GFM Wealth Advisory

SMSF SMART

An educational series for potential and existing SMSF Trustees

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Australian Financial Services Licence No. 229401 ABN 69 006 679 394

An Introduction to SMSFs

Chapter #1

SMSF Smart is designed to assist potential and existing SMSF trustees with their understanding of an SMSF. It provides a comprehensive guide on how an SMSF works.

In this first chapter, we cover:

- What is Superannuation?
- What is a self–managed super fund?
- Advantages of SMSFs
- Disadvantages and Risks of SMSFs
- Multi–member funds
- Single member funds
- Individual versus Corporate Trustee Structure

What is Superannuation?

Superannuation is a dedicated vehicle to save for retirement. Contributions made are invested and accumulated until the member's retirement or another specified event, such as death or incapacity.

Many people consider superannuation to be a different investment option in contrast to the investments they may make in their name. Nothing could be further from the truth. The investments that you make via your superannuation fund are virtually the same and behave in the same way as those made by you in your name. Superannuation funds can invest in cash, property and shares in the same way as other investors. The main difference is that superannuation earnings are generally taxed at a lower rate than those from investments made by individuals or by using trust or company structures.

What is a self–managed super fund (SMSF)?

An SMSF is a private superannuation fund, regulated by the Australian Taxation Office (ATO). It is a legal tax structure with the sole purpose of providing for your retirement and operates under similar rules and restrictions as ordinary super funds.

Since the official introduction of SMSFs in 1999, they have grown to represent a significant component of the superannuation sector.

An SMSF can currently have up to four members. Being a member of an SMSF requires you to actively participate in the fund's investment, administration and management. In an SMSF, all members take on the responsibility and control of managing all of the members' retirement savings.

SMSF trustees perform the same role as other superannuation fund trustees; receiving and investing member contributions and making them available s as lump sums or pensions to members when they meet a condition of release.

An SMSF is most appropriate for those who:

- Prefer to have direct control over their superannuation;
- Wish to be involved in investment decisions,
- Wish to gain from the potential strategic flexibility and estate planning benefits associated with SMSFs; and
- Have a significant superannuation balance, making the costs associated with running your own SMSF more effective

Advantages of SMSFs

There are many possible advantages of an SMSF:

Direct investment choice	You can invest in your own combination of investments that are aligned with your risk profile and objectives. This can include direct shares, high–yielding cash accounts, term deposits, income orientated investments, unlisted assets and direct property. Typically not all of these investments are available via mainstream superannuation funds.
Flexibility	Within an SMSF you can adjust your investment mix as it suits you, allowing for a faster response to changes in market conditions, legislative changes or personal circumstances.
Transparency	SMSFs provide a platform which allows you to understand where your money is invested, with complete visibility over costs, performance and tax treatment.
Consolidation	You can have up to four members in an SMSF. You are therefore able to combine your superannuation benefits into one strategy to increase the SMSF's balance, which increases the assets and potential for compounding capital growth as well as the investment opportunity set.
Tax planning	An SMSF can grow with carefully considered tax strategies. You can reduce tax liabilities within an SMSF by selecting a tax effective mix of investments, including franked dividends.
Estate planning	A member of an SMSF can a have a non–lapsing, cascading binding death benefit nomination which allows them to specify how their benefits are to be distributed on their passing. SMSFs also allow members to run multiple pension accounts. This can help achieve better estate planning outcomes.
Strategy implementation	It can be easier to implement strategies such as super splitting, personal concession contributions, in–specie asset transfers when compared to mainstream superannuation funds. This is in addition to the previously stated SMSF tax and estate planning strategies.
Long term financial planning tool	SMSFs also allow members to run a mixture of accumulation and pension accounts within the same structure, meaning an SMSF can be a suitable long term financial planning tool.
Cost considerations	SMSFs become more cost effective with larger balances. SMSF trustees must lodge an annual tax return and audit and pay ATO fees. These are not based on a percentage of your super balance.

Disadvantages and Risks of SMSFs

Cost barriers	The cost may vary depending on the SMSF balance, complexity of investments and level of outsourcing. Once you are in the pension phase, there may be a point at which the SMSF ceases to be cost–effective because fixed costs will remain constant or increase while the balance of the SMSF diminishes. Additional charges will also be incurred upon winding up an SMSF.
Legal and compliance obligations	Although many responsibilities can be outsourced, the ultimate responsibility remains with the trustee. Even if one trustee is less actively involved, they are equally liable for complying with the trustee obligations under superannuation and tax laws
Expertise and performance	A high level of flexibility in investment choice requires sound knowledge and experience on behalf of the members.
Time–consuming	It is reasonable to expect an SMSF will take up more time for the member than alternative superannuation funds.
Succession planning issues	If one trustee is more involved in the management of the SMSF, the less active trustee may be forced to take on more responsibility and could incur problems if the dominant trustee is unable to manage the SMSF.
Lack of statutory compensation	When transferring (the whole or part of) an existing superannuation account balance from a superannuation fund regulated by the Australian Prudential Regulation Authority (APRA) to an SMSF, you should be aware that SMSFs are not subject to the same government protections that are available in APRA–regulated superannuation funds, such as statutory compensation in the event of theft or fraud.
Impact on insurance	The only Life and TPD insurance cover that many hold is through their superannuation. Moving to an SMSF may leave you without any life or other insurance cover unless the trustee(s) take out insurance for SMSF members. SMSF insurance can be harder to get and more expensive than in other superannuation funds.
Access to complaints mechanisms	Certain dispute resolution mechanisms, such as the Superannuation Complaints Tribunal, may not be available to SMSFs. However, the types of disputes and complaints that may arise for SMSF members may be different from those in an APRA–regulated superannuation fund, and access to other complaints mechanisms may be available (e.g. the Financial Ombudsman Service Limited).

Multi–member funds

An SMSF must meet the following criteria to comply with the law:

- Have four or fewer members
- Each member of the SMSF must be either an individual trustee or a director of the corporate trustee
- If the trustee of the SMSF is a company, also known as a 'corporate trustee', then each director of the company must be a member
- No member of the SMSF can be employed by another member unless those two people are related
- The trustees of an SMSF are responsible for running the fund and cannot receive any remuneration for performing this role.

Single member funds

An SMSF may have only one member if it satisfies certain necessary conditions.

An individual cannot be both the sole trustee and sole beneficiary of a trust. The SIS Act addresses this by allowing an SMSF to have a single member if the member is one of two individual trustees or a director of a company (corporate) trustee of the fund.

The most common arrangements are:

- Two trustees – one is the member and the other is a relative of the member or can be another person providing they are not an employer of the member.
- The company acting as trustee – where the member is the sole director of the corporation or the member is one of only two directors of the company, and the member and the other director are relatives or another person, and that person is not an employee of the member.

In certain situations, other people may be permitted to act as an SMSF trustee on a member's behalf without causing the fund to fail the SMSF definition. These situations might include:

- If the member is under a legal disability, their Legal Personal Representative can act as trustee on their behalf.
- A Legal Personal Representative can act as the truste should a member pass away until the deceased member's benefits commence to be paid from the SMSF.
- If an Enduring Power of Attorney has been made for a member, they can act as trustee.

Individual Trustee versus Corporate Trustee Structure

SMSFs can have an individual or corporate trustee.

SMSFs are structured as trusts, meaning that the SMSF's trustees are responsible for all the fund's affairs. The trust can be set up in one of two ways. It is a requirement that you appoint either a group of individuals or a company to act as the trustee of the fund to qualify as an SMSF. The trustee structure you choose will influence how your SMSF is administered.

