Go-To Guide

Establishment of an SMSF

SMSF Association
Technical Team

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Key Advice Issues

Steps to setting up an SMSF

This Go-To Guide outlines the steps required in order to set up and register an SMSF with the Australian Taxation Office (ATO).

The steps are required to be completed in a certain order before progressing. Furthermore, not having the right information or documents completed can result in a delay when establishing an SMSF.

Australian Securities and Investments Commission's (ASIC) role

ASIC is responsible for compliance with the licensing and advice requirements. They have released numerous Reports, Regulatory Guides and Information Sheets that provide guidance for those wishing to advise in the SMSF space.

In April 2018, ASIC updated *Information sheet 216 'AFS licensing requirements for accountants who provide SMSF services*.' The exemption which allowed recognised accountants to give financial advice about acquiring or disposing of an interest in an SMSF was repealed on 1 July 2016 and accountants need to be clear about which services must be covered by a licence and which remain exempt. INFO 216 assists accountants in understanding which services do and not require them to be covered by an AFS licence and confirms that unless covered by an AFS licensee, an accountant can no longer provide advice about setting up or winding up an SMSF.

Click here to access Information sheet 216 'AFS licensing requirements for accountants who provide SMSF services.

Click here to access the SMSF Association's Licensing Fact Sheet.

In June 2018, ASIC released *Report 575 SMSFs: Improving the quality of advice and member experiences* and *Report 576 Member experiences with self-managed superannuation funds* which considered the findings from ASIC's research into member experiences in setting up and running an SMSF and whether advice providers were complying with the laws surrounding the provision of personal advice when establishing an SMSF. ASIC's findings identified deficiencies in complying with the best interest duty, a need for greater trustee education and better documentation.

Access Report 575 *SMSFs: Improving the quality of advice and member* experiences and Report 576 *Member experiences with self-managed superannuation funds*.

This Go-To Guide also uses some of the findings and practical tips in the Report to ensure that advisers are not only providing the best advice possible but are also meeting their regulatory requirements.

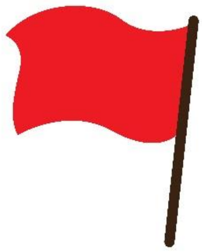
Is an SMSF the right fit?

An SMSF is not the right choice for everyone. It is important that your clients understand their obligations as SMSF trustees and the pros and cons of setting up an SMSF. ASIC released a list of 'red flags' indicators that may suggest an SMSF is not suitable for your client and these issues should be carefully considered.

Red Flags

The red flags include, but are not limited to, clients who:

- Have a low superannuation balance, and would have a limited ability to make future contributions.
- Would like a simple super solution.
- Delegate all of the running of the SMSF to a paid advice provider.
- Delegate all of the investment decision making to someone else.
- Do not have a lot of time to devote to managing their financial affairs.
- Have little experience in making investment decisions.
- Are an undischarged bankrupt or has been convicted of an offence involving dishonesty (as such, persons are prohibited from acting as a trustee).
- Have a low level of financial literacy.



Low Balances

While a low balance can be a red flag, it is the SMSF Association's view that this is not always a barrier to entry.

This conclusion is based on our analysis of industry data and the report, "Cost of Operating SMSFs" for ASIC prepared in 2013, by actuarial consulting firm Rice Warner. This report has been an important source of information regarding SMSF costs and establishments since it was published and was the basis of ASIC guidance in 2015 that SMSFs should have a minimum balance of $200,000.

In 2020, the SMSF Association retained Rice Warner to update its report prepared for ASIC in 2013 to provide additional insights into the true costs of running an SMSF and to enable industry to compare appropriate fee estimates with APRA regulated funds, across different SMSF balances. Key findings include:

- SMSFs with less than $100,000 are not competitive in comparison to APRA regulated funds. SMSFs of this size would only be appropriate if they are expected to grow to a competitive size within a reasonable time. The analysis of these small funds over time, shows that the majority of these funds do, in fact, grow.

- SMSFs with $100,000 - $150,000 are competitive with APRA regulated funds. These SMSFs are competitive with APRA regulated funds, provided the Trustees use one of the cheaper service providers, or undertake some of the administration themselves.

