

## Running a SMSF

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If you have made the decision to run a SMSF, the trustees of the fund must be made aware of their responsibilities in relation to operating the fund. To assist trustees in managing their retirement savings and complying with super and tax laws, the ATO has identified 6 key aspects involved in running a SMSF. These 6 aspects are summarised below:

Aspects		Comments
1	<b>Running a SMSF</b>	Trustees of the SMSF are responsible for managing the fund and ensuring it complies with the trust deed and all relevant tax and super laws.
2	<b>Accepting contributions &amp; rollovers</b>	All contributions - both mandated employer contributions and non-mandated contributions - must be accepted in accordance with the rules. Transfers and rollovers are permitted if they are in accordance with the fund's trust deed.
3	<b>Managing your fund's investments</b>	An investment strategy must be developed to guide the investments of the fund. All investments must be made for the sole purpose of providing benefits to members after retirement, and it is the trustees' responsibility to ensure this rule is followed.
4	<b>Paying benefits to members</b>	There are rules surrounding the payout of member benefits, depending on the classification of the benefit, contained in the fund's trust deed and super laws. In most cases, a condition of release must be met before payments can be made. Improper early access to benefits is not permitted and penalties may be imposed by the ATO.
5	<b>Reporting &amp; administration</b>	All SMSFs must lodge an annual return with the ATO. To fulfil this and other reporting obligations, a comprehensive

	<b>obligations</b>	and proper system of record keeping must be in place.
<b>6</b>	<b>Understanding compliance &amp; penalties</b>	Trustees need to be aware of their obligations and comply with these at all times. Breaches of the trust deed, super and tax laws may result in penalties being imposed on the fund and/or the trustees of the fund.

We will now consider each of the above 6 aspects in greater detail.

## **1 Running a SMSF**

An SMSF is basically the same as any other super fund, except that its members are also the fund's trustees. As such, they have the ability to control the investment of contributions and the payout of benefits from the fund.

Before a fund can qualify as a SMSF, certain requirements must be met, but these vary depending on the structure of the fund and whether it has individual trustees, a corporate trustee or a single member.

For funds with individual trustees or a corporate trustee, it must have 4 or less members, where each member must be a trustee or director of the company respectively. No member of the fund is permitted to be employed by another member, unless they are related, and neither the trustee (for individual trustees) nor the corporate trustees or directors (for a corporate trustee) are to be paid for their services in relation to the fund.

All SMSF trustees are responsible for running the fund and complying with the trust deed, and relevant super and tax laws. Trustees must act honestly and in the best interests of all members, exercising due skill and care in managing the fund. Most importantly, they must keep the assets of the fund separate from their own personal/business assets.

## **2 Accepting contributions & rollovers**

All contributions made to a SMSF must be for retirement purposes only, and each contribution must be allocated to the correct member's account.

There are two major types of contributions:

- mandated employer contributions: those made by an employer under a law or an industrial agreement for the benefit of a fund member, and
- non-mandated contributions: these include voluntary contributions and their acceptance depends on the age of the member and the timing of the contribution.

While mandated employer contributions can be accepted at any time, there are different acceptance rules for non-mandated contributions, depending on whether the member is under 65, between 65 to 70, or between 70 to 75. In each case, the member's TFN must be provided. Non-mandated contributions cannot be accepted for members over 75.

Non-concessional member contributions, such as personal contributions, are capped at an amount of \$150,000 annually or \$450,000 over a three year period.

Contributions by a member's spouse may be permissible, depending on the member's age, and super co-contributions are also allowable, depending on the member's employment status and income. In order to accept all member contributions and avoid paying additional taxes on them, it is important to record each member's TFN and quote it when required.

In some circumstances, members may claim tax deductions for personal super contributions they make. To do this, the member must first give the fund notice of their intent to claim a deduction.

Rollovers and transfers from other super funds may also be accepted by the SMSF, provided they comply with the fund's trust deed and super laws.

### **3 Managing your fund's investments**

An investment strategy must be developed to document the fund's investment objectives and how these will be achieved. The trustees are responsible for managing the fund's investments and making sure all decisions are made in accordance with the fund's strategy.

Super laws also govern the investments made by a fund by placing restrictions on the types of entities an SMSF may invest in or acquire assets from.

To protect the assets of a fund, they should generally be held in the name of either the individual trustees as trustees for the fund, or the corporate trustee as trustee for the fund. Fund assets cannot be used to financially assist members or their relatives, and borrowing by the fund is only permitted in limited circumstances. In addition, the fund is generally not allowed to acquire assets from a related party of the fund, including members and associates of the fund.