1. Individual Trustee Structure

Generally, all trustees must be members of the SMSF, and all members must be trustees. This gives all members input into, and control of the SMSF's administration and investment decisions. For example Michael Smith and Susan Smith as trustee for the M & S Smith Super Fund

2. Corporate Trustee Structure

Under this structure, a company is the trustee of the SMSF. For example Michael and Susan Super Pty Ltd as trustee for the M & S Smith Super Fund.

Generally speaking, all the directors of the company need to be members of the SMSF. This upholds the principle that all members have an interest in the SMSF's administration and decision–making.

It is best practice to use a sole purpose trustee company in the case of a corporate trustee to minimise the possibility of intermingling SMSF's assets with other assets belonging to the company or another related entity.

Individual Trustee and Corporate Trustee Structure: Key Differences

Trustee Requirements:

Individual Trustees

- Each member must be a trustee. Single member SMSFs must have two individual trustees
- If a member leaves the SMSF and resigns as a trustee, leaving only one member, a second individual trustee must be appointed.

Corporate Trustee

- Each member must be a director. Single member SMSFs can have a corporate trustee with the member as the sole director.
- If a member leaves the SMSF and resigns as director, leaving only one member, they do not have to appoint a second director.

Administration:

Individual Trustees

- More administrative impact if a member/trustee leaves the SMSF, as all ownership documents must be amended to reflect the new trustee composition. If a member leaves the SMSF and resigns as a trustee, leaving only one member, a second individual trustee must be appointed.

Corporate Trustee

- Less administrative impact if a member/trustee leaves the SMSF, as ownership documents remain unchanged.

Cost:

Individual Trustees

- No additional cost.

Corporate Trustee

- There are costs associated with establishing a company for the corporate trustee and an annual fee payable to the Australian Securities & Investments Commission (ASIC).

ASIC and the ATO prefer a corporate trustee structure. ASIC has released some documents which outlined the advantages of an SMSF corporate trustee structure. We at GFM have a firm preference for a corporate trustee structure as well.

By far the easiest way to deal with changes to membership is for an SMSF to have a corporate trustee in place.

Being an SMSF Trustee

Chapter #2

In this chapter of SMSF Smart, we work through the obligations of being an SMSF Trustee. We cover:

- Who can be a Trustee?
- Trustee duties and responsibilities
- The Sole Purpose Test
- Getting it wrong – Penalty Regime

SMSF Trustees are ultimately responsible for ensuring that the SMSF complies with the superannuation laws. Generally, all Trustees of the SMSF must be members of the SMSF. SMSF Trustees carry equal responsibility for the management of the SMSF, regardless of the level of involvement in the running of the SMSF. Trustees are ultimately responsible even though they may use accountants, financial advisers, lawyers and other professionals to look after the SMSF.

Who can be a Trustee?

It is not possible for an individual to act as a Trustee (or Director of the Trustee company) under the Superannuation Industry (Supervision) Act 1993 (SIS Act) if they;

- Are under 18 years of age;
- Lack the ability to manage their affairs (e.g. don't have full mental capacity);
- Are bankrupt or have been found guilty of an offence involving dishonesty;
- Have been penalised under the SIS Act or related regulations;

There are three exceptions to the rule that all members of the SMSF must be Trustees. They are;

- Should a member pass away, a Legal Personal Representative can act as the Trustee until the deceased member's benefits commence to be paid from the SMSF.
- If an Enduring Power of Attorney has been made for a person, they can act as Trustee.
- If the member has no legal capacity to act as a Trustee, their Guardian or Parent can act as the Trustee.

Trustee duties and responsibilities:

Obligations as an SMSF Trustee include:

- Legal obligations
    - The SMSF must be operated as required by the Trust Deed, the provisions of the SIS Act and applicable tax, corporations, family and trust legislation.
- Adhere to the Covenants (obligations) in the SIS Act and Regulations
    - The covenants imposed on Trustees by the legislation are deemed to be part of the Trust Deed of every fund.

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The covenants require Trustees to:

- In all matters concerning the SMSF, act honestly
- Act in the best interests of all members
- Ensure SMSF assets are separated from personal and business assets
- Develop, implement and regularly review an investment strategy
- Allow access to information and keep members informed

Obligations with which SMSF Trustees must comply under superannuation and taxation laws include:

- Maintain the SMSF for the sole purpose of providing retirement benefits to members, or to their dependants if a member dies before retirement
- Accepting contributions and paying benefits (pension or lump sums) to members and their beneficiaries in line with superannuation and taxation laws and the SMSF Trust Deed
- Valuing assets at market value for the preparation of financial accounts and statements
- Having the financial accounts and statements for the SMSF audited:
  - All SMSFs must have their financial accounts and their compliance with the SIS Act audited annually by an approved SMSF auditor.
- Meeting the reporting and administration obligations imposed by the ATO:
  - Trustees must keep minutes of meetings, keep the financial records, prepare and lodge annual returns with the ATO and have the fund's accounts audited every year. Some of these records are required to be kept for up to 10 years.

Trustees are responsible for compliance with a range of investment-related requirements including:

- The investment strategy covenant
- Various restrictions on investments and benefits including those related to:
  - Lending to members or their relatives
  - Acquiring assets from members or their relatives
  - In-house assets
  - Arms–length transactions
  - Borrowing by the SMSF
  - Member reporting obligations
  - Contribution standards, and
  - Benefit payments standards.

The Sole Purpose Test:

It is the Trustee's responsibility to ensure the SMSF is only maintained to provide benefits to members upon their retirement or their beneficiary if a member dies. An SMSF is required to be exclusively operated for superannuation purposes to be eligible for the tax concessions ordinarily available. This is called the Sole Purpose Test

Contravening the sole purpose test is very serious. In addition to the fund losing its concessional tax treatment, Trustees could face civil and criminal penalties.

It's likely that an SMSF would not meet the sole purpose test if you or anyone else, directly or indirectly, obtain a financial benefit when making investment decisions and arrangements (other than increasing the return to the SMSF).

Your SMSF will fail the sole purpose test if it provides a pre-retirement benefit to someone – for example, personal use of an SMSF asset.

Getting it wrong – Penalty Regime:

At all times, with no exceptions, an SMSF needs to be an appropriate retirement savings vehicle.

An SMSF needs to meet the definition of an 'Australian superannuation fund' to be a complying super fund and benefit from tax concessions. This means:

- The SMSF has been established in Australia or holds investments in Australia
- The decisions about the SMSF must be made in Australia except where the Trustees are temporarily absent from Australia for short periods of up to two years
- Where the SMSF has contributions added to it by members (the active members), 50% of the SMSF's assets are attributable to active members who are Australian residents

If an SMSF is non–complying, its assets and income less any non–deductible contributions are taxed at 47% currently.

Some duties and obligations are outlined in the SIS Act; other responsibilities are the subject of general trust law. Trustees are liable under the law for breaches of duties.

If an SMSF breaches the SIS Act:

- The SMSF may no longer be eligible for the superannuation concessional taxation treatment.
- The ATO may fine the SMSF.
- The SMSF may be issued with rectification and an education direction by the ATO.
- Trustees can be disqualified as a Trustee of any superannuation fund.
- Trustees may each have an administrative penalty imposed personally. The penalty cannot be paid from the SMSF.

In Summary:

Getting the right advice and expert guidance is so important when you are a Trustee of an SMSF.

While SMSFs come with greater control, there is also more responsibility. Being a Trustee requires you to actively participate in the investment, administration and management of the SMSF.

The Trust Deed

In this chapter of SMSF Smart, we look at the Trust Deed.