- SMSFs with $200,000 - $500,000 are competitive with both APRA regulated Industry and Retail funds, even for full administration. SMSFs above $250,000 become a competitive alternative provided the Trustees undertake some of the administration, or, if seeking full administration, choose one of the cheaper services.

- SMSFs with $500,000 or more are generally the cheapest alternative regardless of the administrative options taken. For SMSFs with only accumulation accounts, the fees at all complexity levels are lower than the lowest fees of APRA regulated funds.

This latest research provides the most current and comprehensive evidence on the general cost-effectiveness balance of an SMSF. This research highlights that SMSFs with a low complexity can begin to become cost-effective at $100,000. It also demonstrates the fact that there are many options for potential SMSF trustees to establish a cost-effective SMSF with a balance of $200,000 or more.

The latest research challenges ASIC's guidance on the costs associated with running an SMSF as well as the viability of establishing an SMSF with less than $500,000 of assets.

Hopefully, following the latest Rice Warner research, AFS licensees feel more comfortable that SMSFs between $200,000 and $500,000 can be cost competitive and in many instances cheaper for clients when compared to an APRA regulated fund.

It is also important to recognise that when an adviser is assessing the minimum viable or cost-effective size of an SMSF, there are also several other factors to consider. These include:

- The likely pattern of future contributions (nil once all members are fully in pension phase), including any large non-concessional amounts.
- The current size of the fund and future cash flows (earnings plus contributions less expenses, tax, and withdrawals).
- The asset allocation and whether this can be replicated more cost effectively in an APRA regulated fund.
- Whether the trustee(s) is self-directed or will rely on external advice (which will add to costs).

Click here to access the full report on the 'Cost of Operating SMSFs 2020'

Time

The ASIC report found that 38% of respondents found running their SMSF to be more time consuming than expected.

Trustees underestimated the amount of time involved in setting up and managing an SMSF, including where tasks are outsourced to third parties. It is therefore important that trustees understand they are accountable for the decisions and actions of the fund and even outsourcing of administration activities will still require a time commitment from trustees.

Costs

The ASIC report found that 32% of respondents found the costs of setting up their SMSF was more than expected.

Ensure clients have a clear understanding of the fees they are being charged over the life of the fund and are aware of unavoidable costs including:

- The annual SMSF supervisory levy collected by the ATO.
- The cost of producing an annual financial statement, tax return and TBAR reporting.
- Annual independent audit fees.
- Costs associated to setting up the SMSF and advice, including
    - Trust deed.
    - Preparing ATO application forms.
    - Cash management application
    - Provision of binding death nomination forms.
    - Investment strategy.
    - General trust and legal advice.

Optional costs to discuss also include:

- The costs of establishing a corporate trustee, including
    - ASIC's fees to establish a corporate entity.
    - Annual corporate trustee fee.
    - Searches and reservation of company names.
- Ongoing SMSF administration costs.
- Professional investment advice fees.
- Accounting and bookkeeping fees.
- The cost of an actuarial certification (when required).
- Investment management fees.
- The cost of obtaining insurance cover; and
- Costs relating to winding up an SMSF, including compliance costs and transactions costs related to realising assets.

The Productivity Commission Report quantified SMSF establishment costs at ranging between $916 and $2,035. Costs can be more substantial where complex legal or financial advice is required to implement bespoke strategies for the SMSF members.

A significant difference in costs of SMSF compared to an APRA-regulated fund relate to the administration fees. SMSF members have the option to effectively manage the administration services of their SMSF such as managing compliance responsibilities, ATO correspondence and paperwork, or they can outsource these services to a professional SMSF administrator.

For example, some individuals choose to use a full or part administration service which may add $1,000 to $2,000 in fees (when compared to an APRA-regulated fund) but allows trustees to focus on other aspects of their SMSF or finances such as investment strategies and investments.

The SMSF Association also notes the release of updated ATO expense statistics. Previous analysis has relied on the use of averages which ignores distortions from very large SMSFs and included SMSFs which have chosen to use extensive administration, insurance, and investment services. The SMSF Association has been encouraging the ATO to publish more granular expense data and we are extremely supportive of the updated data that has now been released.

