

SMSF RESIDENCY RULES RELAXED



SMSFs will see residency requirements relaxed, with changes set to be seen in the central management and control test along with the active member test scrapped.

Courtesy: PrimeAdvisory Marketing

The government has announced it will relax residency requirements for self-managed superannuation funds (SMSFs) and small APRA-regulated funds (SAFs) by extending the central control and management test safe harbour from two to five years for SMSFs.

The government will also remove the active member test for both fund types.

The measure will have effect from the start of the first financial year after royal assent of the enabling legislation, which the government expects to have occurred prior to 1 July 2022. These changes allow for a more practical application of the SMSF residency rules.

Additionally, the Australian Taxation Office (ATO) has advised they would not apply compliance resources to determine whether the SMSF meets the relevant residency conditions. This will provide relief for SMSF trustees who cannot return to Australia due to travel bans and restrictions because of COVID-19 and, therefore, are unable to meet the central management and control test.

What is the residency test?

An SMSF must meet all three of the following conditions to satisfy the residency test.

Test one - Assets established or held in Australia

The first condition is that the fund was established in Australia, or at least one of its assets is located in Australia. The fund was established in Australia if the initial contribution to establish the fund was paid and accepted in Australia.

This test is the easiest to satisfy, and once it is determined the SMSF was established in Australia, it will meet the first test for all subsequent financial years.

Test two - Central management and control ordinarily in Australia

The second test is central management and control of the fund is ordinarily in Australia. This means the SMSF's strategic decisions are regularly made, and high-level duties and activities are performed, in Australia, including:

- Formulating the investment strategy of the fund
- Reviewing the performance of the fund's investments
- Formulating a strategy for the prudential management of any reserves
- Determining how assets are to be used for member benefits.

Other day-to-day activities do not generally constitute the central management and control as they are of a more formalistic or administrative nature. Examples of such activities include:

- The actual investment of the fund's assets
- The fulfillment of administrative duties
- The acceptance of contributions made on a regular basis
- The payment of benefits.

In general, your fund will still meet this requirement even if its central management and control is temporarily outside Australia for up to five years*. If central management and control of the fund is permanently outside Australia for any period, it will not meet this requirement.

Test three - The majority of active assets are held by Australian residents

The third condition is that the fund either has no active members, or it has active members who are Australian residents holding at least 50% of either:

- The total market value of the fund's assets attributable to super interests
- The sum of the amounts payable to active members if they decided to leave the fund.

As mentioned above, the Government intends to remove the active member test, which means members can continue contributing to their SMSF while temporarily overseas.

What to do for now

Trustees must not be complacent in light of the proposed changes and the ATO's relaxed response. Until the legislation is passed, SMSF trustees need to ensure they satisfy the current requirements and ensure they are present in Australia to exert control, or their absence be temporary and for no longer than two years. SMSF trustees should also only allow contributions where at least 50% of the active interest in the fund belongs to resident contributors.

Kindly note: This article is intended for general information purposes only. If you are concerned about your SMSF meeting the residency requirements, we are here to help you. Here is how you can reach us:

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E: Kindly email your advisor at [PrimeAdvisory](#)