The Trust Deed is a legal document that contains the governing rules of the SMSF. It should be drawn up by a legal professional since it is a legal document.

The Trust Deed is an important document. Not all Trust Deeds are created equal and when it comes to Trust Deeds, it is a case of getting what you pay for.

The Trust Deed sets out the rights and obligations of the trustee and members of the fund. It is the first reference point for all decisions on the operation and management of the SMSF. It is like the constitution of a company and will determine how the SMSF can manage the investments and contributions for the benefit of the members on retirement or death.

When looking to do anything with your SMSF, it is not just a case of checking whether it is allowable under the relevant superannuation and taxation laws. You need to ensure that your Trust Deed allows it – if it is not contained in the rules of the Fund then you can't do it. The Deed should set out the membership of the Fund (i.e. the Trustees and their responsibilities), the aims of the Fund and the management and payment of benefits. A Trust Deed can be tailored to meet the specific needs and objectives of members, but it cannot override other legal requirements and the super and tax rules and regulations. If there is a conflict between the Trust Deed and the tax and superannuation laws, the law takes precedence. However there is nothing to prevent a Trust Deed from containing provisions that are more restrictive than the super rules.

To ensure the Trust Deed remains compliant with legislation, it should be reviewed regularly and Trustees are required to keep a copy of all versions of the Deed and any instrument that has changed if the Trust Deed is amended or replaced.

As a Trustee, your role is to ensure the Trust Deed is created when the SMSF is first established and to understand, sign and date the Deed, ensuring it is properly executed according to State or Territory laws.

Contributing to Superannuation

In this chapter of SMSF Smart, we look at Contributing to Superannuation.

Introduction

Generally, a contribution is money paid into your SMSF.

However, a contribution to an SMSF is anything of value that increases the capital of an SMSF provided by a person whose purpose is to benefit one or more particular members of the SMSF.

Depending on the circumstances in which the contributions are made to the SMSF:

- The contributor may be eligible for an income tax deduction or a tax offset; or
- The SMSF trustee may receive the Government Co-Contribution or Low Income Superannuation Contributions on the contributing member's behalf.

There are four types of contributions:

- Personal contribution – made by the member
    - Personal non-concessional, personal concessional contributions
- Other contributions - made by someone other than the member or employer
    - Spouse contribution, government co-contribution
- Voluntary employer contribution
    - Salary sacrifice, other employer contributions above the Super Guarantee
- Mandated employer contribution
    - Super Guarantee, or contribution under an industrial award

For tax purposes, contributions to superannuation are divided into two types: concessional and non-concessional contributions.

An SMSF Trustee must not accept a contribution from a member unless they have quoted their TFN, or the member quotes their TFN to the trustee within 30 days of the contribution being received.

SMSF Trustees can only accept contributions for members when the conditions specified by the law and the trust deed have been met.

Eligibility to Contribute to Super

The following table summarises the rules for when a person is allowed to contribute to super:

Age at time of contribution	Personal contribution - made by the member	Other contributions - made by someone other than member or employer	Voluntary employer contribution	Mandated employer contribution
Under 65	Yes	Yes	Yes	Yes
65 to 69	Yes - Work test required	Yes - Work test required	Yes - Work test required	Yes
70 to 74	Yes - Work test required	No	Yes - Work test required	Yes
75 and over*	No	No	No	Yes

*You cannot make non-concessional or voluntary concessional contributions, regardless of whether you satisfy the work test, once you reach age 75. However, if you turn 75 during the Financial Year, you can make such a contribution up to 28 days after the end of the month in which you turn 75 if the work test has been met.

The Work Test

The work test requires that an individual be gainfully employed for at least 40 hours in not more than 30 consecutive days in the Financial Year of the contribution before the contribution is made.

'Gainfully employed' means to be employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

The concept of gain or reward is the receipt of remuneration for personal services. Unpaid work does not meet the definition of gainful employment. It also does not include the passive receipt of income such as dividends, rent or trust distributions. Therefore, the gainful employment test would not be met if a member only receives passive income or undertakes volunteer work.

If you contribute without meeting the work test, the amount must be returned to you within 30 days. Any amounts that are not returned within this time will mean the SMSF has breached contribution rules resulting in compliance issues that will be reported in your SMSF Annual Audit.

Total Super Balance

From 1 July 2017, the concept of 'Total Super Balance' came into effect. This measures the value of your super interests on 30 June each year. Your Total Super Balance is used to determine eligibility for some super measures.

Your Total Super Balance is generally the sum of:

- Accumulation phase values
- Retirement phase values
- Rollover superannuation benefits

Rollovers

A rollover is the transfer of some or all of a member's superannuation benefit from one complying superannuation fund to another, with the member's consent.

Rollovers are not considered to be contributions and therefore are not taxed or subject to any contribution caps.

Concessional Contributions

Concessional contributions are those where a tax deduction has been claimed, either by an employer or by an individual.

Types of Concessional contributions

Employer contributions

Employer contributions include the compulsory super guarantee (SG), award contributions and voluntary employer contributions.

Salary sacrifice contributions

Salary sacrifice contributions are those made by your employer based on an agreement with you in the form of a salary sacrifice arrangement. Salary sacrifice contributions are those made by your employer to your super fund, instead of making an equivalent salary payment to you.

Where a tax deduction is claimed for personal contributions

These voluntary personal contributions are made by you, for which you claim a tax deduction.

You will need to complete the relevant form from the ATO ("Notice of intent to claim or vary a deduction for personal super contributions") and submit to your super fund if you intend to claim a tax deduction for a personal contribution. The trustee must acknowledge this notice.

Also, a notice of intent to claim the deduction must be given, where relevant, before:

- Commencing an income stream with either all or part of the contribution
- Withdrawing or rolling over benefits (which include the contribution)
- The member gives the trustee a splitting contributions application.
- Alternatively, in any other case, the earlier of:
  - When the member lodges their tax return; or
  - The end of the Financial Year following the year in which the contribution is made.

The concessional contribution threshold is $25,000 per annum, regardless of age. The limit is indexed to average weekly ordinary time earnings (AWOTE) in $2,500 increments.

Tax on contributions up to the threshold is 15%, commonly referred to as contributions tax.

Carry forward of concessional contributions

From 1 July 2018 members with a Total Super Balance of less than $500,000 will be able to access their unused concessional contributions cap space to make additional concessional contributions, on a rolling basis for five years. Amounts carried forward that have not been used after five years will expire. Only amounts unused accruing from 1 July 2018 can be carried forward.

From 1 July 2019, members will be able to use their accrued unused concessional contributions cap space to make catch-up concessional contributions.

Excess concessional contributions

Excess concessional contributions are effectively taxed at the individual's marginal tax rate, plus an interest charge calculated by the ATO.

Up to 85% of excess concessional contributions can be withdrawn, and unless withdrawn, concessional contributions which exceed the threshold also count towards the non-concessional limit.

Division 293

Commonly referred to as Division 293 tax, an additional tax of 15% is imposed on concessional contributions for those individuals earning more than $250,000 in the Financial Year.

If you need to pay Division 293 tax, the ATO will issue you with a notice of assessment stating the amount of tax payable for the Financial Year and provide you with a release authority to enable the amount to be paid from your super account.

Non-concessional Contributions

Personal contributions made from after-tax income, on which no tax deduction is claimed are known as non-concessional contributions. Some other amounts are classed as non-concessional contributions.

No contributions tax is payable on non-concessional contributions.