With the release of the ATO's statistical overview 2018-19, we can ascertain that the median 'operating expense' of an SMSF is $4,100. We now also have a much clearer picture of where SMSFs choose to voluntarily incur expenses that members believe provide value to their fund.

Click here to download the ATO's SMSFs: A statistical overview 2018-19.

Financial literacy skills

It is also important to recognise if a client is struggling with their personal financial affairs, it will not be appropriate to recommend the establishment of an SMSF.

SMSF trustees have a duty to exercise skill, care and diligence in managing an SMSF, and therefore need to possess a sufficient level of financial literacy to manage the fund and make investment decisions in line with the fund's investment strategy.

ASIC highlighted a case where potential clients who were struggling to manage their personal financial affairs with a large amount of debt and numerous unsecured loans were provided advice to establish an SMSF with a combined superannuation balance of $150,000. We agree this is inappropriate.

Switching from an APRA-regulated fund to an SMSF

When an advice provider recommends switching from an APRA-regulated fund to an SMSF, they must explain in the Statement of Advice (SOA), in clear and simple terms, the following information (where it is known or could reasonably be found out):

- Information about the exit fees or any other charges applying to the withdrawal from the APRA-regulated fund.
- The loss of access to rights or benefits (e.g. insurance cover and compensation).
- The loss of other opportunities, including incidental opportunities associated with the existing product (e.g. rights or opportunities not presently available to the client, but which may become available in the future).
- The set-up costs and ongoing fees for the SMSF.
- Any other significant consequences for the client in changing their superannuation fund to an SMSF.

Record Keeping and SOAs

The ASIC report observed there were problems in record keeping, when setting up an SMSF. Record keeping is important part of the decision-making process, and while the relevant issues may have been discussed, it is important they are also recorded.

When discussing setting up an SMSF with a client, the ASIC report states the following should be recorded:

- Why the client is dissatisfied with current superannuation arrangements.
- What the client hopes to achieve by setting up an SMSF.
- What outcomes the client would like to achieve.

- Why any recommendations are suitable and consistent with the client's objectives and financial situation.

This should be clear and recorded in the client's own words in the client file and in the SOA.

You must also not reduce the scope of advice to exclude critical issues that are relevant to the subject matter of the advice sought. Where the subject matter of the advice is limited in scope at the request of the client, you should record this carefully in the client file, including the client's reasons for the request. This should also be detailed in the SOA.

Complex financial products and strategies necessitate more extensive inquiries. The decision to move from an APRA-regulated fund to an SMSF is a significant decision for clients. Therefore, you should demonstrate in the client file that you have undertaken reasonable inquiries into the financial products and strategies that could meet the client's needs and objectives.

Steps to setting up an SMSF

Step 1 – Choosing a structure

Approximately 80% of SMSFs are set up with corporate trustees. A corporate trustee structure, while adding costs to the setup can provide advantages to an SMSF in terms of succession and asset protection.

Each structure has its own set of requirements and fees.

Structure	Features
Comparison of member and trustee requirements for individual and corporate trustees	
Individual Trustees	No more than six members. Each member of the fund must be a trustee, and each trustee must be a member of the fund. (Exception for single member funds) Simple structure and SMSF is not subject to corporation law requirements
Corporate Trustee	No more than six members. Each member of the fund must be a director of the corporate trustee, and each director of the corporate trustee must be a member of the fund. (Exception for single member funds) Company structure which acts as trustee under corporations law.
Costs	
Individual Trustee	A trustee cannot be paid for their duties or services as a trustee.
Corporate Trustee	ASIC fee to register a corporate trustee for the first time. Annual review fee, which is lower if the corporate trustee acts solely as a super fund trustee, but higher if the corporate trustee also performs another function, such as running a business. A corporate trustee cannot be paid for its services as a trustee, and directors of the corporate trustee cannot be paid for their duties or services as directors in relation to the fund.