If investing in, lending to or leasing from a related party, trustees are restricted to using only less than 5% of the fund's total assets. It is important for trustees to ensure that these and all other transactions are carried out at arm's length - that is, on a strict commercial basis.

Above all, the SMSF must comply with the sole purpose test of providing retirement benefits to its members. A fund will be complying if one of its core purposes is the provision of benefits to members in either of the following circumstances: upon retirement of the member from gainful employment, upon the member reaching the prescribed age, or upon the death of the member before retirement or having reached the prescribed age.

It is the responsibility of the trustees' to ensure that the fund complies with this test at all times. The penalties for non-compliance can be severe and may lead to trustees facing civil or criminal action, including fines and imprisonment.

#### **4 Paying benefits to members**

Payments from the fund must be made in accordance with the sole purpose test, super laws and the fund preservation rules (contained in the trust deed).

There are 3 types of member benefits - preserved benefits, restricted non-preserved benefits and unrestricted non-preserved benefits - and two forms of cashing of benefits:

- compulsory cashing of benefits: this occurs only when a member dies, and
- voluntary cashing of benefits: this occurs at different times, depending on the type of benefit.

For preserved benefits and restricted non-preserved benefits, these can only be cashed after the member has met a condition of release. They are also subject to cashing restrictions, which specify the form in which benefits must be taken. On the other hand, unrestricted non-preserved benefits may be paid upon demand by a member and do not require satisfaction of a condition of release.

The conditions of release, one of which must be met before preserved and restricted non-preserved benefits can be withdrawn, include retirement, attaining age 65 or more, permanent or temporary incapacity, severe financial hardship and terminal illness or injury. However, all conditions of release are subject to the fund's rules, as detailed in the fund's trust deed. While early access to benefits may be permitted in only very limited circumstances, improper early access is illegal and can result in severe penalties from the ATO.

Benefits are generally paid to members in a single lump sum, as an income stream (pension) or through the purchase of one or more annuities. There are rules governing how income streams and annuities can be paid which the fund must observe.

In addition, the SMSF must register for and comply with PAYG withholding and meet all relevant reporting requirements. An actuary's certificate may be required if the fund is paying an income stream, in order to qualify for tax exemptions from fund assets that are used to make current pension payments.

## **5 Reporting and administration obligations**

Every SMSF needs to lodge an annual return with the ATO reporting on income tax, super regulatory information and member contributions, and to pay the supervisory levy. An approved auditor should be appointed in order to complete an audit of the fund each year. The resulting audit report must be lodged with the annual return.

When detailing member contributions in the annual return, rollovers must also be acknowledged. This, and other information within the report, is then used by the ATO to assess compliance with the rules surrounding contributions.

While professionals such as lawyers, tax agents, accountants and financial planners may assist in determining tax obligations, it is ultimately the trustees who are

responsible for compliance. As such, it is imperative that all trustees understand the rules and obligations in tax law and how they apply to the super fund.

An adequate system of record keeping should be in place to ensure accurate and proper accounting, operational and administrative records are made and kept for the requisite period of time.

The ATO also requires notification of any changes to the structure or contact details of the fund within 28 days of the change occurring.

## **6 Understanding compliance and penalties**

Trustees of SMSFs are expected to understand and meet their compliance obligations in relation to the fund, as well as ensuring that the fund's annual return is lodged and the supervisory levy paid.

While minor breaches of super laws, tax laws or the fund's trust deed may be rectified without any punishment by the ATO, administrative penalties may be imposed for certain violations. These include failure to lodge returns on time, failure to notify the ATO of changes to the structure of the fund or for false statements in relation to tax liability or other aspects of the fund.

Serious breaches are not taken lightly and can be penalised in various ways, such as by declaring the fund non-complying. This is undesirable as it will result in the fund suffering serious tax consequences.

Trustees could also be disqualified, suspended, or have legal action commenced against them as the result of a serious breach. If a trustee is found guilty of an offence, the maximum penalty is currently \$220,000 for a civil offence and/or 5 years imprisonment for a criminal offence.

Running a SMSF requires trustees to be aware of their duties and responsibilities in managing the fund and complying with legal requirements. Some of these can be difficult and complex to understand, so it is important to seek qualified and professional advice where necessary to ensure the fund is able to satisfy its legal obligations and perform satisfactorily for its members.