

Self Managed Superannuation Fund Q & A

Q: What is a SMSF?

A: A SMSF is a superannuation fund that has no more than 4 members. It is governed by the Superannuation Industry (Supervision) Act and must comply with the same rules that govern large superannuation funds. SMSFs are often established as a “family” superannuation fund. With a SMSF, each member must also be a trustee of the fund, and each trustee must be a member. Special rules apply to trustees of “single member” funds.

Q: Who does a SMSF suit?

A: Primarily a SMSF is used by people who want to have a hands-on involvement with their superannuation savings. In certain circumstances a person may establish a SMSF because they wish to hold specific investments that are not generally accessible through other types of superannuation funds. Depending on the amount held in a SMSF and the amount of work the trustees are prepared to do, there may be some cost savings achieved by running a SMSF.

Q: Can my employees join my SMSF?

A: An employee can only be a member of their employers SMSF if they are related to their employer. Unrelated employees can't be members of their employers SMSF.

Q: Is there a minimum amount required to set up a SMSF?

A: There is no prescribed minimum amount required to establish a SMSF however both the Australian Securities & Investment Commission, and the Australian Taxation Office, in a jointly released fact sheet “is a SMSF right for you?” suggest that a minimum of less than \$200,000 may not justify the costs in establishing a SMSF.

Q: How does a SMSF differ from a “DIY” super fund?

A: SMSF and DIY are terms that are interchangeable. The term DIY (do it yourself) was a popular term used to describe a SMSF some years ago. It is still used from time to time, particularly in the printed media.

Q: Are there any disadvantages of a SMSF?

A: As each member is also a trustee of the fund, they assume significant responsibilities to ensure the fund is operated in a compliant manner. Running a SMSF requires both time and attention to the detail, along with an adequate level of knowledge of the rules that govern superannuation. There are many administrative duties that need to be undertaken and while these may be outsourced to an accountant or SMSF administration service, additional costs will be incurred. For many people who simply wish to access investments such as managed funds, or for people with modest superannuation balances, the use of a “public offer” superannuation fund may represent a cost effective alternative.

Q: Can I keep my SMSF if I go overseas?

A: For a SMSF to qualify to receive concessional tax treatment, it must meet the definition of an Australian Superannuation Fund. Amongst other things, an Australian Superannuation Fund is one that has its “central management and control” in Australia. A trustee can be temporarily absent from Australia for a period of up to 2 years without affecting the “residency” of the fund. If a trustee is permanently absent from Australia, or temporarily absent for period of more than 2 years, the tax status of the SMSF may be affected. There are alternative solutions available where a trustee plans to be absent from Australia for an extended period.

Q: Are their restrictions on who can be a trustee?

A: Generally most adults can be a trustee of a SMSF. Children under the age of 18 can not be a trustee, nor can people under legal disability. Their “legal personal representative” can act as trustee in their place. The legislation also precludes “disqualified persons” from acting as the trustee of a SMSF. A disqualified person includes an undischarged bankrupt, and any person who has ever been convicted of a crime involving fraud. Furthermore, a person disqualified by the Regulator (the Australian Taxation Office) can not act as the trustee of a SMSF

Q: Can my company act as trustee of my SMSF?

A: A company can be appointed as the trustee of a SMSF however each director of that company must also be a member of the SMSF, and each member of the fund must be a director. It is generally recommended that where a company is to act as the trustee, that company be retained for the exclusive purpose of being the trustee. It is often undesirable to appoint a company as trustee where the company is a trading entity or is used for purposes other than as the trustee of the SMSF.

Q: Who is responsible for administering my SMSF?

A: The trustees are ultimately responsible for running the SMSF. Even though certain functions may be out-sourced to others such as an accountant or SMSF administrator, the ultimate responsibility for the operation of a SMSF rests with the trustees. Access to professional advisers such as an accountant, SMSF administrator, or financial planner who specialises in SMSFs is vitally important for trustees.