Ownership of fund assets	
Individual trustees	If an individual trustee is removed or another added, the fund must change the titles of the SMSF's assets. This can be costly and time-consuming. State government authorities may charge a fee for title changes. Most financial institutions also charge a fee for title changes.
Corporate trustees	Recording and registering assets can be simpler, particularly for changes in membership. When a person starts or stops being a member of the SMSF (including death), they become, or cease to be, a director of the corporate trustee. ASIC and the ATO must be advised of any change in directors. The corporate trustee does not change, so the titles of the SMSF's assets are unchanged. Some banks require a corporate trustee arrangement when entering a LBRA to purchase property.
Separation of assets	
Individual trustees	Fund assets should always be held in the name of the individual trustees 'As Trustees For' the SMSF. Fund assets must not be combined with personal assets.
Corporate Trustee	Fund assets should always be held in the name of the Corporate Trustee 'As trustee For' the SMSF. Fund assets must not be combined with director's personal assets. Although uncommon, may reduce personal liability by limiting the liability of the assets of the company where the trustee of a fund is subject to litigation – such as a personal liability action in relation to one of the fund's properties.
Succession	
Individual Trustee	Where changes in trustees occur, the fund is not likely to continue to operate as usual unless an appropriate succession plan has been prepared.
Corporate Trustee	A corporate trustee continues in the event of a member's death or incapacity. In the event of the death or incapacity of a member, control of an SMSF and its assets by a corporate trustee is more certain.

Step 2 – Drafting the Trust Deed

The trust deed is a legal document that covers how to establish and operate the SMSF. It details all the rules and regulations of the fund, and investment and contribution information, as well as wind-up procedures. It includes such things as the fund's objectives, who can be a member and whether benefits can be paid as a lump sum or income stream. The trust deed and super laws together form the fund's governing rules.

It is important to get the trust deed right and consider the rules of the fund across the lifetime of the fund. Amending the deed can be costly and time consuming. It is also important that certain contributions are allowable under the trust deed and you cannot go back and amend the trust deed after the fact. Therefore, reviewing the trust deed when there are law changes, or changes in membership, is also important.

It’s also important for trust deeds not to be too restrictive, as this will limit flexibility and strategies the SMSF may undertake. For example, recent changes which increase the maximum number of SMSF members from four to six may not be cohesive with current trust deeds.

Modern trust deeds must ensure they are able to apply all aspects of superannuation legislation.

The trust deed must be:

- Prepared by someone competent to do so as it is a legal document which means a lawyer should have drafted the document.
- Signed and dated by all trustees.
- Properly executed according to state or territory laws.
- Regularly reviewed and updated as necessary.

Step 3 - Establish the trust

To establish the trust, the fund must set aside a nominal asset for the benefit of members. This is typically a token amount until members are able to roll over their existing benefits from elsewhere or make contributions themselves.

The ways in which a contribution can be evidenced as being received on the day of execution of the trust deed are as follows:

- if it is paid in cash and there is a clear document trail showing the timing of receipt
- if it is paid by cheque and a copy of the cheque is retained to show the date of contribution
- if the first deposit is made to a bank account (established using a bank that does not need the fund ABN to establish the account).

This token amount is regarded as a contribution and must be allocated to a member.

If a member can't contribute to the fund (for example, they are over 67 and don’t meet the work test), an administrative discretion is automatically applied to allow a nominal contribution for the member. The amount must be allocated to the member, solely for the purpose of registering the SMSF.

Step 4 – Sign an ATO trustee declaration

An ATO trustee declaration must also be signed by trustees and directors of a corporate trustee of an SMSF to declare they understand their obligations and responsibilities.

This declaration must be signed within 21 days of becoming a trustee or director. Similarly, trustees or directors of corporate trustees who are issued with an education direction as a result of a compliance breach must also sign a declaration within 21 days of completing the course.

The declaration must be retained by the SMSF for at least 10 years and although it does not need to be lodged with the ATO, it needs to be readily available to the ATO if required as failure to produce the declaration at the time of an ATO audit or review may result in the application of penalties.

Click here to download the ATO's trustee declaration form.

Trustees must also consent in writing to acting as a trustee of an SMSF.

Step 5 – Check on Australian Residency

The ATO's view on the meaning of 'Australian superannuation fund' in subsection 295-95(2) of the ITAA 1997 can be found in TR 2008/9.

An SMSF is an Australian super fund if it meets all three of these residency conditions:

- 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.
- The 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. It includes 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; and determining how assets are to be used for member benefits.
  - In general, a fund will still meet this requirement even if its central management and control is temporarily outside Australia for up to two years. If central management and control of the fund is permanently outside Australia for any period, it will not meet this requirement.
- 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 attributable to super interests, or
  - the sum of the amounts that would be payable to active members if they decided to leave the fund.

