

# Your super – booklet 5

Self managed super funds: from set-up to wind-up



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# Introduction

Perhaps you’re considering establishing your own self managed super fund (SMSF), or perhaps you already have. There are numerous considerations associated with establishing, running and winding up an SMSF.

This is the fifth in the *Your super* series of booklets that Macquarie has developed to help you understand how superannuation works and to give you some tips on how you can get the most out of your super.

The other booklets in the *Your super* series are:

- 1** [GETTING THE BEST OUT OF YOUR SUPERANNUATION SAVINGS](#) which focuses on saving through super and some things to keep in mind while your super is accumulating.
- 2** [SUPERANNUATION WHEN LIFE CHANGES](#) which focuses on some important superannuation-related issues to consider whenever you experience changes in your circumstances, whether planned or unexpected.
- 3** [ACCOUNT-BASED PENSIONS: MAKING YOUR SUPER GO FURTHER](#) which focuses on using account-based pensions to provide income in retirement.
- 4** [SUPER AND ESTATE PLANNING](#) which covers information about the treatment of superannuation on death and how you can use your super as an estate planning tool.
- 6** [SELF MANAGED SUPER FUNDS: A GUIDE TO SUPER BORROWING](#) which focuses on matters SMSF trustees should consider in establishing a super borrowing arrangement, as well as ongoing maintenance and wind-up issues.

“There are numerous considerations associated with establishing, running and winding up an SMSF.”

After over a decade of rapid growth, the SMSF sector is now the largest single superannuation sector by number of funds and asset size.

This series of booklets provides information about taxed superannuation funds. A taxed superannuation fund pays tax on the assessable contributions and certain investment income of the fund. Most Australians superannuation funds are taxed superannuation funds. We have not included information about untaxed superannuation funds, such as certain government or public sector funds. Different arrangements apply to these funds which are beyond the scope of these booklets.

This booklet has been prepared without any knowledge of your personal circumstances. The information is general in nature and should not be relied upon as specific financial advice. We strongly recommend that you seek the advice of a financial services professional, for example a financial planner, accountant/tax adviser, or legal adviser. Throughout this booklet, the term 'financial adviser' is intended to include any one or more of these types of financial services professionals.

**Note: Technical terms that are used throughout this booklet are shown in *italics* and are explained in the glossary at the end of the booklet.**

### SMSFs and the superannuation industry

After over a decade of rapid growth, the SMSF sector is now the largest single superannuation sector in Australia by number of funds and asset size.

As at June 2015, there were more than 556,000 SMSFs, with over \$589 billion or 29.2 per cent of total superannuation assets (\$2.02 trillion).<sup>1</sup> Table 1 below compares the asset sizes of the various superannuation sectors.

**Table 1: SMSFs – Australia's largest super sector**

Superannuation sector	Assets (\$ billion)	Percentage of assets
SMSFs	\$589.9	29.2%
Retail	\$535.9	26.5%
Industry	\$432.8	21.4%
Public sector	\$219.3	10.8%
Other	\$244.4	12.1%
<b>Total</b>	<b>\$2,022.3</b>	<b>100.0%</b>



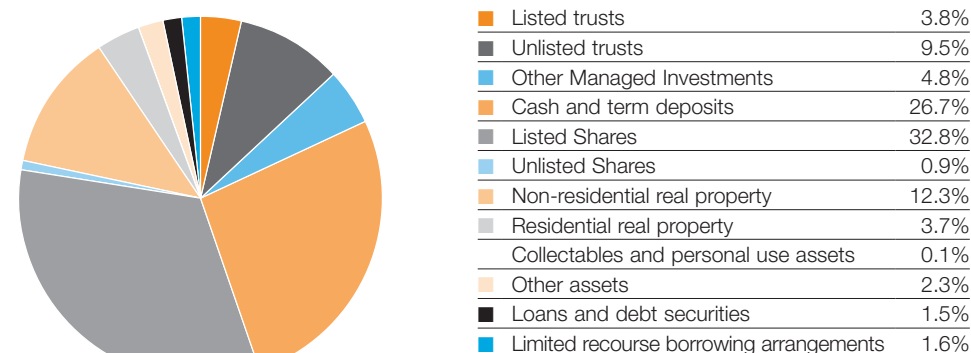
**SMSFs hold a majority of their assets directly as opposed to investing via trusts.**



Compared to members of other types of superannuation funds, SMSF members are, on average: older, earn a higher income, and have larger superannuation balances.<sup>2</sup>

SMSFs hold a majority of their assets directly as opposed to investing via trusts. The allocation of assets within SMSFs at 31 March 2015 is shown in Figure 1 below.

