

SELF MANAGED SUPERANNUATION FUNDS (SMSF)

Practical Points For SMSF Trustees

Trustee Responsibilities

There is a wealth of information available on the ATO website regarding the operation and management of an SMSF. A useful guide to the responsibilities of a Trustee of a Superannuation Fund is the Australian Taxation Office publication 'Running a Self-Managed Super Fund' (NAT 11032).

Binding Death Benefit Nominations (BDBN)

Superannuation account balances **DO NOT FORM PART OF A MEMBER'S ESTATE**. This means that your **WILL** does not necessarily deal with your superannuation entitlement. There are now court cases coming through that are dealing with disputes over entitlements from deceased members' superannuation funds. Trustees have certain rights and relatives don't necessarily have what might be 'presumed rights'. This problem can be solved largely by having a current BDBN where you nominate what the Trustee of your Superannuation Fund is bound to do with your balance in the fund in the event of your sudden or unexpected death. You must use the word 'binding' in order for the Trustee to be required to comply with the instruction.

Excess Contributions

Superannuation contributions are subject to age based caps. When making contributions that might approach the caps that apply to you it is important that you do your sums carefully in order not to breach the cap by over contributing. Individuals are taxed an additional 31.5% on the amount of excess concessional contributions. **The ATO are assessing excess contributions at an alarming rate.**

Investment Strategy

All SMSFs must have an investment strategy. This can take a number of forms but in generally the trustees should outline what where and when they would intend to invest their superannuation funds money. The actual investments should then reflect this strategy. The strategy can be reviewed and varied at any time but any changes should be noted and preferably documented formally.

Name for Investments Held

It is important to ensure investments and bank accounts are in the name of the Trustee(s) of the superannuation fund in the specific format '**As Trustee For**' or '**ATF**' '<Super Fund Name>'. Without clear nomination of the SMSF as the owner of the investment you might be in breach of Section 52 (2) (d) where it states assets of an SMSF must be held separately from any assets held by the trustee personally.

WE ARE FINDING THAT THIS IS A REGULAR MISTAKE BEING MADE ALTHOUGH A SIMPLE ONE TO AVOID.

Property Investments

If property investments are owned by the super fund or jointly owned by the super fund, the property cannot be used as security for loans or borrowings unless they are loans or borrowings that are specifically covered under the provisions of the SIS Act and Regulations. The Trustees **MUST** ensure that assets are properly held.

SUCH CONTRAVENTIONS INVOLVE ADDITIONAL COSTS TO UNWIND THE BORROWING AND CLEAR THE TITLE AND CONSEQUENTLY THE AUDITOR MUST ALSO LODGE A CONTRAVENTION REPORT WITH THE ATO.

When purchasing property and the property is to be jointly owned by another entity, there should be a legal document in place between the parties who claim ownership in the property to reflect the proportion (%) held by the super fund and the proportion (%) held by the other entity(s).

Property Valuations

Owing to the requirement to reflect 'Market Value' for assets held by a SMSF, it is recommended that property valuations be performed regularly to reflect MARKET. We suggest valuations be done at least every 2-3 years unless there is a good reason why it should be done sooner. Trustees are **NOT** required to incur the cost of a sworn or other valuation. They are able to do the valuation themselves based on history of the area.

Life Insurance Deductibility (Section 279 ITAA)

The Trustee of the fund is required to consider insurance for members when formulating and reviewing the investment strategy. This does not necessarily mean the fund is required to pay for insurance premiums as members may have adequate coverage outside of the fund. The most important aspect to having life insurance premiums paid by the fund from money in the fund is to ensure the Insurance Policy is owned by the SMSF or Trustee in that capacity. The fund **MUST** be mentioned in the policy as the recipient of the payout in the event of a claim. Life insurance premiums are deductible in Superannuation Funds with some exceptions. Disability premiums are deductible for policies that pay benefits for less than 2 years any occupation. There are restrictions on premiums being deductible under other circumstances. You may need to consult your accountant/financial adviser about deductibility.

Succession Planning

If someone is going to step into the role of Trustee or Legal Personal Representative of your SMSF in your absence they must have the following important documentation;

- Trust Deed of Establishment
- Variations or amendments to the above deed.
- Minutes
- Death Benefit Nominations
- Where there is a corporate Trustee; All the documents of the company including Memorandum and Articles, Shareholding certificates, Consents to act, Annual Returns. Et al.
- Power of Attorney (if required), Enduring (if this applies).
- Copy of members' will
- Clear instruction about Investment Strategy and or what the new person becoming involved in the day to day running of the fund should do.
- Is there a pension being paid? Is it reversionary? Pensions not reversionary cease immediately upon a members death but do not cease if a member is in a coma or cannot communicate.
- Recent Tax returns to ensure that all Tax obligations are up to date.
- Clear indication of who the Lawyer and Accountant are for this person to consult when required.

SMSF Trust Deeds

Keeping SMSF Trust Deeds up to date in line with changes to superannuation legislation is critical for compliance.

Collectables in an SMSF

The government has announced its clear intention to outlaw SMSFs from holding 'collectables' after 2015. This includes Art, Coins/Notes and a myriad of other items that many trustees have felt are worthwhile and valuable to hold in a self managed superannuation fund. If your fund holds Collectables don't leave it to the last minute to sell them out of the fund as you might experience a flood of the items you hold in the market place at the time you are wanting to sell. There might be a long delay in realizing the sale. The value may drop substantially if it is last minute or flooded market pricing.

Audit and Contraventions

Sometimes the auditor has NO option but to lodge a contravention report for even what might seem a minor infringement or the SIS Act or Regulations – accidental or not. In such a situation it is an advantage to the SMSF and the trustees/members that the auditor is able to give a detailed explanation of the contravention and how it was promptly corrected or the trustees upon becoming aware of the problem immediately commenced action to correct it. If the contravention has not been rectified at the time of lodgement of the contravention report the Trustees might enter into an enforceable undertaking to indicate the contravention will be corrected. This Enforceable Undertaking should be over as short a time period as possible.

Penalties

With the introduction of legislation as part of the Stronger Super reforms, the Australian Taxation Office (ATO) will commence a regime of imposing administrative penalties on SMSF Trustees where their SMSF contravenes superannuation legislation.

The penalties are to be paid by the Trustees, with all Trustees jointly and severally liable. The penalties cannot be paid from SMSF assets and the Trustees cannot seek reimbursement from the fund.

The size of the penalty will depend on the seriousness of the contravention.

To avoid such penalties, we encourage all clients to ensure their SMSF complies with superannuation legislation.