Note: For the purposes of condition three, 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 where contributions include rollovers. Members in receipt of a pension are not active members unless they are also contributing to an accumulation interest.

For more on an Australian superannuation fund, refer to our March 2020 Technically Speaking: SMSFs and residency – the tests for remaining a complying superannuation fund.

In the 2021 Federal Budget, the Government announced a proposal to relax the residency requirements by extending the central management and control temporary absence test to 5 years and removing the active member test.

Step 6 - Register with the ATO

The fund needs to be registered with the ATO within 60 days of being established and the trustee will need to elect for the fund to be regulated under the SIS Act. This is an irrevocable election.

This is done by applying for an Australian Business Number (ABN) at the Australian Business Register. When completing the ABN application, a tax file number (TFN) for the fund should also be obtained. Before applying for an ABN, the previous steps must have been completed to ensure that the fund has been legally established.

Click here to download the “Application for ABN registration for superannuation entities”.

When completing the ABN application ensure you:

- Apply for a TFN for the fund.
- Elect for the fund to be an ATO-regulated SMSF. This is important to ensure the fund is able to receive tax concessions and the members’ employers can claim deductions for contributions.
- Register for GST (if necessary).

Once the election is made, it will apply to the SMSF, regardless of the complying status of the SMSF.

The ATO will review the ABN application before issuing the ABN to the fund. Once the ATO process the ABN application, the fund will appear on ABN lookup. Once processed, the fund will also appear on Super Fund Lookup (SFLU) with a status of ‘registered’. This can take up to 28 days and allows the SMSF to be treated as complying for the purposes of receiving rollovers and employer contributions.

The ATO will subsequently issue a notice of compliance to the SMSF, changing the fund’s status on Super Fund Lookup to 'Complying'.

Click here to access ABN lookup and Super Fund Lookup.

Super Fund Look Up (SFLU) status:

The status of the fund will change depending on their registration status:

Election to be regulated is being processed	Registration in progress - **cannot** receive contributions or rollovers from third parties at this time.
Registered – status not determined	Registration complete – **can** receive contributions or rollovers from third parties.
Registration details withheld	Registration on SFLU withheld due to risk - **cannot** receive contributions or rollovers from third parties

Where the ATO has any concerns about an SMSF's application, the fund will appear on SFLU as 'Regulation details withheld' until contact has been made by the ATO for further information. Generally, the following can cause delays or reviews of a fund's ABN application:

Individual members and trustees	Administrators, agents and other professionals
Bankruptcy	Previous links to SMSF clients of concern
Debts owed to the ATO	Debts owed to the ATO
Poor lodgment or payment compliance history	Poor lodgment or payment compliance history
Ability to maintain an ongoing SMSF	
Previous links to other SMSFs of concern	

A fund's status on SFLU can change back to 'Regulation details removed' if once established, the SMSF return is overdue more than two weeks on any annual return and a lodgement deferral hasn't been requested.

The SMSF may also need to be registered for PAYG withholding tax. This is the case where the fund is going to make payments (lump sum or pensions) to members aged less than 60 years old.

Registering for GST

Most SMSFs do not need to register for GST because SMSFs mainly make input-taxed sales which do not count towards GST turnover.

SMSFs with an annual GST turnover of more than $75,000 must register for GST. Annual GST turnover does not include:

- Contributions
- Interest and dividends
- Residential rent or income generated outside Australia.

However, it does include gross income from the lease of equipment or commercial property.

Step 7 - Set up a bank account for your fund

A bank account should then be opened in the SMSF's name to accept cash contributions, receive income from investments, pay fund expenses and pay benefits to members. These details do not need to be provided to the ATO when the fund is registered however should be updated as soon as possible.

Incorrect or out of date banking details are a common reason for delay in payments and rollovers – so ensuring bank account details are correct is vital.

The SMSF's bank account must be completely separate from individual members', trustees' and related employer's bank accounts.

Provide member TFNs

Make sure that you provide each member's TFN.

If a TFN is not provided, the fund will be unable to accept personal contributions from members. The fund will also be liable for more tax on their employer contributions.