Non-concessional contribution threshold and tax rates

Unless the bring forward rule applies, and your Total Super Balance wasn't more than $1.6 million on 30 June of the previous Financial Year, the non-concessional contribution threshold is $100,000 per annum.

The non-concessional threshold is four times the concessional contribution cap.

Excess non-concessional contributions

Where contributions have exceeded the non-concessional cap, an individual can generally elect to withdraw this excess (plus 85% associated earnings). The associated earnings are included in the taxable income of the individual. The individual is eligible for a (non-refundable) tax offset equal to 15% of the associated earnings.

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Bring-forward rule

Under age 65

If a member is under 65, they can make non-concessional contributions of up to three times the annual cap in a single year by "bringing forward" two years' worth of their cap. From 1 July 2017, this means that you can contribute up to $100,000 per year or up to a maximum of $300,000 averaged over a three year fixed period.

The "bring forward" rule is triggered once contributions exceed the cap in any given year and that year's cap amount will apply for the following two years.

From 1 July 2017, the non-concessional contribution cap that a member can bring forward will depend on their Total Super Balance at 30 June of the previous year.

Where your Total Super Balance is:

- Less than $1.4 million, the maximum non-concessional contributions is $300,000
- Between $1.4 million and $1.5 million, the maximum non-concessional contribution is $200,000
- Between $1.5 million and $1.6 million, bring forward is not available as total non-concessional contributions are limited to $100,000.

The bring-forward rule resets at the end of the three years, allowing you to make further non-concessional contributions at the end of the period.

Turning age 65

The bring-forward provisions are not available to those above 65.

However, if you are age 64 on 1 July in a particular Financial Year, you can implement the bring forward provisions if a non-concessional contribution above $100,000 is made.

In-specie Contributions

In some situations, a limited range of investments may be transferred to an SMSF and for the value of the investment to be treated as a contribution; this is called an in-specie contribution.

Examples of in-specie contributions include:

- Public company shares listed on a stock exchange
- Property that is used exclusively for business, commercial or principally farming purposes. This is also called 'business real property'.

Residential property cannot be transferred into an SMSF.

Considerations for in specie transfers

While there can be significant tax savings by transferring assets from your name to your SMSF, there are several issues to consider:

- Transferring assets to super "locks" the asset into the super system due to preservation so you will be unable to access it until you meet a condition of release
- Contribution thresholds need to be observed
- In-specie contributions may be subject to capital gains tax and stamp duty

Co-contributions

Super co-contributions help eligible people boost their retirement savings.

If you're a low or middle-income earner and make a non-concessional contribution, the government also contributes (called a co-contribution) up to a maximum amount of $500.

The amount of government co-contribution you receive depends on your income and how much you contribute.

The Government co-contribution does not count towards the concessional or non-concessional thresholds.

Eligibility

To be eligible for a government super co-contribution you must:

- Have made one or more eligible personal super contributions to your super account during the Financial Year;
- Pass the two income tests (income threshold and 10% eligible income tests);
- Be less than 71 years old at the end of the Financial Year;
- Not hold a temporary visa at any time during the Financial Year (unless you are a New Zealand citizen or it was a prescribed visa);
- Lodge your tax return for the relevant Financial Year;
- Have a Total Super Balance less than the Transfer Balance Cap at the end of 30 June of the previous Financial Year, and
- Not have contributed more than your non-concessional contributions cap

How much is the government co-contribution?

Based on current thresholds, the maximum government co-contribution is $500. This is calculated as $0.50 for every $1 of personal contribution made, in the Financial Year up to $1,000. This is subject to an income test.

The maximum co-contribution of $500 is reduced by 3.333 cents for every dollar that total income exceeds the lower income threshold.

Spouse Contributions Offset

A spouse contribution involves contributing to a low income or non-working spouse's super to build their retirement savings.

Eligibility

You can contribute on behalf of your spouse and claim a tax offset (commonly referred to as a 'rebate'), if:

- The sum of your spouse's assessable income, total reportable fringe benefits amounts and reportable employer super contributions were less than $40,000, and the contributions were not deductible to you.
- Both you and your spouse were Australian residents when the contributions were made.
- When making the contributions you and your spouse were not living separately and apart on a permanent basis.

- Your spouse had not exceeded their non-concessional contributions cap for the relevant year or had a Total Super Balance equal to or exceeding the Transfer Balance Cap immediately before the start of the Financial Year in which the contribution was made (the general Transfer Balance Cap for 2017–18 is $1.6 million).

There is no age limit or work test for the person making the contributions. However, if the receiving spouse is aged 70 or over, contributions can't be accepted.

How much is the spouse contribution offset?

An 18% income tax offset for contributions up to $3,000 is available, with the maximum tax offset being $540.

The full offset is available where the assessable income and reportable fringe benefits of the receiving spouse is below $37,000.

The offset phases out as the spouse's assessable income and reportable fringe benefits increases to $40,000, above which no offset is available.

Treatment of spouse contributions

Spouse contributions are fully preserved and form part of the tax-free component. They are treated as non-concessional contributions and are not included in the SMSF's assessable income.

Spouse Contribution Splitting

Contribution splitting refers to the splitting of concessional contributions between you and your spouse, enabling you to boost your spouse's super savings with some of your own.

Contributions can be split with your spouse after the end of the Financial Year and at any time up to the end of the following Financial Year.

For a member to split a contribution, an application must be made to the member's fund. Before the end of the Financial Year, this ATO form should be sent to, received, and acknowledged by the member's super fund.

Up to 85% of concessional contributions are splittable, and there is no age requirement for the originating spouse.

Eligibility

The requirements for eligible contributions splitting are:

- The receiving spouse must be:
  - Less than their preservation age; or
  - Between their preservation age and 64 and not be retired
- The trust deed of the super fund must allow the splitting of contributions

Treatment of contribution splitting

Contribution splitting counts only towards the concessional cap of the originating spouse. When it is split to the receiving spouse, it does not count towards any cap.

The amount is fully preserved for the receiving spouse.

Withdrawing Money from Superannuation

In this chapter of SMSF Smart, we look at withdrawing money from Superannuation.

Preservation

Most of your super savings are preserved, or not accessible until you reach your preservation age, or meet one of the other prescribed situations contained in the super legislation. These are commonly referred to as a condition of release.

Where a Trustee of a super fund is reasonably satisfied that a member has met a condition of release with no restrictions, the member's preserved benefits and restricted non-preserved benefits in the fund at that time become unrestricted non-preserved benefits (i.e. accessible).

There are three possible preservation statuses, depending on how and when the money came into the fund.

Preserved

Most of your super will be in the form of preserved benefits. These must be preserved until the time the law allows them to be paid.

All contributions made by or on behalf of a member, and all earnings since 30 June 1999, are preserved benefits.

You can generally access your preserved super when you retire or meet a condition of release such as severe financial hardship or a terminal medical condition.

Restricted non-preserved

Restricted non-preserved benefits generally stem from employment-related contributions (other than employer contributions) made before 1 July 1999.

Investment earnings on any restricted non-preserved amounts are preserved.

You can generally access restricted non-preserved super when you leave the employer who made those contributions for you.

Unrestricted non-preserved

Unrestricted non-preserved benefits do not have any restrictions so that these amounts can be withdrawn at any time.

Unrestricted non-preserved amounts:

- Can be taken in cash or commence a retirement phase income stream
- Are not indexed, and any earnings on these benefits will be preserved
- When rolled over, will continue to remain unrestricted non-preserved

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Priority of preservation components upon withdrawal

If you have satisfied a condition of release with a nil cashing restriction, all your benefits will become unrestricted non-preserved. However, if you have met a condition of release with a cashing restriction, benefits will be paid in the following order:

1. unrestricted non-preserved benefits, then
2. restricted non-preserved benefits, then
3. preserved benefits.