**Figure 1: SMSF Asset Allocation March 2015**



Source: Australian Taxation Office, Self-managed super fund statistical report – March 2015.

### Terminology

This booklet contains terminology specific to the superannuation industry. Where possible we have defined the terms in the glossary at the back of this booklet.

Some important clarifications to note upfront include:

- a reference to **trustee** will generally encompass both individual trustees and directors where there is a corporate trustee, unless specifically stated otherwise
- superannuation law** encompasses the *Superannuation Industry (Supervision) Act 1993* (SIS Act); the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), collectively referred to as SIS; and other relevant *superannuation laws*, and
- taxation law** includes the *Income Tax Assessment Act 1997*, *Income Tax Assessment Act 1936*, *Taxation Administration Act 1953* and other relevant *taxation laws*.

<sup>2</sup> ASIC, Report 337: *SMSFs: Improving the quality of advice given to investors*, April 2013 and Australian Government, *A review into the governance, efficiency, structure and operation of Australia's superannuation system – A statistical summary of self-managed superannuation funds*, December 2009.

What is an SMSF?

An SMSF is a type of complying superannuation fund. Complying superannuation funds are tax-favoured trusts used to accumulate and hold retirement savings.

To qualify for favoured tax treatment, complying superannuation funds (including SMSFs) must comply with a range of regulatory controls. The controls and the way they apply do differ in some respects between SMSFs and other funds. Regulatory treatment of SMSFs will be discussed in more detail later.

So the underlying motivation for establishing an SMSF is typically based on a desire to save for retirement in a tax-effective way.

SMSFs are regulated by the Australian Taxation Office (ATO) whereas *non-SMSFs* are generally regulated by the Australian Prudential Regulation Authority (APRA).

Key requirements to be an SMSF

In broad terms, *superannuation law* defines an SMSF as a superannuation fund that meets the following conditions:

- has less than five members
- each individual trustee (or director if there is a corporate trustee) of the fund is a fund member (unless it is a single member fund)
- each member of the fund is a trustee (or a director of a corporate trustee)
- no member of the fund is an employee of another member of the fund, unless those members are related, and
- no trustee of the fund receives remuneration for his or her services as a trustee.

As the members take on the role of trustee, they are ultimately responsible for ensuring the SMSF is administered in line with numerous laws and regulatory requirements.

“ So the underlying motivation for establishing an SMSF is typically based on a desire to save for retirement in a tax-effective way. ”

The SMSF decision

The decision to establish an SMSF is a significant one that should be undertaken with due care, consideration and consultation with a financial adviser.

In a survey conducted by Investment Trends in 2014<sup>3</sup>, the respondents were asked the main reasons for setting up an SMSF (multiple responses were permitted). Table 2 summarises the top seven reasons given.

Table 2: Main reasons for setting up an SMSF

Reason given	Percentage of SMSFs
More control of my investments	60%
Wanted to choose specific shares to invest in	39%
Save money on fees	37%
I saw what super funds were charging me	34%
Advice from my accountant	30%
Poor performance from existing super funds	28%
More tax-effective	27%

The survey results outlined above clearly show that control and choice of investments, costs and performance are key reasons for establishing an SMSF.

The following discussion expands on a number of the reasons listed above and provides some additional considerations.

.....  
The decision to establish an SMSF is a significant one that should be undertaken with due care and consideration.  
.....



“ ... an SMSF trustee has ultimate responsibility for making investment decisions. ”

### Investment control and flexibility

An SMSF trustee has ultimate responsibility for making investment decisions. However, you could argue that a similar level of control is available to a member of a large super fund who is allowed to choose from a range of investments offered by that fund. A key difference, however, is that the member of a large fund can only choose from the range that the trustee is prepared to offer.

So, what range of investment options are available to an SMSF trustee (and therefore an SMSF member)? The answer is that trustees of trust arrangements must invest trust property in accordance with general trust law, state legislation and the terms of the trust – the constituent *trust deed*. In addition, trustees of SMSFs (as with other complying superannuation funds) must comply with SIS provisions relating to investments.

One notable SIS provision is the requirement for a trustee to formulate and give effect to an investment strategy having regard to (among other things) risk, return, cash flow, liquidity, diversification and fund (mainly benefit payment) liabilities and their timing. The investment strategy must also be reviewed regularly. This is discussed in more detail later (see *Prepare an investment strategy* on page 21 and *Maintaining the fund's investment strategy* on page 33).

### Range of investment options

Assuming (as is typically the case) the fund's *trust deed* provides the trustee with broad investment powers, the trustee will have scope to invest in a broad range of assets over the long-term, potentially including direct shares, direct property, available listed and unlisted managed investment vehicles, as well as various exotic investments.