Step 8 - Get an electronic service address (ESA)

Employer contributions

If the fund receives employer contributions the fund will need an electronic service address (ESA) to enable it to receive SuperStream data. The employer will need to know the fund's ABN and bank account details, in addition to the funds ESA.

Employers and other super funds will not be able to transfer benefits to the fund until the fund has a registered ABN and "registered" status on Super Fund Lookup.

The ATO has a public register of SMSF messaging services providers who can provide the SMSF with an electronic service address.

A common error is providing the email address rather than the electronic service address, this will delay Super Stream payments until the correct details are provided.

Click here to view the Register of SMSF messaging providers.

Electronic rollovers

From 1 October 2021, it will be compulsory for all SMSFs to be compliant with SuperStream in order to receive and make rollovers. This will impact all newly established SMSFs as well as SMSFs restructuring and wishing to roll monies out.

Member contributions will not require SMSFs to be compliant with SuperStream meaning that not all SMSFs will need to enter the SuperStream environment. This means that many SMSFs will not need to be SuperStream ready until they are about to receive or make a rollover.

To be SuperStream ready, trustees will broadly need to give the following information to the ATO:
- An ABN as well as up to date details of the SMSF and all of its members;
- A unique bank account for superannuation purposes that can receive electronic payments; and
- An ESA that can action and process rollover requests.

To facilitate a rollover to or from an SMSF, the SMSF will need a unique bank account for super purposes. This cannot be the SMSF tax agent's bank account used for tax purposes.

SMSFs will need to ensure that their service provider allows for rollovers via SuperStream. If a new ESA is required, it will replace any existing ESA. Click here to view the Register of SMSF providers with rollover functionality.

Release authorities

Form 1 October 2021, the following release authorities will also be transacting through SuperStream:

1. Excess Concessional Contributions (ECC)
2. Excess Non-Concessional Contributions (ENCC) and
3. excess Non-Concessional Contributions Tax (ENCCT)
4. Division 293 Due & Payable, and
5. Division 293 Deferred Debt and
6. First home super saver

Actioning release authorities in SuperStream is not compulsory for SMSFs. However, using SuperStream will allow the ATO to send electronic requests to SMSFs to reduce administrative costs as well as increase data integrity and timeliness around the release of benefits.

Other considerations

First year

The first SMSF annual return is due 31 October, or 28 February if the return is lodged through a tax agent. Failure to lodge the first return on time means the SMSF's status on SFLU is updated to 'regulation details removed due to failure to lodge return'.

Notice of compliance

For an SMSF to qualify for concessional tax treatment for income tax purposes, it must be a complying superannuation fund under sections 42A and 45 of the *Superannuation Industry (Supervision) Act 1993* (SISA).

A newly established SMSF will normally be given a notice of compliance when its first SMSF annual return (which combines the income tax return and regulatory return, and member contributions information) is lodged, and the return indicates that it has complied with all relevant requirements under the SISA.

A notice is not required to be given to an SMSF for each and every year of income. A notice of compliance given in relation to a year of income will be effective for that year and all subsequent years until such time, if any, as a notice of non-compliance is given to the fund.

Prepare an investment strategy

One in three respondents to a recent ASIC survey were not aware an SMSF must have an investment strategy. An investment strategy is essentially a plan for making, holding and realising fund assets that is consistent with an

SMSF's investment objectives. This plan, or blueprint, is not only required by the superannuation laws but is also essential for guiding the fund to achieve a desired retirement savings outcome for the fund members.

In developing a strategy, you should ensure the strategy meets and considers:

- The sole purpose test and investments are maintained on an arms-length basis
- The benefits of asset diversification
- The needs of members across different phases
- That all members have read and understood any statement of advice, including if the product meets the investment strategy and if the investment will generate a sufficient return to fund their retirement

The *Superannuation Industry (Supervision) Regulations 1994* (SISR) requires the formulation of an investment strategy for the SMSF and that it be regularly reviewed. The strategy must reflect the purpose and circumstances of the SMSF and consider:

- Investing in such a way as to maximise member returns, taking into account the risk associated with the investment.
- Appropriate diversification and the benefits of investing across a number of asset classes (for example shares, property, fixed interest) in a long-term investment strategy.
- The ability of the SMSF to pay benefits as members retire and pay other costs incurred by the SMSF.
- The needs of members (for example, age, years to retirement and the type of benefit to be paid).
- Whether the trustees of the fund should hold insurance for one or more members of the fund.

