

SMSF Administration – “don’t try this at home”

Understanding your trustee responsibilities

Tim Miller

Head of Education & Market Development

Agenda

- SMSF Trusteeship
- SMSF Compliance
- Trustee responsibilities
- Getting the house in order
- Use of SMSF service providers

SMSF Trusteeship

- SMSF Definition
 - All Members must be trustees/directors
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 - Single member fund exceptions apply
 - People other than member in place of member
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 - Member under legal incapacity
 - Age or loss of mental capacity
- Appointment must be in accordance with Trust Deed – Governing Rules
- Actual replacement of member – not signing authority

SMSF Trusteeship

- Trusteeship Traps
 - People signing on behalf of others without due process
 - Resignation or removal of existing member in trustee capacity required – Deed or Resolution
 - Consent to act as trustee
 - Trustee declaration signed within 21 days
 - Asset title reflection
 - Notification to Regulator
- Is an SMSF right vehicle?
 - Appropriately appointed Enduring Power of Attorney
 - Valid Will – Executor of Estate

SMSF Compliance

- During 2013/14 ATO – undertook 37,000 SMSF Compliance Activities
 - 129 Funds made non-complying
 - 585 trustees disqualified
 - 22,000 SMSFs removed from ATO register for having 2 or more lodgements outstanding
 - 258 Fund applications rejected
 - 186 Fund's closed due to illegal activity
- 80% of SMSFs lodge on time

SMSF Penalty Regime

- New penalty regime came into effect from 1 July 2014 for all SMSF (effective for breaches that occur from 1 July 2014 or remain unrectified)
- Commissioner will be able to give the Trustees:
 - Education Direction
 - Rectification Direction
 - Administrative penalties
- New Penalty regime is not a reflection of poor compliance but rather a reflection of alternate more effective powers

Administrative penalties

SIS Section		Penalty units	Current dollar value
Subsection 34(1)	Prescribed operating standards 21%	20	\$3,400
Section 35B	Preparation of accounts and statements	10	\$1,700
Subsection 65(1)	Lending or giving financial assistance to members or relatives 21%	60	\$10,200
Subsection 67(1)	Borrowing prohibition 8%	60	\$10,200
Subsection 84(1)	In-house assets 19%	60	\$10,200
Subsection 103(1)	Keeping minutes and records 10 years (2 or more trustees)	10	\$1,700
Subsection 103(2)	Keeping minutes and records 10 years (single trustee)	10	\$1,700
Subsection 103(2A)	Keep trustee election 10 years	10	\$1,700
Subsection 104(1)	Keep change of trustee / director records 10 years	10	\$1,700
Subsection 104A(2)	Sign and retain trustee declaration	10	\$1,700
Subsection 105(1)	Keep member reports 10 years	10	\$1,700
Subsection 106(1)	Notify regulator of significant adverse events on financial position	60	\$10,200
Subsection 106A(1)	Notify commissioner of change in status of entity	20	\$3,400
Subsection 124(1)	Investment managers must be appointed in writing	5	\$850
Subsection 160(4)	Must comply with an education direction within specified period	5	\$850
Subsection 254(1)	Information to be given to the regulator	5	\$850
Subsection 347A(5)	Obligation to participate in regulator's statistical programs	5	\$850

S66 –
max 12 mt
goal term
1%

14%

Application of penalties

- Directors are jointly and severally liable to pay up to maximum penalty - \$10,200
- Individual trustees must each pay up to maximum penalty - \$10,200
- Must not be paid from resources of the fund
- Seek appropriate advice on trustee structure of the fund?

Related party transactions

- $\frac{3}{4}$ of all SMSF breaches that are reported to the ATO via the Audit Contravention report relate to “Related Party” transactions
- Combined forces of “legislative liberties” being provided without appropriate education being sought or with inappropriate advice being given
- SMSF Specific Advice is available for SMSF Trustees to ask the Commissioner about the validity of a transaction prior to its occurrence
 - Must be SIS related advice
 - Must provide evidence of transaction

Administrative penalties

- Subsection 34(1) prescribed operating standards (\$3,400 penalty) - over 30 separate rules including, but not limited to:
 - contribution acceptance rules;
 - preservation rules;
 - investment strategies, including insurance;
 - keeping assets separate;
 - Payment standards

Compliance program

- SMSF Auditors are the ATO's gate keepers
- the ATO will respond to ALL Auditor Contravention Reports (ACR) with a phone call or letter
- Each SMSF will be risk assessed as
 - Low risk
 - Medium risk or
 - High risk
- Risk assessment will have an impact on the type of penalty imposed

Low risk SMSFs

- The ATO will remind trustees of their obligations and encourage future compliance
- The issue will be closed with the issuing of this letter which will usually occur within 6–8 weeks of lodgement of the ACR

Medium risk SMSFs

- The ATO will engage directly with trustees to discuss the reported contravention
- remind trustees of their obligations and encourage future compliance within 6-8 weeks of the ACR lodgement

Generally, if the trustee assures the ATO that they understand their obligations, the issues will be closed and no penalties applied.