Preservation age

Access to super benefits is generally restricted to members who have reached preservation age. A person's preservation age ranges from 55 to 60, depending on their date of birth.

Date of birth	Preservation age (years)
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

Conditions of release

A condition of release is satisfied upon the occurrence of a specific event.

When a condition of release occurs that has a nil cashing restrictions (full access), both preserved and restricted non-preserved benefits become unrestricted non-preserved benefits and are available for access by the member.

The following events will result in a condition of release with nil cashing restrictions:

- Retirement on or after reaching preservation age
- Attaining the age of 65
- A terminal medical condition
- Death
- Permanent incapacity
- Termination of gainful employment with a standard employer-sponsor on or after 1 July 1997, where the preserved benefit at the time of termination is less than $200
- Being a lost member who is found, and the value of whose interest in the fund, when released, is less than $200.

Conditions of release with nil cashing restriction

The following events will result in super benefits becoming fully accessible.

Reaching age 65

Once you reach age 65, your super becomes unrestricted non-preserved. This generally means you will have unrestricted access to your super.

Retirement - reached a preservation age that is less than age 60

For an individual that has attained their preservation age, but under age 60, retirement occurs when both the following are satisfied:

- an arrangement under which the member was gainfully employed has come to an end
- the Trustee is reasonably satisfied that the person intends never to again become gainfully employed for ten hours or more each week.

Retirement - reached age 60

In the case of a person who has attained age 60, retirement occurs when an arrangement under which the member was gainfully employed has come to an end, and either one of the following applies:

- the person attained this age on or before ending employment, or
- the Trustee is reasonably satisfied the person never intends again to become gainfully employed

Permanent incapacity

Permanent incapacity is defined as having ceased paid work, and the Trustee must be reasonably satisfied that you are unlikely to, because of physical or mental ill-health, ever again engage in gainful employment for which you are reasonably qualified by education, training or experience.

The incapacity may have occurred before ceasing employment or could have happened after employment terminated. The Trustee's decision to pay the benefit under the trust deed may take these developments into account.

Death

The death of a member is a full condition of release, resulting in all the deceased's remaining super benefits becoming re-classified as unrestricted non-preserved. These benefits must be distributed to beneficiaries as soon as practicable after death in accordance with the super rules and the SMSF's trust deed.

Termination of gainful employment (restricted non-preserved amounts)

There are no cashing restrictions for restricted non-preserved benefits when a member terminates gainful employment with an employer who had, or any of whose associates had, at any time, contributed to that super fund.

Terminal medical condition

Since 1 July 2007 a terminal medical condition exists, allowing for a nil cashing restriction if the following criteria are met:

- two registered medical practitioners have certified, jointly or separately, that the individual suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period that ends not more than 24 months after the date of certification
- at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person for each of the certificates, and the certification period has not ended.

A temporary resident leaving the country:

Eligible temporary resident visa holders who permanently leave Australia can apply to the ATO to have accumulated super benefits paid out.

Conditions of release with cashing restrictions

Transition to Retirement

If you reach your preservation age but have not retired, you can access your super as a regular income stream as a Transition to Retirement income stream. This income stream cannot be converted to a lump sum (commuted) until you meet the definition of retirement or reach age 65, thereby satisfying a nil cashing restriction. Further, from 1 July 2017, the investment earnings supporting a Transition to Retirement income streams will no longer be entitled to a tax exemption. Once you subsequently meet the a condition of release with nil cashing restrictions, the Transition to Retirement income stream will revert to a retirement phase income stream and the tax exemption on earnings will apply. At this stage, it will also then count towards your transfer balance cap.

Temporary incapacity

The release of funds to cater for temporary incapacity is allowed under the super rules as a non-commutable income stream. Temporary incapacity means physical or mental ill-health that caused the member to cease gainful employment but does not constitute permanent incapacity.

The amount of super released under temporary incapacity must be taken as an income stream (with specific restrictions) cashed from the regulated super fund for:

- The purpose of continuing (in full or part) the gain or reward which the member was receiving before the temporary incapacity
- A period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity.

Compassionate grounds

A person can apply to the Department of Human Services for a determination to release their preserved benefits, or restricted non-preserved benefits, in full or part due to compassionate reasons. The Department of Human Services should be satisfied that you do not have the financial capacity to meet an expense arising from grounds such as:

- Payment on a loan that is required to prevent foreclosure of a mortgage on a principal residence
- To cover costs concerning a dependant's death, funeral or burial
- To pay for medical treatment, medical transport, or related medical modifications to the person's principal home or vehicle for the member or a dependant.

Although the Department of Human Services must be satisfied that an application meets the criteria for early release of super, the final decision to pay out the benefit must be made by the Trustee.

Severe financial hardship:

An application for release under hardship is assessed by the Trustee. The test of hardship depends on the person's age.

Test 1: Any age

A limited amount of superannuation can be accessed if the person:

- Has received Commonwealth income support for a continuous period of 26 weeks
- Still receives income support, and
- Satisfies the Trustee that they are unable to meet reasonable and immediate family living expenses.

If this test is satisfied, the Trustee is limited to paying a single lump sum in 12 months. The minimum amount is $1,000 (or account balance if less than $1,000), and the maximum is $10,000.

Test 2: Age 56 and 39 weeks or older

If the person is aged 56 years and 39 weeks or more, they satisfy a full release of benefits if they:

- Have received Commonwealth income support for a cumulative period of 39 weeks after turning age 56, and
- Are not gainfully employed on the date of application.
- If this second test is satisfied (for people over age 56 years and 39 weeks only), the current superannuation benefits are fully accessible (i.e. nil cashing restriction). The entire balance will become unrestricted non-preserved (subject to any payment restrictions by the superannuation fund's trust deed).

The age 56 relates to the preservation age applicable at the time. Those with an older preservation age will not be able to satisfy Test 2 until they are 39 weeks passed their preservation age.

Paying a lump sum or income stream

Upon retirement, benefits are usually paid as either a lump sum or as a pension. Lump sum benefits may be paid in cash or in-specie. Pensions are required to be paid in cash.

Traditionally in Australia, people have preferred to receive lump-sum payments to receiving income streams. The main reason being that in the past, the amount of money saved in superannuation has been relatively small (e.g. the money a person received at retirement could be used to pay off the mortgage, buy a car or go on an overseas trip).

The attitude towards spending the lump sum soon after retirement is slowly changing. People are becoming much more aware of the need to provide for retirement, and contributions under the Superannuation Guarantee system are starting to accumulate into sizeable amounts.

It is for these reasons that income streams are becoming more popular.

Under the SIS Act, there are limited types of pensions that can commence from the SMSF:

- Account-based pensions

This is calculated using the superannuation member's account balance when the pension commences and after that at 1 July in each subsequent Financial Year. A minimum annual pension amount applies.

- Transition to Retirement pensions

A Transition to Retirement pension is a type of account-based pension that can commence once you reach preservation age. This enables you to keep working and supplement your income with some of your superannuation. The main restriction is that the pension must be paid as an account-based pension and that you cannot convert it into a lump sum. There are restrictions on the maximum pension amount that can be paid.

- Market-linked income streams

A market-linked income stream can only commence in very limited circumstances.

Transfer Balance Cap

From 1 July 2017, a $1.6 million cap on assets that can be transferred to a superannuation retirement phase income stream tax-free took effect. This is subject to CPI indexation (in $100,000 increments) after that.

