SUPERMATTERS

SUPERANNUATION STRATEGIES FOR YOU AND YOUR BUSINESS

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Avoid these SMSF trustee mistakes

Trustees who overlook important details or are reported to the ATO, risk incurring financial, civil or criminal penalties.

The role of the trustee should not be taken lightly as with greater control, comes greater responsibility should the administration of your SMSF go awry.

Protect your retirement nest egg and avoid these common SMSF trustee mistakes.

Breaching the sole purpose test

SMSFs must be maintained for the sole purpose of providing retirement benefits to your members, or their dependents if a member dies before retirement. You will fail the test if a member gets any financial benefit through an investment, aside from increasing the return to your fund. For example, a member's personal use of a holiday house purchased by the fund, without making rental repayments, would breach the sole purpose test. The rules can become complex, which is why seeking professional advice may be wise. Trustees who breach the sole purpose test will lose their fund's concessional tax treatment and could be liable for civil and criminal penalties.

Financial assistance and member loans

Trustees can make the error of accessing their SMSF funds at will instead of following strict super laws. You cannot access your SMSF bank account to give financial assistance or loans to members or member's' relatives, improve your cash flow, repay debts or make personal investments. There have also been reports of withdrawals from SMSFs accidentally on mobile banking apps. Avoid ATO sanctions and keep your bank accounts separate to ensure no premature withdrawals are made from your SMSF account.

Lagging on paperwork

SMSF trustees must comply with demanding reporting and recordkeeping requirements. Your SMSF will have an annual audit. Failure to produce certain documents or make the deadline date may result in your SMSF being reported to the ATO. It is crucial to keep accurate records of all decisions and transactions should the ATO take an interest in your SMSF. Consider having a third party prepare regular financial statements to be renewed with your financial advisor.

Not planning for the death or illness of a member

The death or illness of a member of your SMSF can have devastating effects on your retirement savings if you are not prepared. Dependency on one member to administrate the SMSF can destabilise the fund if they pass away.

Additional actions that can help include:

- Educating all members on the basic rules and strategies of your SMSF
- Employing an accessible financial advisor
- Allowing access to passwords and account numbers for all members
- Regularly reviewing your binding death benefit nominations
- Ensuring members have an effective estate plan

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A guide to binding death benefit nominations

You must make a binding death benefit nomination if you want control and certainty over who will inherit your superannuation assets after you pass away.

Contrary to what you may think, your will does not automatically control the payment of your death benefits. If you do not make a binding death benefit nomination your super trustee will decide who your super passes onto.

Familiarise yourself with the death benefit nomination rules so your super assets are paid on your terms after you are gone.

Binding and non-binding death benefit nominations

You can make a binding or non-binding death benefit nomination depending on your super fund. A binding death benefit nomination provides the greatest certainty as the legal document binds the trustee to pay your death benefits to the beneficiaries you have nominated.

Some super funds do not offer binding nominations, so individuals make non-binding nominations instead. Non-binding nominations act as a guide to your trustee that they will take into consideration but are not obliged to follow. Your trustee may pay your death benefit to an individual you did not nominate if they feel they are more appropriate.

Lapsing and non-lapsing nominations

Understanding your fund's options for lapsing and non-lapsing nominations will help you keep your nominations up to date and binding. Lapsing nominations typically expire after three years and must be renewed. If your binding nomination lapses without renewal, it will be considered a non-binding nomination upon your death. Non-lapsing nominations are permanent unless you change them.

Changing death benefit nominations

Life circumstances like divorce, marriage or the death of a nominated individual, may trigger you to change your nominations. You can amend, cancel or replace your death benefit nomination at any time, provided the nomination is validly concluded. Keep in mind that a power of attorney can renew lapsed binding nominations in the event you are mentally incapacitated or unable to sign yourself.

Eligible beneficiaries

You cannot pay your superannuation death benefits to just anyone as there are strict eligibility requirements. You may only nominate your dependents or personal legal representative.

Dependents are strictly defined by law. According to the legislation dependents include:

- Your spouse, whom you are legally married to, in a registered relationship with or live with on a genuine domestic basis
- Your child (including adopted and foster children) or your spouse's child
- Anyone in an interdependent relationship with you at the date of your death
- Other persons who the trustee deems were financially dependent on you at the date of your death

You can also have your super death benefit paid directly into your estate.

Validity requirements

Whether you are making a new binding death benefit nomination, replacing an old one or cancelling altogether, you must meet these requirements to make your nomination valid:

- Nominate eligible beneficiaries
- Clearly allocate your benefits amongst your beneficiaries
- Allocate 100 per cent of your death benefits
- Sign and date your nomination in the presence of two witnesses who are legally adults and not nominated to receive your death benefits
- Ensure your witnesses sign and date the notice in your presence

ATO reviews diverting PSI to SMSFs

The ATO is reviewing arrangements where members of SMSFs, at or approaching their retirement age, divert personal services income (PSI) to reduce their tax burdens.

Income is classified as PSI when more than 50 per cent of the amount you received for a contract was for your labour, skills or expertise. For example,

PSI includes income derived by consultants from the exercise of personal expertise or income of a professional practitioner in a sole practice. PSI is not applicable to employees on salaries and wages.

The ATO is investigating arrangements that include:

- Provision of a service by an individual for a client, where the individual does not directly receive any or adequate consideration for their services
- The client pays income for services provided to an entity, who is an unrelated third party
- The entity distributes the income to an SMSF, of which the individual is a member
- The trustee of the SMSF treats the income as subject to a concessional tax rate or exempt current pension income of the SMSF

If you think you have entered into this arrangement you should:

- Get in contact with the ATO and ask for a private ruling
- Seek professional advice
- Make a voluntary disclosure to reduce any penalties that may apply

Benefits and risks of cryptocurrencies for your SMSF

The hype surrounding cryptocurrency may tempt you to invest through your SMSF, but you should know all the risks before you commit.

Your first step should be to check that your trust deed allows this kind of investment. Even though most modern deeds give the trustee freedom to invest in what they like, they are all different. Currently, there is no explicit legislative prohibition or restriction on investing in SMSFs so long as you follow investment rules for trustees.

Benefits

- Some advantages to adding this asset to your SMSF include:
- Further diversification of your SMSF by adding a new type of asset to your portfolio
- Security of the investment as transactions using cryptocurrency are trackable through blockchain technology
- Potential for high windfalls for those wanting a high risk, high return investment strategy
- Reduced tax on the returns for SMSFs in comparison to investing as an individual

Risks

Risks associated with cryptocurrencies in your SMSFs extend to:

- Unpredictability of the asset due to its short history
- Instability of the investment due to the potential for future government regulation
- High volatility of the investment due to dramatic rises and falls in recent times
- High risk due to no physical asset backing up the investment; if it fails you lose everything