



Switching Regulators

The *Superannuation Industry (Supervision) Act 1993* (SIS Act) provides for the regulation of self managed superannuation funds (SMSFs) by the Australian Taxation Office (ATO) and all other SIS Act entities by APRA.

A feature of the SIS Act is that small superannuation funds may switch from one regulator to the other according to changes in a fund's circumstance. Detailed below is a summary of the circumstances in which a fund should switch regulators and the administrative arrangements that apply.

SMSFs and Small APRA Funds (SAFs)

SMSFs must meet the following conditions:

- fewer than five members;
- each individual trustee of the fund is a fund member;
- each member of the fund is a trustee or a director of the corporate trustee;
- no member of the fund is an employee of another member of the fund unless those members are related; and
- no trustee receives remuneration for his or her services as a trustee.

Funds that have fewer than five members and do not meet the definition of an SMSF are known as Small APRA Funds (SAFs), and must have appointed an approved trustee.

Switching funds must notify the ATO

Where an existing fund commences to be an SMSF, or ceases to be one (without winding up), it switches regulators. When a fund switches, irrespective of direction, the trustee must notify the ATO within 21 days of becoming aware of the change, by lodging an [Application to Register for The New Tax System Superannuation Entities Change of Details](http://www.ato.gov.au/download.asp?file=/content/downloads/n3036form2009.pdf) form located at: www.ato.gov.au/download.asp?file=/content/downloads/n3036form2009.pdf

This form is available on the ATO's website and once completed, should be sent to:

The Registrar
Australian Business Registry
Australian Taxation Office
PO Box 627
Hurstville NSW 1481
Ph 13 10 20

The ATO will advise APRA of the change in the fund's details. APRA is unable to recognise the updated status of the fund until this advice is received from the ATO. This advice may take up to six weeks to arrive at APRA.

Annual returns for switching funds

A fund switching from APRA to ATO regulation is required to lodge an annual return with the ATO in respect of the switching year. The fund is not required to lodge an annual return with APRA in respect of the switching year.

A fund switching from ATO to APRA regulation is required to lodge an annual return with both regulators in respect of the switching year. The type of return that the fund will be liable to lodge with APRA will be the type of return appropriate to the fund's status with APRA (e.g., a SAF return).

In addition, a fund that has outstanding prior year returns when it switches regulators is required to lodge those returns with the new regulator.

Need more information?

For further information on this topic:

- visit the ATO superannuation website at www.ato.gov.au/super;
- phone ATO on 13 10 20;
- phone APRA on 1300 13 1060; and
- visit the APRA website at

www.apra.gov.au/Superannuation/Superannuation-Circulars.cfm.