

## ESTABLISHING AN SMSF – STEPS INVOLVED AND ISSUES TO BE CONSIDERED

Individuals face a number of considerations in deciding to establish a Self Managed Superannuation Fund (SMSF). This article considers some of those considerations and outlines some of the steps involved.

### SMSF Establishment

The table below sets out the steps involved in the initial decision to establish of a SMSF and the issues which flow from such a decision:

SMSF ESTABLISHMENT – STEPS AND CONSIDERATIONS		
#	STEP	CONSIDERATION
1	Consider - is a SMSF appropriate?	<p>The responsibilities of running a SMSF may not suit all those considering the establishment of a SMSF.</p> <p>The ATO has published a booklet titled 'Thinking about self-managed super' which lists a number of steps to enable individuals to determine if a SMSF is right for them.</p> <p>The booklet can be accessed online via the ATO website.</p>
2	Obtain a Trust Deed	<p>The Trust Deed of a SMSF provides the rules under which the trustees of a SMSF operate, in conjunction with the provisions of the superannuation legislation (SIS Act).</p> <p>A well drafted trust deed which provides proper guidance to the trustees, whilst allowing a degree of discretion, is imperative for a SMSF and its trustees.</p>
3	Appoint a Trustee or Trustees	<p>The SIS Act permits either individual trustees of a SMSF or a company (corporate) trustee, and sets out rules as to the composition of the trustee or trustees of the SMSF.</p> <p>In general terms:</p> <ul style="list-style-type: none"> <li>■ each member must be either a trustee of the fund or a director of the trustee company; and</li> <li>■ each trustee or director of the trustee company must be a member of the fund.</li> </ul> <p>There are exceptions to that rule, for instance in the event of a fund with only 1 member, or where a member is not able to act on their own behalf.</p> <p>Although the appointment of individual trustees removes the need for a company, resulting in some savings, the need to change the trustee structure which may arise at a later date can prove those initial savings to</p>

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		<p>be 'false economy'.</p> <p>A corporate trustee is generally recommended as the best option.</p>
4	Determine who will be Members of the SMSF	<p>As this issue is likely to have been decided at the start, consideration of the applicable rules is important. Although there are generally very few restrictions on who can be a member of a SMSF, there are some limitations, including:</p> <ul style="list-style-type: none"> <li>■ the SIS Act directs that:</li> <li>■ the fund must have no more than 4 members; <ul style="list-style-type: none"> <li>- one member of a SMSF must not be an employee of another, unless they are related; and</li> <li>- a person who has been found guilty of 'dishonesty' offences or is a bankrupt must not be a trustee so, by extension, cannot be a member of the SMSF;</li> </ul> </li> <li>■ the trust deed should be reviewed to ensure there are no other restrictions (Note: the Topdocs SMSF Trust Deed does not impose any additional restrictions.); and</li> <li>■ the Australian residency of the members needs to be considered, both at the time of establishment and ongoing, as that can affect the tax position of the SMSF.</li> </ul>
5	Trustee Education	<p>Given the responsibility associated with SMSF trusteeship, trustee education is an important aspect of the establishment process of any SMSF. It is essential that all fund members/trustees have an understanding of:</p> <ul style="list-style-type: none"> <li>■ key regulatory obligations of SMSF trustees;</li> <li>■ general SMSF operating standards and compliance conditions;</li> <li>■ administrative issues associated with the establishment and operation of a SMSF; and</li> <li>■ potential penalties associated with a breach of trustee duties and/or fund compliance.</li> </ul> <p>Again, ATO publications, such as 'Running a self-managed super fund' and 'How your self-managed super fund is managed', can be of assistance to trustees. They can be located via the ATO website.</p>

