importance of the fund's deed in relation to loss of capacity issues
- What is the process when loss of capacity occurs with a trustee?
- Who is eligible to take over the director role when loss of capacity occurs?
- What if there is no family member or legally appointed representative available to take on the incapacitated trustee's role?
- Does the SMSF auditor have any obligations:
  - to refer loss of capacity issues to SMSF trustees?
  - if they "sense" a trustee is losing or has lost capacity?
- What documentation would the auditor require that supports a loss of trustee capacity and a resulting change of trustee?
- How to address digital issues for a fund to minimise the impact of loss of capacity
- Case study

*Speaker: Neal Dallas, Director - Legal, Business Depot Legal, Fortitude Valley, Qld*

### 3.00 - 3.10pm Panel Comments and Questions

### 3.10 - 3.55pm

#### Session 6: Cases and Situations Involving SMSF Disputes: What Should the Audit File Look Like?

With the substantial amounts now involved in SMSFs, it is not surprising that disputes involving disgruntled members and beneficiaries are on the rise. So, how is the SMSF auditor placed when it all goes pear-shaped? This session reviews relevant cases and situations involving SMSFs which could potentially put the auditor in the firing line if someone feels they have been unjustly treated, including:

- Who can take over as trustee or director of a corporate trustee on the death of a member?
- What are the SMSF auditor's responsibilities for reviewing deed amendments to ensure correct procedures have been followed?
- The class action for Caddick victims - could this be an emerging trend?
- Documentation the professional standards would expect to be in an SMSF auditor's file for situations involving:
  - trustee decision making for death benefit recipients (Wareham v Marsella [2020] VSCA 92)
  - invalid binding death benefit nominations (Williams v Williams [2023] QSC 90)
  - a change of trustee which is subsequently deemed to be invalid
- Implications for the SMSF auditor involving marital/business partner disputes, including:
  - signing off on an audit if not all parties have signed required documents
  - directors signing requirements for an SMSF
- How the three year renewal rule for binding death benefit nominations applies to SMSFs (Hill v Zuda Pty Ltd [2022] HCA 21)
- Lost fund deeds - should this be picked up in the audit process? (Application by Ellasil Pty Ltd [2023] VSC 69)
- Tips for performing audits with an eye to possible future disputes occurring on the payment of benefits

*Speaker: Deanne Firth, Director, Tactical Super, Geelong, Vic.*

### 3.55 - 4.05pm Panel Comments and Questions

### 4.05 - 4.25pm Networking Break and Afternoon Tea

# DAY 1 - THURSDAY 25 JULY 2024

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4.25 - 5.10pm

## Session 7: Reporting of Contraventions: The When, How and Why it Matters

The reporting of contraventions by an SMSF auditor is guided by a set of criteria outlined by the ATO. Professional judgement can also come into play for situations that may fall outside this set criteria. This session explores the situations that require contravention reporting and how to go about it, including:

- A review of the seven tests
- Situations where reporting requires professional judgement, including:
  - privacy considerations
  - using the “tip-off” form
- What are your reporting obligations if:
  - you consider a contravention may have occurred (as distinct from has occurred)?
  - your services have been terminated?
- Reporting requirements for continuing contraventions
- Consequences for trustees not meeting allowed time limits when interacting with the auditor
- The types of contraventions where the ATO issue:
  - a rectification direction to a trustee (PS LA 2023/1)
  - a notice of non-compliance
- Practical examples of:
  - contraventions that require reporting
  - contraventions that require professional judgement as to whether to report
  - how to complete the ACR in each case

*Speaker: Belinda Aisbett, Director, Super Sphere, Melbourne, Vic.*

5.10 - 5.20pm Panel Comments and Questions

# DAY 2 - FRIDAY 26 JULY 2024

## MORNING THEME: AUDITING SPECIFIC ASSETS

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

### Session 8: Auditing Death Benefits: A Compliance Compass for Auditors

The payment of death benefits is becoming an increasing litigious area in the SMSF environment. This is just one of the reasons why the SMSF auditor should ensure their file adequately addresses the audit issues that can arise for those type of benefits. This session is designed to provide the tools to assist with ensuring a comprehensive review of a death benefit payment has been performed, including:

- Timing and payment rules to consider for a death benefit, including:
  - how a death benefit can be paid
  - audit implications for delays caused by the selling process for “lumpy” assets
  - dealing with in-specie benefit payments
- Timing implications for “super death bed withdrawals” - member benefits or a super death benefit? (PBRs 1052097327812 & 1052090528673)
- Practical examples of valid and invalid binding death benefit nominations (BDBNs), including:
  - whether a parent can be included in a BDBN
  - when the BDBN may have been filled in correctly however the process as set out in the fund’s deed hasn’t been followed
- How to support an interdependency relationship existed at the time of death of a member (PBR 1052119307083)
- To what extent does an SMSF auditor need to review:
  - a BDBN or whether there is one in place?
  - the trustee decision making process on who receives the death benefit?
- Change of trustee implications on the death of a member, including:
  - who can replace a deceased trustee or deceased director of a corporate trustee
  - the time limits for a replacement to occur
- The role of the legal personal representative in the SMSF on the death of a member
- Checklist of audit procedures to cover