Separate investment strategies can be formulated for each member of the SMSF. This can assist the trustee to deal with situations where different members of the SMSF have different risk profiles (e.g. someone who has just started working may have a higher growth asset allocation whilst someone near retirement age may be more conservative).

A properly formulated investment strategy will provide a level of protection for trustees and advisers should an investment fail, against any actions from any person who suffers a loss or damage, as a result.

Property and SMSFs on establishment

If a client has a preference for a property investment, you should consider whether the property investment is appropriate.

If you are recommending a property investment, you should discuss with the client:

(a) the needs and circumstances of the fund's members (e.g. their age and retirement needs);
(b) if the recommendation involves an investment loan, how long it will take for the client to repay the loan;
(c) the high upfront costs of purchasing the property (e.g. stamp duty, loan fees, estate agent fees);
(d) the client's ability to repay the loan if an unexpected event occurs (e.g. the client becomes unemployed for a period of time);
(e) how the client's retirement will be funded by the property investment (i.e. through sale of the property or through rental income);
(f) how likely it is that the property can be sold quickly (i.e. whether it is in a high demand area); and
(g) what the client will do if the property is not rented for a period of time.

Insurance via superannuation

While use of insurance in an SMSF is not common, it must be considered as part of the investment strategy.

Death, total and permanent disablement (TPD) and income protection policies can be purchased by an SMSF. The premiums for these policies are generally tax deductible (in full or part) to the SMSF as long as the fund is a complying superannuation fund.

Since 1 July 2014, it has not been possible to take out a new trauma policy or a new TPD policy for own occupation within any superannuation funds including SMSFs.

The potential loss of insurance benefits is an important issue to consider before setting up an SMSF. When switching superannuation savings out on an APRA-regulated fund a member may be uninsured unless they purchase a new insurance policy.

Trustees must consider insurance for fund members as part of the fund's investment strategy and should consider:

- The existing insurance cover.
- The level of insurance cover required in the future.
- The costs and options of maintaining, increasing or decreasing (as appropriate) members' existing insurance cover through an SMSF.
- Any health issues which may affect members' ability to get insurance cover.
- The advantages and disadvantages of retaining a portion of members' APRA-regulated superannuation for insurance purposes.
- The impact of the insurance recommendation on members' SMSF balances.

Prepare an exit strategy

It is also important upon setting up an SMSF that trustees consider preparing and SMSF exit strategy.

Having an exit strategy may reduce the impact of 'unexpected' events, particularly relationship breakdowns, incapacity and death. As part of an exit strategy, some of the things trustees should consider are:

- Ensure all trustees can access the SMSF's records and electronic transaction accounts.
- Include specific rules in your fund's trust deed that are triggered by events that could otherwise lead to the fund becoming unmanageable.
- Members to make binding death benefit nominations (and renew them regularly).
- Encourage members to appoint an enduring power of attorney.
- The likely costs involved in winding up an SMSF.

Contingency plans

An SMSF is a long-term plan. Much can happen during this time including illness, incapacity or death of a member.

Death – Given the introduction of the $1.6 million transfer balance cap which means larger sums of money may need to leave the superannuation system sooner, planning has never been more important.

The rules of the SMSF, as set out in the trust deed and related documents, determine how the trustee structure is to be reconstructed on the death of a member as well as how death benefits are to be handled by the fund. Therefore, it is important to consider these issues when formatting the deed.

Legal tools to help direct superannuation can also include making a binding death benefit nomination or providing for a reversionary pension following death.

Refer to our Go-To Guide – Estate Planning for more on building and reviewing an SMSF clients' estate plans.

Refer to our Go-To Guide – Superannuation death benefits for more on the interaction of the super and tax laws.

Diminished capacity – Consider the consequences if trustees are unable to carrying out their duties (e.g., due to mental incapacity).

Separating couple – Family law contains a number of options for superannuation to be split between a couple who separate or divorce. As superannuation is treated separately to other property, specialist advice may be needed.