The Transfer Balance Cap generally limits the amount of assets you can transfer to tax-free superannuation retirement phase income streams.

If an amount greater than the Transfer Balance Cap is transferred to a superannuation retirement phase income stream, you will generally be required to remove the excess amount from the retirement phase of superannuation. You may also be liable for an excess transfer balance tax.

A person commences to have a transfer balance account on the later of 1 July 2017 and when they start a superannuation retirement phase income stream. The transfer balance account will track the net amount a person has transferred into the tax-free retirement phase of superannuation.

Specific rules apply to the payment of superannuation death benefits paid as superannuation retirement phase income stream, defined benefit income streams and annuities.

Payments from super upon death

It is compulsory for the SMSF to pay or commence paying a member's superannuation benefit on their death.

Superannuation benefits on a member's death can be paid to the dependants and/or the legal personal representative of the deceased member.

A superannuation lump sum death benefit is an amount that, in the event of a person's death, is paid to a dependant or legal personal representative of the deceased.

A superannuation death benefit income stream can be a new income stream or a continuation of an existing income stream, and there are restrictions depending on the beneficiary.

Who is a dependant for purposes of paying benefits?

A dependant for purposes of paying superannuation is a person who is ordinarily dependent on a person for support. It includes the spouse (including a member of a same-sex couple), a child of the person and anyone who is in an interdependency relationship with the person. The spouse and child are included, irrespective of whether they are financially dependent on the person for support.

Ordinarily dependent: A person who is ordinarily dependent on the person is usually someone who is financially dependent on them for support.

An interdependency relationship exists where two persons:

- Have a close personal relationship;
- Live together;
- Provide financial support; or
- Provide domestic support or personal care.

If they do not satisfy the above conditions, they will be considered to be in an interdependency relationship only if one of them suffers from a physical, mental or psychiatric disability.

Death benefit nominations

The payment of a death benefit is ultimately a matter of Trustee discretion, subject to the payment standards and the governing rules of the SMSF.

You can direct how your SMSF death benefits are to be paid after your death, so long as this is allowed in the trust deed. This direction is called a binding death benefit nomination.

A binding death benefit nomination is a written direction that directs the Trustee to pay your death benefits to certain dependants and/or the legal personal representative in the proportions set out therein in the event of your death.

If the binding death benefit nomination is valid and in effect at the date your death, the Trustee must pay your SMSF monies to the beneficiaries nominated in the proportions set out in the nomination.

In Summary:

An SMSF Trustee must ensure the relevant payment rules and regulations are being met.

The payment standards and cashing restrictions are prescribed operating standards that apply to the operation of the SMSF as a regulated superannuation fund and must be complied with at all times.

SMSF Investment Rules

In this chapter of SMSF Smart, we look at SMSF Investment Rules.

The Sole Purpose Test

Underpinning all SMSFs is the Sole Purpose Test. The Sole Purpose Test requires an SMSF to be maintained exclusively to provide benefits for members, including:

- Retirement benefits;
- Benefits for members of the SMSF on reaching age 65; and
- The provision of benefits for the member's dependents or the member's legal personal representative in the event of the member's death.

Trustees must ensure that the SMSF does not undertake an investment that provides pre-retirement benefits to members or related parties.

An SMSF is not permitted to provide a direct or indirect financial benefit to a member or relative when making investment decisions and arrangements.

Unless the transaction complies with the specific exceptions and limited circumstances allowed by the superannuation legislation, Trustees need to ensure that they do not:

- Lend money or resources of the SMSF to related parties;
- Acquire assets or other investments from related parties, or
- Borrow money

Collectable and personal use assets

Collectables and personal use assets include artwork, jewellery and antiques, for example.

SMSFs can invest in collectables and personal-use assets; however, strict rules apply to SMSFs investing in and maintaining those assets. Investments in such items must be made for legitimate retirement purposes, not to provide any present-day benefit.

Collectables and personal use assets can't be:

- Leased to, or part of a lease arrangement with, a related party;
- Used by a related party; or
- Stored or displayed in a private residence of a related party

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Also:

- The investment must comply with all other relevant investment restrictions, including the sole purpose test
- The decision on where the item is stored must be documented (for example, in the minutes of a meeting of Trustees) and the written record kept
- The article must be insured in the SMSF's name within seven days of acquiring it
- If the item is transferred to a related party, this must be at market price as determined by a qualified, independent valuer.

For collectables and personal use assets held before 1 July 2011, an SMSF had until 30 June 2016 to comply with these rules.

Also, investments into this asset type must also be in line with the Fund's investment strategy.

Investment strategy

An SMSF investment strategy generally outlines the investment plan the Trustees will aim to follow to achieve the SMSFs stated investment objective(s). The investment strategy requirements aim to ensure that all investment decisions are carefully considered and are not made without reference to the SMSF's circumstances.

The strategy should detail what asset classes the SMSF will invest in and the relative percentage weightings and benchmarks of each asset class.

When formulating an investment strategy Trustees are required to take into account the circumstances of the SMSF as a whole and consider the:

- Investment objectives of the SMSF
- Likely return and risk associated with an investment
- Need for diversification given the level of risk and investment timeframe
- The expectation of when benefits would start to be paid (given the age of the members), the need for liquidity
- SMSF's ability to meet ongoing operating expenses from the investment income on the asset
- Need to hold a contract of insurance that provides cover for one or more members

Investment objectives

The SMSF's investment objectives should take into account the circumstances of the SMSF, including:

- The elements of the SMSF as a whole, e.g. liabilities, taxation obligations, size
- The status of the SMSF's members, e.g. age, risk profile, expected retirement date and requirements

Investment considerations

Implementation of the investment strategy requires consideration of the following issues:

- How will certain asset classes be accessed, e.g. exchange-traded funds, direct shares, managed funds
- The process for the selection of specific assets, e.g. which shares to invest in
- Whether the investment is allowable under the SMSF's trust deed
- Whether the investment is permissible under the super investment rules
- Whether the SMSF Trustee wishes to invest in a single asset, such as a property
- Whether the SMSF wants to invest in or has existing collectables and personal use assets
- Segregation of SMSF assets for different pools of investment

Investment strategy review

The investment strategy should also contain details on how often and in what circumstances the Trustees will review the investment strategy. The strategy should be considered annually as a minimum and potentially upon the occurrence of a significant event such as:

- New or departing members
- The commencement of an income stream for a member previously in the accumulation phase
- A change in the needs of members, e.g. insurance needs of the members, benefits taken due to ill health

Who is a related party of an SMSF?

Understanding who are related parties of an SMSF is essential for compliance with the super rules. The rules impose certain restrictions on Trustees undertaking investments and arrangements that involve a related party of the SMSF. These rules include the:

- Sole purpose test
- In-house asset rules
- Restrictions on lending or providing financial assistance to members and relatives
- Prohibition of acquiring certain assets from a related party
- Arm's length rules

A 'related party' of an SMSF includes:

- all members of the SMSF
- associates of SMSF members, which include:
    - The relatives of each member
    - The business partners of each member
    - Any spouse or child of those business partners
    - Any company the member or their associate's control or influence
    - Any trust the member or their associate's control

- Standard employer–sponsors, which are employers who contribute to the SMSF for the benefit of a member, under an arrangement between the employer and the Trustee of the SMSF
- Associates of standard employer–sponsors, which include:
  - business partners and companies or trusts the employer controls (either alone or with their other associates)
  - companies and trusts that control the employer

A relative of a member means any of the following:

- A parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the member or their spouse
- A spouse of any individual specified above

Acquisition of assets from related parties

Generally, an SMSF is not able to acquire, purchase or transfer to the SMSF, assets from related parties.