Q: Can I access my superannuation savings at anytime?

A: Most superannuation benefits held by members under retirement age are “preserved”. This means they can not be accessed until such time as a “condition of release” has been met. Conditions of release include (but are not limited to) retirement on or after reaching preservation age (currently 55), turning 65, on death or becoming totally and permanently incapacitated. Just because a person operates their own SMSF doesn’t give them access to the accumulated funds unless a condition of release has been met. And where benefits are taken prior to age 60, there may be taxation implications for the member.

Q: Where can my SMSF invest?

A: In general terms, SMSFs can invest in a wide range of assets both in Australia and overseas. Every SMSF must have its own written investment strategy. This investment strategy sets out the investment objectives of the SMSF and provides guidelines to the trustees in terms of the types of assets that can be held, and the proportion of the SMSF's funds that can be applied to each asset class. Strict limits apply where a SMSF may wish to invest in a business operated by the members and/or other related parties.

Q: Can my SMSF pay a pension?

A: Once superannuation benefits become payable, they are generally paid as a lump sum, or as a series of regular series of income (or pension) payments. The form in which a benefit can be paid is set down both in legislation, and in SMSFs trust deed. When a member's benefit becomes payable, the trustees need to refer to the trust deed to ensure that the form in which the benefit is to be paid (lump sum or pension) is permitted under the rules of the fund.

Q: If I already hold investments in my own name, can I transfer them to my SMSF?

A: The legislation imposes strict rules in relation to SMSFs acquiring assets from members and other related parties. In broad terms a SMSF is unable to acquire investments, either by purchase or as an in-specie contribution, from a member (or a related party of the member). However there are a number of limited exceptions to this prohibition. A SMSF may acquire listed securities (i.e. shares listed on a recognised stock exchange) and real property that is used wholly and exclusively for business purposes, from a member or related party. Where a SMSF does acquire an approved asset from a member or related party, the transaction must be conducted on an arms-length basis and must be acquired at current market value.

Q: Can my SMSF borrow money to invest?

A: An amendment that was made to the Superannuation Industry (Supervision) Act in September 2007 now allows a superannuation fund to borrow in order to purchase an asset. The rules surrounding the borrowing "opportunity" are very complex and professional advice is highly recommended before proceeding.

Q: If I die, can my super benefit be kept in the SMSF for the benefit of other members?

A: When a member dies, their accumulated superannuation benefit must be dealt with by the trustees of the SMSF. Death benefits may be paid in the form of an income stream or pension (where the benefit is being paid to a surviving spouse or child) in which case the benefit remains in the SMSF. When the benefit is to be paid as a lump sum, it must be paid out of the SMSF. Even where the beneficiary's preference is for the benefit to be retained in the superannuation fund, it must firstly be paid out and then (subject to age limits, work requirements and limits of contribution amounts) it may be re-contributed to the SMSF. Dealing with superannuation death benefits is a complex area of superannuation law and therefore professional advice should be sought. The payment of a superannuation death benefit may involve the payment of tax depending on the relationship of the beneficiary to the deceased member.

Q: Can my children become members of my family SMSF?

A: A child can become a member of their parent's SMSF. If the child is under 18 years of age they can not act as a trustee of the fund (or be a director of a trustee company). In such cases it is usual for their legal personal representative (their parent or guardian) to represent them as trustee until such time as they are able to be appointed as a trustee in their own right.

Q: Where can I get more information about running a SMSF?

A: A financial planner who specialises in SMSFs will be able to provide you with the information necessary to decide whether a SMSF is right for you. In addition, the Australian Taxation Office has a number of publications to assist trustees of SMSFs. Their flagship publication "Role and responsibilities of trustees" is recommended reading for new and existing trustees of SMSFs. It is available free of charge from the ATO's website www.ato.gov.au

The information provided in this update should be treated as general information only and not acted upon as specific advice. Information prepared by Professional Investment Services 2009. For more information please contact Pinnacle Wealth Management on 08 8312 0000.