*Speaker: Shirley Schaefer, Partner - Superannuation, BDO, Adelaide, SA*

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

### Session 9: Auditing Cryptocurrency and Other Digital Assets

The emerging trend of investments being held in a digital form is requiring the SMSF auditor to adapt their skills to the digital world. This session is designed to assist with the development, including:

- What an auditor would need to see in the fund's:
  - deed
  - investment strategy
- How to audit a “digital wallet”
- What is acceptable audit evidence if the investment account cannot include the SMSF's name?
- Can an SMSF acquire cryptocurrency and other digital assets from a related party?
- What type of asset is a “non fungible token” and how does the classification impact on the audit?
- The ATO issues with cryptocurrency and other digital assets
- When to:
  - qualify the audit report
  - lodge an ACR
- Checklist of audit procedures for digital assets

*Speaker: Jacob Kewley, Partner, Tactical Super, Sydney, NSW*

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea



# DAY 2 - FRIDAY 26 JULY 2024

11.15 - 12.00pm

## Session 10: The SMSF as a Property Developer

Having an SMSF involved in a property development can prove challenging for the most experienced of SMSF auditors. This session is designed to flush out the issues that an auditor needs to be mindful of to minimise the risk of closer scrutiny from the ATO, including:

- The various options an SMSF has to purchase and develop property and the arrangements that can attract ATO attention (incl. TA 2023/2)
- Situations where a property purchase and development can trigger the NALI and NALE provisions
- What are the in-house asset exceptions for structuring an SMSF property development?
- What do auditors need to see in an SMSF's deed and investment strategy when a property development is involved?
- How to address valuation issues during the course of the development
- Auditing a property development involving:
  - a property subdivision
  - a related party builder
- Audit issues that can arise when dealing with:
  - limited recourse borrowing arrangements involving the SMSF acquiring shares or units in a property development entity (SMSFR 2020/1)
  - a partnership or joint venture property development arrangement involving an SMSF
- Practical examples of allowed/non allowed property development arrangements involving an SMSF

*Speaker: Katrina Fletcher, Director, Elite Super, West Kempsey, NSW*

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

## AFTERNOON THEME: CONTEMPORARY CHALLENGES

1.10 - 1.55pm

## Session 11: When the ATO Comes Knocking

The ATO generally conduct a review or audit of an SMSF auditor when they believe a closer look may be required. So, what triggers the ATO into action to pick one auditor from another? This session delves into the answer, including:

- The type of documentation the ATO expect to see on an SMSF auditor's file
- Examples in practice where SMSF auditors have been selected for a review or audit
- ATO's likely conclusions for:
  - an SMSF auditor using an audit sampling method that didn't pick up a contravention [PS LA 2018/1]
  - a change of SMSF trustee where the auditor didn't include testing that the correct process was followed
- ATO's accepted audit evidence for:
  - the market values of unlisted shares or units in unit trusts
  - the checking of charges over fund property and other assets [QC 73156]
- The consequences for not responding to an ATO's request for documentation
- The types of support or education the ATO can recommend an auditor undertake
- The type of matters the ATO are referring to ASIC
- Practical examples where the ATO considers an SMSF auditor has failed to adequately and properly discharge their duties

*Speaker: Shirley Schaefer, Partner - Superannuation, BDO, Adelaide, SA*

1.55 - 2.05pm Panel Comments and Questions

2.05 - 3.00pm

## Session 12: Q&A: Panel Session

A panel of our speakers will discuss some of the issues causing difficulty and uncertainty in practice. Delegates can submit questions prior to the conference for discussing by the panel.

*Moderator: Robert Clemente, Chief Executive, TEN The Education Network, Melbourne, Vic.*

*Panellists: Belinda Aisbett and Shirley Schaefer*

3.00pm Conference Close

# GENERAL INFORMATION

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## Conference Registration Fee

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The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunches are included for face to face attendees.

## Conference Papers

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TEN does not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

## CPD

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**Accountants:** 11 CPD hours

## SMSF Association Accreditation

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This conference has been accredited by the SMSF Association for CPD.



Accreditation activity code: **PETEN240725**

SMSF Association: 12 CPD hours - SMSF Audit

Legislated CPD: 12 CPD hours

## CPD Certificate

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All delegates attending the conference will receive a CPD Certificate confirming attendance.

## The Conference Venue

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### Sofitel Gold Coast

81 Surf Parade, Broadbeach, Qld

## Sofitel Gold Coast Accommodation Offer to Conference Delegates

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Sofitel are offering a 15% discount on the unrestricted rate of the day to any guests attending this conference.

To take advantage of this discount, simply call the in-house Reservation Team on (07) 5592 2250 or via email at H0454@sofitel.com and **quote the code: 12T250724**.

## Travelling to the Conference Venue

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Delegates are advised to make their own travel arrangements.

## Conference Dress

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Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).



# TERMS AND CONDITIONS

1. In these terms,
  - a. "TEN" means Television Education Network Pty Ltd
  - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
  - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
  - d. "live conference" means a conference other than a recorded conference.
  - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
  - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
  - g. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

## General – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

## Conversion of face to face conferences to live online conferences

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  - a. State or national border closures
  - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
  - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
  - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
6. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
7. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

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9. You are entitled to use those materials for private study and research only.
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## Conference cancellation by TEN – all conferences

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13. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

## Cancellation by You – all conferences

14. Refunds for registration cancellation by you other than under Clause 6(b):
  - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
  - b. Otherwise, no refund.

## Governing Law – all conferences

15. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