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6	Trustee Declaration	<p>All newly appointed SMSF trustees, or directors of a corporate trustee, are required to complete a formal Trustee Declaration, which must be signed within 21 days of becoming a SMSF trustee. The form must then be retained for at least 10 years.</p> <p>The form contains broad statements confirming that the individual understands their SMSF trustee requirements generally and the potential consequences of non-compliance with the legislation. The declaration also contains a number of detailed statements confirming that the individual understands their specific obligations in a number of key areas including:</p> <ul style="list-style-type: none"> <li>■ sole purpose test;</li> <li>■ investment strategy;</li> <li>■ investment;</li> <li>■ contribution and benefit payment restrictions; and</li> <li>■ administration of the SMSF.</li> </ul> <p>Reference is made in the form to the ATO publication 'Self-managed super funds - Key messages for trustees'. Both documents can be accessed via the ATO website.</p>
7	Election for SMSF to be Regulated as a Complying Superannuation Fund	<p>The next step is for the fund to elect to be a regulated fund under the SIS legislation. This is achieved by completing the 'Application for ABN registration for superannuation entities' form, available from the ATO website.</p> <p>The notice is irrevocable and must be lodged with the ATO within 60 days of the fund being established.</p> <p>Regulation as a complying superannuation fund means the SMSF is entitled to the lower tax rates available to superannuation funds.</p>
8	Apply for Tax File Number (TFN) and Australian Business Number (ABN) and consider registration for Goods and Services Tax (GST)	<p>As part of the election to be regulated, the trustees also need to obtain a TFN and ABN for the fund.</p> <p>The same form can also be used to register for GST purposes, if the fund either needs to register or decides to do so. Funds do not need to register for GST if their annual turnover (e.g. taxable supplies) is under \$75,000 p.a. For many SMSFs, registration to claim a limited amount of input tax credits is not considered worthwhile.</p>

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9	Fund Investment Strategy	<p>SMSF trustees are required to formulate an investment strategy for the fund.</p> <p>Formulating the investment strategy involves developing and documenting a plan for making, holding and realising fund assets, considering (among others) appropriate risks of the investments, the ability of the SMSF to meet its liabilities and general liquidity issues.</p>
10	Consider Insurance for Members	<p>As part of the investment strategy, trustees must also consider whether the SMSF should hold life and disability insurance cover for its members.</p> <p>If members have insurance cover in a separate superannuation fund, and intend to transfer their benefits from that fund to the SMSF, the fact that the cover will lapse should be considered.</p>
11	Open separate Bank Account	<p>Trustees of SMSFs must keep all money and other fund assets separate from any personal or business assets. This includes ensuring that the fund has its own bank account for all fund transactions and that these transactions are handled separately to all personal assets of the trustees.</p> <p>The bank account should be opened in the name of the trustee or trustees with a designation indicating that they hold the account in trust for the (named) SMSF.</p>

Many of the steps detailed above are attended to by the adviser to the SMSF members or by Topdocs, as part of the process in preparing the documentation for the establishment of the SMSF.

### Post Establishment Actions

Although not actually part of the initial establishment process, subsequent actions post establishment need consideration, as detailed in the table below. Some or more of these actions are likely to involve the assistance of advisers.

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1	Appoint Advisers	<p>Throughout the course of the life of a SMSF, a range of advisers may or may not be consulted, depending on the requirements of each fund and the individual skills of the trustees.</p> <p>The advisers will include Accountants, Administrators, Auditors, Financial Planners, Lawyers, Real Estate Agents and Valuers.</p>

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2	Transfer from other superannuation funds	<p>Once the SMSF has been registered as a regulated superannuation fund, and an ABN has been issued, the members will be in a position to initiate a transfer of their benefits from other superannuation funds to the SMSF, if they wish to do so.</p> <p>Transfer forms, titled 'Completing the request to transfer whole balance of superannuation benefits between funds form' are available from the ATO website.</p> <p>As mentioned previously, consideration should be given to the impact such transfers, and the cessation of insurance cover as a result, will have on the respective members.</p>
3	Estate Planning	<p>The activity of estate planning should be an ongoing process and, with the introduction of the SMSF, an additional dimension has been added to the process.</p> <p>Within a SMSF there are opportunities to structure member's benefits so as to provide improved outcomes, compared to alternative funds.</p> <p>There is also the ability to provide direction in regards to the payment of benefits following the death of a member. In particular, nomination of beneficiaries through a Binding Death Benefit Nomination is a very valid consideration.</p> <p>Additionally, the appointment of a Death Benefit Guardian can assist to ensure benefits pass as intended, with some structured flexibility.</p>
4	Investments	<p>Similar to the reference above to the ownership of a bank account, other SMSF investments should be in the name of the trustee or trustees, with a clear designation they are held as trustee for the (named) superannuation fund.</p>
5	Contributions	<p>A properly drafted trust deed will permit the trustees to accept a broad range of contributions. Specific rules apply regarding acceptance of contributions at particular ages and whether employed or not.</p>
6	Benefit Payments	<p>Rules also apply to the preservation of benefits and what conditions need to be met to enable members to access their benefits. Trustees must follow the access rules as significant penalties can apply.</p>

### More information

Should you have any queries or require more information, please contact the team at Topdocs on 1300 659 242.

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