

TRANSACTING SMSF BANK ACCOUNTS - AUTHORITY & CONTROLS

When the Trustee of an SMSF opens a bank account to conduct the financial transactions of the SMSF, who should be authorised to transact on the account?

One decision often given minimal consideration when establishing an SMSF is the decision concerning authority to transact the SMSF finances, and any limitations to be placed on those authorisations.

Are signatories outdated?

Maybe a reason for a lack of consideration of the role stems from the fact that very few cheques are written by trustees of SMSFs, so there is little concern for the authorisation of individuals.

Cheques, for decades the most common method of conducting transactions in SMSFs, have steadily become more and more redundant over the last 5 to 10 years.

In times past, banks would review signatures on the cheques against the authorised signatories on record and, if they matched, would clear the cheque.

In other words, the signatures and number of signatories required to sign cheques were the means by which the payment system attempted to combat fraud, particularly internal fraud.

More recently, that responsibility has shifted from the bank to the bank account holder - i.e. in this case, the SMSF trustee.

Authorisation

Although the need for signatories, as such, may have diminished, the matter of who is authorised to

transact on the fund bank accounts and additional conditions, are arguably more vital now than previously.

SMSF bank accounts established with:

- only one of the trustees or directors appointed as the authorised signatory; or
- each of the trustees or directors appointed as authorised signatories, with each having sole authority to transact finances of the SMSF.

are potentially putting the fund money at risk.

Each of those arrangements should raise concerns for the SMSF trustee and members. In fact, some SMSF auditors raise their concerns regarding bank signatories in their Audit Management letters.

Why the concern?

The concern of auditors relates to the potential for losses by the fund as a result of internal fraud which can impact the ability of the fund to operate as a going concern.

Two Administrative Appeals Tribunal (AAT) cases have illustrated how sole trading authorisation can result in losses to the fund and, by extension, to SMSF trustees.

In those AAT cases, which shall be discussed briefly below, tax assessments issued by the ATO were

challenged. What relevance is that to potential fraud by an individual?

Unfortunately, the defrauded members were left to pay tax, despite having effectively lost their superannuation benefits.

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Shail

Briefly, the case of Shail (*Shail Superannuation Fund and FCT [2011] AATA 940*) came about after Mr Shail, who was an individual trustee with Mrs Shail of their SMSF, withdrew sums totalling \$3.46 million from the SMSF and, after transferring the funds outside of Australia, left the country.

As neither Mr nor Mrs Shail had met a condition of release, the ATO made the fund non-complying and issued assessments (more than \$1.5 million) and significant penalties on the trustees of the SMSF.

Current as at 12 May 2015.

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Because they were individual trustees of the SMSF, each of Mr and Mrs Shail were jointly and severally liable for the payment of the taxes.

With Mr Shail out of the country, Mrs Shail was liable for the taxes. In other words, on top of losing the benefits she had accumulated in superannuation, she was found liable for the various taxes assessed and the penalties applied.

Triway

In the case of Triway (*Triway Superannuation Fund and Commissioner of Taxation [2011] AATA 302*) the SMSF had three members who were also the individual trustees of the fund.

The three members were of the one family - father, mother and son.

The son, who was a drug addict, withdrew the majority of the fund's cash to support his habit, effectively removing all of the assets of the SMSF.

The ATO made the fund non-complying and issued assessments for a range of SIS contraventions.

Effectively, the parents were liable for the tax, even after having their retirement savings wiped out (and other personal funds stolen by the son).

Correct structure

Apart from providing another compelling reason for SMSFs to have corporate trustees (from a personal liability perspective), the Shail and Triway cases provide a very strong message regarding authorisation of those individuals who may transact

the fund bank accounts, and the restrictions on such authorities.

Although there is no set rule which could be applied to every SMSF, trustees should consider the position from a worst-case scenario, and implement a structure to control that scenario.

As a minimum, trustees should consider imposing limits on transactions over a certain dollar value, with those transactions requiring confirmation from at least two individuals.

Had such limits been in place in the cases of Shail and Triway, it is less likely that either Mr Shail or the son in Triway would have been able to conduct the transactions to the extent they succeeded to do without the presence of such restrictions.

Conclusion

There is no 'one size fits all' answer, but options are available to provide greater control over financial transactions and to mitigate additional costs through, if not already in place, having a corporate trustee for the SMSF.

Whilst we tend to assume there will not be any issues with fellow co-trustees, the runaway spouse and the addict son showed that faith can sometimes be misguided.

More information

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

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