However, there are exceptions including the following:

- Listed securities acquired at market value, for example, shares listed on the ASX.
- Business Real Property (sometimes very broadly referred to as commercial property) of the related party providing it is acquired at market value:
  - The property must be used wholly and exclusively in one or more businesses
  - Note that property that is used for residential purposes is unlikely to meet the definition of Business Real Property
- A farm or rural farming property
- Units in a widely-held unit trust (such as a managed fund) acquired at market value
- A term deposit acquired at market value
- An investment, loan or lease (referred to as an in-house asset) acquired at market value and where the total value of all in-house assets does not exceed 5% of the market value of the SMSF's overall investment

Invest on arm's length basis

Where a Trustee deals with a related party, the dealing must be on an arm's length basis. The purchase and sale price of SMSF assets should always reflect the true market value for the asset.

The arm's length investment rule states that an SMSF Trustee must deal with the other party to an investment transaction at arm's length. An arm's length transaction is one where an agreement is made by the parties freely and independently of each other and on commercial terms. Where a Trustee is not dealing at arm's length, the terms of the transaction are no more favourable to the other party than they would have been if they were dealing at arm's length.

While a transaction may comply with the arm's length rule, it may be in contravention of another provision of the super laws or income tax laws.

In-house assets

SMSFs are prohibited from making an investment (in the form of an investment, loan or lease of assets) that represent in total, more than 5% of the market value of the total SMSF assets with any related parties. These related party investments are called 'in-house assets'.

Typically, a lease arrangement of a Business Real Property with a related party would also be an in-house asset, if it was not for a specific section in the superannuation laws that exclude Business Real Properties subject to a valid lease or lease arrangement that is enforceable by legal proceedings with a related party from being an in-house asset.

The in-house asset rules apply to restrict the number of the SMSF's investments with related parties and ensure that the investments are made on commercial terms. The in-house asset rules act as protection for members so that members will not lose all of their benefits in the SMSF if an in-house asset goes bad.

Financial assistance and loans to members

An SMSF is not permitted to lend money to a member, or the relative of a member, in any circumstances.

While an SMSF can lend to others, Trustees should consider the SMSF's investment strategy and Trust Deed to determine whether the investment is legal.

If the SMSF does lend money, the Trustees should:

- Have an appropriate loan agreement in place signed by all the parties involved
- Ensure the agreement specifies all the terms of the loan
- Ensure the SMSF receives the interest and repayments according to the loan agreement
- If the loan agreement is not followed, take appropriate action to protect the SMSF's investment
- Ensure the loan is sensible and does not put the members' benefits at risk
- Ensure the loan is conducted on an arm's length basis, or not be more favourable to the borrower than would be expected if the arrangement was conducted on an arm's length basis

Borrowing

An SMSF can borrow money only in very limited circumstances. These circumstances include:

- Borrowing money for a maximum of 90 days to meet benefit payments to members or to meet an outstanding surcharge liability (the borrowings can't exceed 10% of an SMSF's total assets):
  - The SIA Act also requires that the borrowing is to enable a payment that must be required by law or the governining rules of the SMSF i.e. the application is pretty limited and not for anything
- Borrowing money for a maximum of seven days to cover the settlement of security transactions (the borrowings can't exceed 10% of an SMSF's total assets):
  - Trustees can only borrow to settle security transactions if, at the time the transaction was entered into, it was likely that the borrowing would not be needed
- Borrowing using instalment warrants or Limited Recourse Borrowing Arrangements that meet certain conditions

A Trustee can use a limited recourse borrowing arrangement to fund the purchase of a single asset (or collection of identical assets that have the same market value) to be held in a separate trust.

A Limited Recourse Borrowing Arrangement ("LRBA") is a special borrowing arrangement that is permitted. A specific characteristic of an LRBA is that in case of default, the lender's rights are limited to the asset which is the subject of the LRBA. The lender will have no recourse to other assets owned by the Trustees of the SMSF. The loan agreement must specify that it is an LRBA.

Trustees need to ensure that the LRBA is correctly structured. The borrowing arrangement must also comply with all other ordinary provisions of super law.

Generally, the Trustee uses the borrowed funds to purchase a single asset, such as property on a single title to be held in trust on behalf of the SMSF. The SMSF accounts for all income and expenses relating to the asset held in trust.

Some particular considerations about borrowing to buy a property through an SMSF include:

- Higher costs – SMSF property loans tend to be more costly than other property loans which must be factored into the investment decision
- Cash flow – Loan repayments must be made from your SMSF which means the SMSF must always have sufficient liquidity or cash flow to meet the loan repayments
- Hard to cancel – If the SMSF property loan documentation and contract is not set up correctly unwinding the arrangement may not be allowed and the SMSF may be required to sell the property, potentially causing substantial losses to the SMSF
- Possible tax losses – Any tax losses from the property cannot be offset against taxable income outside the SMSF
- No alterations to the property – Until the SMSF property loan is paid off alterations to a property cannot be made if they change the character of the property

In Summary:

SMSFs are required to be established and operate solely for superannuation purposes.

This means that benefits must be maintained for the sole purpose of providing retirement benefits to members, or to their dependants if a member dies before retirement.

SMSFs must comply with the sole purpose test to be eligible for the tax concessions available to a complying super fund.

Involvement in a contravention may result in the disqualification of the Trustee, attract a civil or criminal penalty and may place the SMSF's status as a complying fund at risk.

Keeping Your SMSF Healthy!

Chapter #7

In this chapter of SMSF Smart, we look at keeping your SMSF healthy.

Once the SMSF is established, the ongoing tasks will commence. The number of tasks required will depend on the circumstances of the SMSF; however, certain administrative tasks must be completed by every SMSF, every year. These include, in no particular order:

1. SMSF annual return

All SMSFs must lodge a combined income tax and regulatory return called the SMSF annual return with the ATO each year.

2. Valuing assets

Valuations are required to complete the SMSF's financial statements and annual return, as well as for member's benefit reporting purposes. Valuations should be effective at reporting date which, in most cases, is 30 June each year.

3. Engage an Approved SMSF Auditor at least 45 days before the annual return is due to be lodged

It is essential that you obtain the services of an Approved SMSF Auditor. Approved auditors perform a critical role in assessing the legal compliance of the SMSF through the annual audit they conduct on an SMSF.

Since 1 July 2013, SMSF Auditors must be registered and approved with ASIC. A list of approved SMSF Auditors can be found on the ASIC Website.

4. Acceptance of contributions

It is the Trustee's responsibility to ensure the SMSF can accept a particular contribution, as per the trust deed of the SMSF. Trustees must also ensure that contribtuions received are correctly recorded and allocated to member's accounts.

5. Notification of change in SMSF details

SMSFs are required to notify the ATO of any change in SMSF details, such as contact details, name, address, membership and Trustees, within 28 days of the change.

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6. Record-keeping

It is essential that the SMSF Trustees maintain proper records of how the SMSF is run for members. This provides an accurate history of the SMSF, supports the decisions made by the SMSF Trustee on the SMSF's behalf, and assists the SMSF Auditor and the ATO in determining whether the SMSF and the SMSF Trustee has complied with the relevant laws and regulations.

Records required to be kept for five years include:

- Accounting records that explain the transactions and financial position of the SMSF;
- The SMSF's operating statements;
- A statement of the net assets and any changes to the net assets of the SMSF during the reporting period;
- Records to show contributions and rollovers received from, and payments made to members;
- Copies of all annual returns lodged; and
- Statements describing and listing the accounting systems and records (i.e., a description of the accounts kept on paper and those maintained electronically).

