

Changes to the requirements to register SMSFs for an ABN and TFN

The Australian Taxation Office (ATO) has recently made changes to the requirements that must be satisfied for a self managed superannuation fund (SMSF) to apply for an Australian Business Number (ABN) and Tax File Number (TFN) at establishment.

The two additional requirements that have to be met add an additional step to the process of applying for the ABN and TFN.

Taken directly from the application form on the abr.gov.au website, there are two additional questions that have been added to the ABN | TFN application form for SMSFs, which are as follows:

- What is the value of the assets held by the Fund?
- Does the Fund have governing rules?

If the applicant selects that there are no assets held in the Fund, or that the Fund does not have governing rules, the application for the ABN and TFN will be refused by the ATO

What implications do these additional requirements have?

In practice, this means that the ABN and TFN cannot be applied for until the governing rules of the Fund have been executed *and* a contribution has been received by the Fund.

The first criteria is straight forward. However the second criteria has caused confusion amongst practitioners, given that members can't roll over their member balances into the Fund until the ABN has been obtained. Therefore, how can a contribution be made into the

Fund before the Fund is allowed to register for the ABN?

Topdocs has been in contact with senior management at the ATO in relation to this aspect, especially in the circumstance where the members may be unable to make a cash contribution to the Fund (for example, if all members are over the age of 65 and don't satisfy the work test).

The **practical solution** to meeting this requirement is where the members are permitted to make a contribution, have one of the members of the Fund make a nominal cash contribution to the Fund, for example \$1. This contribution will be held by the trustees as cash until the bank account has been opened for the Fund. Then, when the ABN has been applied for and received by the Fund, the cash contribution should be deposited into the bank account of the Fund as a contribution by the Member.

What if the member is not permitted to make a contribution?

In the situation where a member is not permitted to make a contribution to the Fund, for example, due to their age, there doesn't seem to be a clear response from the ATO on how to satisfy the asset criteria. However, the practical reality is that confirmation

in the application form that the Fund holds an asset should be made notwithstanding in this circumstance, so that the application form the ABN can proceed, as our understanding is that the ATO will not penalise a Fund in doing so in this particular circumstance.

So what happens when you instruct Topdocs to apply for the Funds ABN and TFN for you?

When you request Topdocs to apply for the Funds ABN and TFN on behalf of the Fund, we will send you an email requesting your confirmation that the governing rules have been executed, and that a nominal contribution has been made to the Fund. Once you reply via email that these two requirements have been met, we will immediately apply for the Fund's ABN.

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