Refer to June 2020 Technically Speaking: Winding up an SMSF for more on the main issues that need to be addressed when winding up an SMSF.

Setting up an SMSF checklist

The establishment of an SMSF requires a lot of decisions to be made by your clients as SMSF trustees. Use the below checklist to ensure every step has been completed.

- [ ] Work with your client to determine if an SMSF is 'right' for them and their specific circumstances.
- [ ] Prepare appropriate and clear documentation of the advice to establish an SMSF, including switching from an APRA-regulated fund.
- [ ] Choose an appropriate trustee structure for the fund.
- [ ] Appoint trustees or directors as required.
- [ ] Establish the trust with a nominal asset and associated trust deed
- [ ] Have the fund's trustees complete and sign the ATO trustee declaration
- [ ] Check that the fund has been established as an Australian super fund.
- [ ] Lodge an election to be a regulated fund with the ATO and consider whether the fund needs to also be registered for:
    - ABN
    - TFN
    - GST
    - PAYG withholding.
- [ ] Set up a bank account in the name of the SMSF.
- [ ] Get an Electronic Service Address (ESA)
- [ ] Prepare an investment strategy
- [ ] Consider insurance and whether it is appropriate to take out policies within the fund for its members
- [ ] Ensure any property and gearing is appropriate
- [ ] Prepare an exit strategy and what will occur in the case of unexpected events (e.g. death or incapacity of a member) ensuring that all members agree.

White Label Document

Setting up an SMSF – What do you need to consider?

Setting up an SMSF can be complicated. Not getting it right can materially affect your financial situation and retirement plans.

The first question you need to be sure about is whether an SMSF is the right fit. Seeking specialised financial advice can help you answer this question. Some considerations include:

Low balances

You must ensure you have an appropriate superannuation balance before considering an SMSF. While a low balance can be a red flag, it is not always a barrier to entry. Establishing an SMSF with a small balance may not be in your best interests. This is because SMSFs tend to be more cost efficient with larger balances. Therefore, before rolling over your superannuation balance to an SMSF, you should establish and justify that by doing so you are likely to end up in a better position in retirement.

Motivation

You must also understand your motivation for establishing an SMSF. The most common motivation SMSF trustees indicate is control. Control of an SMSF allows individuals to have a wide range of investment choice, flexibility and engagement with their superannuation. However, superannuation law is complex, and you need to ensure your ambitions are allowed under the law and will be able to be achieved in an SMSF.

Costs and time

SMSFs incur a wide range of costs in establishment and the day to day running of the fund. Ensure you are across the estimated establishment, accounting and audit costs that will be incurred by your SMSF. Speak with your advisers so you are across all other incidental costs, which unlike large super funds generally occur with fixed rates rather than as a proportion of your balance.

SMSFs also require dedicated attention from trustees which will take time out of your daily life to manage. Understanding from the outset your legislated responsibilities and obligations before establishing an SMSF is important.

Establishment process

Once you have decided that an SMSF is right for you, the process of establishing the fund can commence. A Specialist SMSF adviser is the best person to help you with this process which generally involves choosing a trustee structure, selecting a trust deed, completing the ATO registration, opening a unique fund bank account, getting an electronic service address and arranging for rollovers to the fund to occur.

Investment Strategy and Insurance

Upon establishment you must also create an investment strategy which must be regularly reviewed. Your investment strategy should be in writing and must consider:

- Diversification (investing in a range of assets and asset classes).
- The liquidity of the fund's assets (how easily they can be converted to cash to meet fund expenses).
- The fund's ability to pay benefits (when members retire) and other costs it incurs.

- The members' needs and circumstances (for example, their age and retirement needs).
- Whether to hold insurance in your SMSF.

Property investment
It is also common for SMSF trustees to be motivated by investing in property when establishing an SMSF. You should be sure that any investment in property, particularly when gearing is involved, is appropriate for your circumstances. Holding properties in an SMSF can also require some complex structures to ensure the law is being followed and specialist advice may be needed before making an investment choice. A lack of diversification, low balances and inappropriate property investments can have a detrimental impact on your retirement savings.

How can we help?

If you are considering an SMSF, please feel free to give me a call to arrange a time to meet so that we can discuss your particular requirements and circumstances in more detail.