

Setting up a SMSF

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If you are thinking about setting up a SMSF, there are a number of decisions you will need to make regarding the structure, operation and management of your fund. To help you understand the process and decisions involved, the ATO has recently identified 5 key aspects that you should consider in setting up a SMSF. The 5 key aspects are summarised below:

Aspects		Comments
1	Deciding to set up a SMSF	You need to think about the purpose for which you are setting up the SMSF and whether you have enough time, skill and money to manage the fund.
2	Preparing to set up your fund	You must decide whether to set up the fund with individual trustees, a corporate trustee or as a single member fund. There are different requirements under each structure for the fund to be considered an SMSF, and all trustees must be eligible trustees.
3	Getting your fund started	A trust deed needs to be prepared and executed to create the SMSF. To be legally established, trustees must be appointed and the fund must acquire assets. The fund should then be registered with the ATO.
4	Starting to operate your fund	Every SMSF needs an investment strategy outlining the fund's investment objectives and action plan. All contributions and payouts must be in accordance with the fund's deed and super laws, and accurate records of the fund's activities must be kept.
5	Understanding your role and responsibilities	Trustees must be aware of their duties and obligations under the SMSF deed and super laws to ensure they are compliant with the requirements. Non-compliance can result in penalties being imposed by the ATO.

We will now consider each of the above 5 aspects in greater detail.

1 Deciding to set up an SMSF

Managing a super fund requires time, skill and knowledge, along with money and assets to make the fund viable. The purpose of any SMSF must be solely to pay retirement benefits to members, and the decision to set up a SMSF should only come after comparing this with other retirement savings options.

A SMSF requires a trustee - ie an individual or company that holds and invests the fund's assets for the benefit of the members' retirement. Upon setting up a SMSF, you will take on the role of either the trustee, or the director of a company that is a trustee - also known as a corporate trustee.

While being a trustee or director of an SMSF allows you to make your own investment choices, it carries with it the responsibility of managing the fund and making decisions which are in the best interests of all the fund members.

2 Preparing to set up your fund

If you have made the decision to set up an SMSF, the next step is to choose the structure of the fund, keeping in mind that each structure has different requirements for it to be a complying SMSF under super laws.

If the fund has individual trustees, it must have four or less members to be a SMSF, where each member is a trustee. Compared to a corporate trustee, a fund with individual trustees can be less costly to establish and is subject to fewer reporting obligations.

If the fund has a corporate trustee, it must also have four or less members, where each member is a director of the company and each director of the corporate trustee is a member of the fund. While directors of a corporate trustee must comply with more rules than individual trustees, such as the *Corporations Act 2001* (Cth), having a corporate trustee can make it easier to keep fund assets and business or personal assets separate.

A third option is to set up the SMSF as a single member fund. In that case, the fund can either have a corporate trustee or have two individual trustees where one person is a member.

In most cases, all members of the fund will need to be trustees, so you must consider whether the members are eligible to be trustees. Generally, persons over 18 are eligible, provided they are not under a legal disability and are not a disqualified person. For a corporate trustee, the responsible officer, along with the trustees and directors of the company must not be disqualified.

In addition, to be a complying fund and obtain tax concessions, the fund must come within the definition of an "Australian super fund" for tax purposes.

Overall, the choice of how to structure your SMSF will influence the manner in which you administer the fund and the types of benefits you can pay. You should consider the benefits and costs of each option and discuss them with a legal advisor before making a decision.

3 Getting your fund started

It is important that your SMSF is set up correctly to ensure it is a complying fund, it is easy to administer and is able to pay benefits as required.

All SMSFs are a type of trust, and hence a trust must be created for each fund. This requires the preparation of a trust deed, along with the identification of trustees, assets, identifiable beneficiaries and the intention to create a trust.

The trust deed sets out the rules for establishing and operating the fund, and should be prepared by a legal professional. The deed should reflect the objectives of the fund, the composition, appointment and removal of trustees, and the method and timing of benefit payouts. It should be updated as necessary to remain current with respect to members' needs and super laws.

All trustees and directors of corporate trustees need to consent to their appointment as trustees, and sign a trustee declaration within 21 days of appointment.

An SMSF must hold assets to be legally established. This is usually achieved by making a contribution to the fund at the time of executing the trust deed. All assets must be protected by accurately recording their ownership. Fund assets, other than money, should be held in the name of either the individual trustees as trustees for the fund, or the corporate trustee as trustee for the fund.

To avoid the possibility of additional tax liability on certain member contributions, each member's TFN must also be recorded.

Once the fund has been legally established, it must be registered with the ATO. For an SMSF to be a complying fund and obtain tax concessionary treatment, you must elect for it to be regulated within 60 days of its establishment. All funds are then issued with a TFN and ABN.

A bank account will need to be opened in the fund's name to manage the fund's operations and for the receipt of cash contributions and rollovers of super benefits. Account records should be kept for each member, detailing their contributions, any fund earnings allocated to them, and any payments of super benefits made to them.

In addition, if the fund's annual turnover is greater than \$75,000, it will need to be registered for GST.

4 Starting to operate your fund

An investment strategy must be developed to document the fund's investment objectives and how you plan to achieve them. A financial advisor may help devise the strategy, however, the trustees of the fund are ultimately responsible for managing the fund's investments.

All contributions and rollovers must be in accordance with the fund's trust deeds and super laws. A contribution is a payment made to the fund, while a rollover involves the transfer of existing super benefits from a previous fund to the newly established SMSF.

In determining whether your fund can accept contributions from a member, consider the type of contribution, whether there is a cap on contributions which the member has exceeded, the member's age and whether they provided their TFN.

In general, an SMSF can accept employer contributions, personal contributions, salary-sacrifice contributions, super co-contributions and eligible spouse contributions. However, check the rules governing your fund to clarify this position.

As a trustee, you must develop a method for keeping accurate and current administrative and financial records for the fund. These can be important in supporting the decisions you make on behalf of the fund and in helping auditors assess the fund's compliance with super laws.

One of the requirements under super laws is that each SMSF appoint an approved auditor to audit the fund's operations each year. If the fund begins paying a pension to any member, an independent actuary may also need to be appointed.

Trustees must know the rules contained in the trust deed and super laws about paying benefits to members. The common forms of payment are as a lump sum, as an income stream, for example a pension or annuity, or a combination of both. It is also important to plan for the future by considering how to deal with members' funds in the event of their death, and whether insurance is necessary for protection of the fund's assets.

5 Understanding your role and responsibilities

Ultimately, it is the trustees who are responsible for complying with tax and super laws, even if financial and legal advisors provide guidance. The ATO can impose penalties for non-compliance, including declaring the fund as non-complying and disqualifying trustees.

While an SMSF allows trustees to make their own investment decisions, these need to be made in accordance with the fund's trust deed, investment strategy and super laws. In particular, they must comply with certain investment restrictions

contained in super laws. A legal advisor can help determine whether your fund's investments comply with these restrictions.

Keeping proper records is imperative for the fund's audit to be properly executed each year. As trustee, you are responsible for ensuring that the auditor's report is lodged with the fund's annual return.

The decision to set up a SMSF is only the first of many which must be made in order to establish an effective and viable super fund. Some of the decisions and processes involved can be complex, so it is critical you seek advice from legal advisors with expertise in superannuation law.