# GOSSIP LEADS TRUSTEES ASTRAY

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The Australian Taxation Office says it is doing all it can to stamp out dodgy behaviour in self-managed superannuation amid talk that members are relying on hearsay advice and trying to bend the rules.

Assistant tax commissioner Stuart Forsyth said he was “open to suggestions about what more” the ATO could do to ensure all members of the $420 billion sector were kept informed about the rules, changes and obligations of trustees.

Concern about trustees breaking the rules follows a recent Federal Court decision in which trustees of a DIY fund were fined $50,000 and ordered to pay the Tax Office’s legal fees after being found guilty of 62 contraventions of the Superannuation Industry (Supervision) Act.

Industry experts say that, while only a small number of people actually break the SMSF rules, many trustees do not fully understand how the rules work and they sometimes rely on information provided by family and friends instead of professional advisers.

“They only get half the story from the friends and relatives, so they mix up all of this information and make up their own conclusions,” said HLB Mann Judd director of superannuation services Andrew Yee. Some of the most common misunderstandings that get people into trouble relate to borrowing to buy residential investment property.

“People get wrapped up in the new borrowing laws and forget about the types of assets that they can actually buy,” said Warrick Hanley, chairman of training group SMSF Education.

He pointed to inadequate auditing and complex and changing laws as the main reasons why some people were still confused.

“Some of the auditing in some cases is a little bit light on,” he said. “I think it is the fact that some people are actually doing it and the regulators are just not picking up on it.”

Townsends Business and Corporate Lawyers special counsel Michael Hallinan said some problems occurred when people started up a self-managed scheme before seeking professional advice.

“Quite often they form the idea and then implement it . . . then they approach the adviser once the process has already been commenced. This places the adviser in a difficult position,” said Mr Hallinan. Mr Forsyth said that in some cases advisers to self-managed funds were not providing members with the right information. “In some cases, some of the advisers might not be aware of what they can do. “If they [SMSFs] are talking to the core part of the advice profession they are very much aware of what they can do,” he said.

Mr Hanley believes trustees should be provided with more information on penalties, which can be as high as $220,000 for a single breach. “Superannuation has fairly complex laws that are always changing, and breaches are not reported on as much as they could be,” he said.

Other common misconceptions relate to people being unaware they cannot buy residential investment property from a related party (such as themselves or an entity that they control). Residential investment property cannot be transferred into a fund and investment properties cannot be rented out to a relative – irrespective of whether market rent has been achieved.

In addition, members are not allowed to draw on the equity from an existing asset owned by an SMSF to buy another asset for the fund.