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Self Managed Superannuation Funds – Residency Rules

When determining whether an SMSF is a "complying superannuation fund" 3 rules must all be satisfied

A member is an 'active member' if they are a contributor to the fund or contributions to the fund have been made on their behalf.

1.

The fund was established in Australia, or at least one of its assets is located in Australia

The establishment of the fund requirement is a "once and for all requirement." Once it is determined that a fund was established in Australia, it will satisfy this requirement at all relevant times.

The location of an asset is determined by reference to the type of asset and the common law rules established by the courts

2.

The central management and control of the fund is ordinarily in Australia

The SMSF will still meet this requirement if trustees are temporarily outside Australia for up to two years.

Longer than 2 years? ***

Move to a Small APRA Fund

OR

Wind up SMSF and move proceeds into a public offer fund

OR

Arrange for corporate or personal representatives to assume management role

3.

The fund either has **no active members** or it has **active members who are Australian residents and who hold at least 50% of the total market value of the fund's assets** ***

Has a non-resident member made a contribution and become an "active member"?

Yes

Does the SMSF have (other) active members who are Australian residents?

No → Non Complying Fund

Yes

Do those active Australian resident members hold:

at least 50% of the total market value of the fund's assets attributable to super interests

OR

at least 50% the sum of the amounts that would be payable to active members if they decided to leave the fund

Yes → Complying Fund

No → Non Complying Fund

Tax Consequences – Non Complying Super Fund

- The market value of the SMSF as at the end of the financial year before it becomes non-complying, less the value of any non-concessional contributions, is **included in the assessable income of the SMSF** in the year in which the SMSF became non-complying,
- The rate of tax payable in respect of the taxable income of the SMSF is the highest marginal tax rate, currently 45 per cent, rather than the usual 15 per cent

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In the 2021-22 Federal Budget, the Government announced that it would relax the residency requirements for SMSFs by extending the central control and management test safe harbour from two to five years, and also remove the active member test. The intended implementation date was 1 July, 2022 – now likely deferred.

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