Records required to be kept for ten years include:

- Registration documents (ABN, TFN, GST details etc.) and notice of the SMSF's complying status;
- Minutes of Trustee meetings and decisions;
- Records of all changes to the Trustee and the SMSF;
- Members' written consent to be appointed as Trustees;
- Copies of all reports given to members;
- Auditor engagement letters, records needed to complete the annual audit, and subsequent audit reports;
- Changes to the trust deed and/or the investment strategy;
- Death benefit nominations; and
- Trustee declarations must be kept for at least ten years or while the Trustee remains a Trustee (whichever is longer).

7. Rollovers out of the SMSF

Sometimes an SMSF member may wish to transfer all or part of their benefits to another superannuation fund. When a rollover of benefits from an SMSF occurs, the Trustee must complete a Rollover Benefits Statement, provide copies to the receiving fund(s) and the relevant member, and ensure that the rollover is only made to a complying superannuation fund.

8. Making benefit payments

The payment of superannuation benefits to members is an vital Trustee duty. Benefits can only be paid in accordance with the trust deed and superannuation legislation. In most circumstances, benefits can be paid either as a lump sum or an income stream.

9. Transferring benefits 'in-specie'

Lump sum payments (including death benefits) can either be paid via cash or by in-specie transfer of an asset out of the SMSF to the member. The requirement is that the asset is valued at market value at the time of the payment.

10. PAYG withholding

An SMSF Trustee must withhold tax, known as Pay As You Go (PAYG) withholding, where a taxable benefit is paid to a member. The most common circumstances of PAYG withholding are where the member is under age 60, and either receives an income stream or lump sum member benefit.

As the Trustee, your main ongoing management tasks will include:

- Managing investments;
- Managing the SMSF's administration; and
- Staying up-to-date with relevant superannuation and tax changes, as well as other issues that affect the SMSF (such as changes in interest rates and market conditions).

Compulsory administrative tasks include:

- Record-keeping;
- Reporting to members; and
- Tax and audit documentation.

What are the consequences of getting it wrong?

The ATO can issue a range of directions and penalties to SMSF Trustees who have not complied with superannuation laws. These consequences include:

- The requirement for you to undertake a course;
- Rectify the contravention;
- Fine you;
- Disqualify you from being a Trustee;
- Pursue civil and criminal penalties;
- Require the SMSF to cease operating or to be wound up;
- Freeze the assets of the SMSF; and
- Make the SMSF non-complying

The ATO may take one or several courses of action, depending on how severe the contravention is and the circumstances involved.

Winding Up an SMSF

Chapter #8

In this chapter of SMSF Smart, we look at winding up an SMSF.

Just as careful consideration needs to be given to estabolishing an SMSF, it is equally important to give consideration to when an SMSF may need to be wound up.

SMSFs could be wound up for several reasons, including:

- Trustees find they don't have the time, resources, interest or expertise to run the SMSF anymore;
- The breakdown of a relationship between one or more members;
- There are not enough funds in the SMSF to cover the ongoing operating costs;
- All the members have moved to another fund or died;
- The SMSF has paid the members all of their retirement savings; or
- One or more of the members have relocated overseas.

The task of winding up an SMSF will need to involve the SMSF's legal advisers and accountant.

Legal advisers will assist with interpreting the SMSF's trust deed to ensure the winding up complies with this, and the income and capital of the SMSF are distributed correctly in accordance with the trust deed.

The role of the accountant is to ensure that the income and liabilities of the SMSF are identified correctly, benefits are paid or transferred correctly, and sufficient money is kept in the SMSF to pay any remaining expenses, including taxes.

Factors to consider before winding up an SMSF

Before the decision is made to wind up your SMSF, you should consider a range of issues to ensure there are no unexpected implications in winding up the SMSF and nothing to prevent or stall this.

- Capital gains – Typically, the winding up results in the SMSF's assets being sold or transferred in–specie (transferring ownership of the underlying asset without selling the underlying asset), which will trigger a CGT event. If the disposal results in a capital gain, this will give rise to a capital gains tax liability and will impact on the members' benefits. If a capital loss results from the disposal, these losses remain with the SMSF and will be offset against any capital gains within the SMSF. In addition, these capital losses cannot be transferred out of the SMSF.
- Allocation of reserves – Where an SMSF holds reserves, this money or assets will need to be allocated to members' accounts before the member's benefits being transferred out. An SMSF reserve is money or assets set aside in the SMSF that have not yet been allocated to any particular member's account.
- Claiming tax deductions for personal contributions – Members who have made a personal contribution need to ensure they lodge their notice of intent to claim this deduction. This is required before their benefits are rolled over to another fund or paid out.

- Life insurance – Options for personal life insurance owned by the SMSF include implementing insurance in an alternative fund or transferring the policy into the individual's name. The existing policy should not be cancelled before the new insurance commencing.
- Outstanding tax returns – Any outstanding tax returns to the Australian Taxation Office (ATO) will need to be finalised before finalising the wind up of the SMSF.
- SMSF owns a frozen asset – Where a frozen asset exists in the SMSF, it will generally not be able to dispose of those assets. This may prevent you from being able to wind up the SMSF.
- Current income streams being paid from the SMSF – for those members in receipt of an existing income stream from the SMSF consideration will need to be given to the merits of transferring the pension to another fund or receiving a lump sum, assuming the member is eligible to do so. The type of income stream being received, if the member is receiving social security and the taxation components of the member's interest in the SMSF, will all impact on the appropriate course of action.

The process of winding up an SMSF may take up to 14 months to complete, dependent on when the SMSF can sell its assets (e.g. a direct property may take months to sell) when the Trustees request the SMSF to be wound up, and the ATO lodgement requirements.

Steps in winding up an SMSF

The steps involved in winding up an SMSF are:

- Complete any requirements that the trust deed specifies about winding up the SMSF
- Pay out or roll over all super (leaving a sufficient amount to pay final tax or expenses if required)
- Appoint an SMSF auditor to complete the final audit
- Complete and lodge the final SMSF annual return (including wind up details)
- Pay any outstanding tax liabilities
- After all expected liabilities have been settled and requested refunds are received, close the SMSF's bank account.

Record keeping after an SMSF has been wound up

Even after an SMSF has been wound-up, records will need to be retained for the specified period, which will assist in resolving any disputes or issues that arise after the closure.

The ATO requires Trustees to keep accurate records for prescribed periods and must make them available to the SMSF's auditor or the ATO on request.

All copies of the SMSF's trust deeds and any amendments should be kept.

Records required to be kept for five years include:

- Accounting records that explain the transactions and financial position of the SMSF;
- The SMSF's operating statements;
- A statement of the net assets and any changes to the net assets of the SMSF during the reporting period;
- Records to show contributions and rollovers received from, and payments made to members;
- Copies of all annual returns lodged; and
- Statements describing and listing the accounting systems and records (i.e., a description of the accounts kept on paper and those maintained electronically).

Records required to be kept for ten years include:

- Registration documents (ABN, TFN, GST details etc.) and notice of the SMSF's complying status;
- Minutes of Trustee meetings and decisions;
- Records of all changes to the Trustee and the SMSF;
- Members' written consent to be appointed as Trustees;
- Copies of all reports given to members;
- Auditor engagement letters, records needed to complete the annual audit, and subsequent audit reports;
- Changes to the trust deed and the investment strategy;
- Death benefit nominations; and
- Trustee declarations must be kept for at least ten years or while the Trustee remains a Trustee (whichever is longer).