High risk SMSFs

These SMSFs will be selected for comprehensive audits

- will scrutinise all regulatory and income tax risks displayed by the fund,
- a particular focus on repeat offenders

This program will also involve an increasing number of field visits to engage high-risk SMSFs and their tax agents.

SMSF administrative penalties will apply when the ATO confirms the breach is eligible for this penalty.

The unknowns.....

- When will the ATO seek a Civil penalty order v an admin penalty?
- If multiple breaches of the same provision (say over a number of years) will multiple, or a single penalty, apply?
- What if there has been a change of trustee since the contravention. Who pays?
- Will all trustees pay equally or will the dominant trustee incur a higher amount?
- Federal Court – Deputy Commissioner of Taxation v Graham Family Super Pty Ltd
 - 80 breaches of the loans to member rule over 4 years – single penalty imposed on a ‘course of conduct’ basis
 - Dominant trustee paid 70% of the penalty.

Dealing with the ATO

- SMSF advice capability and new penalty regime will be of assistance to SMSF trustees wanting to seek clarity on transactions
- ATO compliance program has indicated that they will target “high risk” clients subject to Contraventions lodged
 - Rectify contraventions
 - Open dialogue with ATO
 - Seek SMSF Specific Advice upfront
 - Apply for Private Binding Rulings upfront
 - Identify what your transaction is and ask all the necessary questions

Dealing with the ATO

- How to audit proof (or safeguard) your SMSF
 - Document all transactions
 - Make sure the Governing Rules (Deed) provide for activities
 - Seek appropriate advice
 - Regulator
 - Legal/Financial/Tax
 - ATO focus heavily on Tax Audits as much as Compliance
 - Non-arm's length income
 - Exemption pension income
 - Don't breach the law!

ATO Youtube channel



What's involved with an SMSF



Investment Strategy



You can't do it all yourself



Annual obligations



Paying an income stream



Planning for the unexpected



Sole Purpose Test



Loans and early access

Trustee responsibilities

- Trustees must regularly review the Funds investment strategy
 - Trustees should document this in trustee minutes held during the year
- SMSF Trustees must consider whether to hold a contract of insurance for one or more members
 - Trustees should document this in trustee minutes held during the year
- SMSF assets to be kept separate from assets of trustees held personally or contributing employers
 - Corporate v Individual Trustee Structure – advice
- Assets recorded at market value

Concessional contribution caps

CONCESSIONAL CONTRIBUTIONS CAPS		
Financial year	Age	Annual cap
2013/14	58 or under on 30/06/13	\$25,000*
	59 or over on 30/06/13	\$35,000**
2014/15	48 or under on 30/06/14	\$30,000*
	49 or over on 30/06/14	\$35,000**

* Indexed to AWOTE in \$5,000 increments. Indexation was frozen until 30/06/14.

** Unindexed. Annual cap will eventually be the same for over and under 50s again

Non-concessional contribution caps

NON CONCESSIONAL CONTRIBUTIONS CAPS – 1/7/2014

Age on the first day of the financial year	Annual cap
< 65	\$180,000* or three year limit of \$540,000**
65 - < 75	\$180,000*
75+	NCCs cannot be accepted

* 6 times the standard concessional cap. Subject to work test for 65 and overs

** Once triggered (by exceeding the annual cap) the three year NCC cap is not indexed – important @ 1/7/14.

** Once triggered, the unused amount can be used in the subsequent two years, even if over age 65 – subject to work test

SMSF Estate Planning

- SMSF most flexible/tax effective estate planning vehicle – most of the time
- Member has greater control via binding death benefit nominations – SMSF only prescriptive nominations
- Reversionary pension flexibility
- Child pensions
- Intergenerational
- Get it right – poor estate planning/no estate planning can be costly!

Service Providers

- Use of service providers to assist with meeting trustee responsibilities
 - Mandatory appointments – external auditor – 7000 registered auditors
 - Practical appointments
 - Professional administrator – separation of assets, valuation of assets, lodgement requirements
 - Licensed Adviser/Accountant – SMSF appropriateness, insurance needs, investments
 - Estate planning lawyers/advisers
 - Trustees still bear responsibility



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SMSF Ultimate: A complete SMSF administration service. This package includes daily SMSF administration and all accounting, tax and compliance requirements including the preparation of financial accounts and SMSF tax returns by Multiport. Excludes; Audit and Actuarial



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