This contrasts with the position of most *non-SMSFs*, where the range of investments tends to be constrained by administrative and other practical limitations. However, the more sophisticated master trust-style superannuation funds now offer a very broad range of unlisted managed funds and listed shares on their investment menus, as well as fixed interest and cash solutions. So there may be little, if any, extra flexibility in this area in favour of the SMSF. Nevertheless, the investment options for an SMSF are potentially still broader.

### Real estate

Most *non-SMSFs* generally do not typically offer direct investment into property. ATO data indicates that around 16 per cent of SMSF assets are invested directly in some form of real estate and about 77 per cent of that investment is in commercial property.<sup>4</sup> It can be quite appealing for some small business operators to have their business premises owned by their SMSFs.

### Collectables and personal use assets

Investments in *collectables and personal use assets* are generally not available via large *non-SMSF* funds.

For SMSFs, the option to invest in these assets may be available, although care needs to be taken to ensure that the trustee's decision to invest in this asset class satisfies the fund's investment strategy (see pages 21 and 33), *superannuation laws* that deal specifically with *collectables and personal use assets* and the SIS sole purpose test, and these investments are not being made for the immediate benefit of members or related parties. Evidence of this needs to be provided in the fund documentation (meeting minutes, investment strategy, insurance documents, etc). *Superannuation law* imposes special requirements on trustees who invest in *collectables and personal use assets* that are acquired from 1 July 2011. Those acquired before this date have until 1 July 2016 to comply with the special requirements.

Figure 1 (page 3) shows the percentage of SMSF assets invested in *collectibles and personal use assets* was only 0.1 per cent of all SMSF assets at March 2015.

### Geared arrangements

So far as geared arrangements are concerned, a few sophisticated large *non-SMSFs* offer members a limited choice of listed instalment warrants or other investments made under instalment arrangements, but again there is broader scope to establish geared investment arrangements via an SMSF.

In recent years, *superannuation law* has been amended to facilitate and clarify the capacity of super funds to borrow to invest through limited recourse borrowing arrangements (see page 36). More information on limited recourse borrowing arrangements can be found in *Your super – booklet 6: Self managed super funds: A guide to super borrowing*.

Any geared investment arrangements need to satisfy one or other of the exceptions to the general prohibition in SIS against borrowing, fall within the powers provided to the trustee under the fund's *trust deed* and satisfy the investment strategy.

“ Investments in *collectables and personal use assets* are generally not available via large *non-SMSF* funds. ”

## Cost efficiency

In certain circumstances, an SMSF will be more cost-effective than *non-SMSF* alternatives. However, there are generally minimum fixed costs of establishing and running an SMSF, resulting in a need for a minimum level of funds invested to justify the costs when compared to *non-SMSF* alternatives.

### TIP

There are a large number of variables (eg cost of advice, administration fees and investment management fees) that will differ from one SMSF to the next.

As a result, a decision involving cost should be based on the actual SMSF's circumstances, and not on a general rule of thumb.

## Tax advantages

As shown in Table 2 (page 5), 27 per cent of SMSFs stated that perceived tax effectiveness was one of the main reasons for setting up an SMSF. There are certainly some potential tax advantages in operating an SMSF, but often the extent of legitimate advantages, when compared to a sophisticated master trust, is over-estimated.

With an SMSF, attention can be given to transactions involving particular assets and member accounts, so there is significant scope for effective tax planning in relation to the fund's tax liabilities and thus net *member benefits*. By contrast, most large *non-SMSFs* seek administrative efficiency by tax accounting on a pooled basis and only offering investment in pooled funds, so they provide little scope for a particular member to influence tax outcomes in relation to their investment choices.

An SMSF trustee can, for example, have regard to tax advantages relating to the timing of purchasing and selling particular assets. For example, the trustee may have regard to the availability of:

- the franking on dividends where shares are held for at least 45 days
- a capital gains tax (CGT) discount in respect of assets held for at least a year, and
- a tax exemption on sale of assets backing a current pension account.

Some of these tax advantages are available in sophisticated master funds, but not always.

A potential tax advantage of an SMSF relates to the ability to change fund administration without incurring tax. If a member is dissatisfied with the way in which a large *non-SMSF* is administered, they generally cannot transfer benefits to another fund (even *in specie*) without CGT consequences. By contrast, an SMSF trustee may change administration arrangements of the fund without changing ownership of the fund assets, so that no capital gains are realised.

## Personal time and expertise

The trustee of a super fund has the ultimate responsibility for meeting the terms of the trust and ensuring regulatory compliance of the fund's operations.

It is important to remember that being a trustee and operating a super fund, including the day-to-day monitoring of investments and transactions, as well as the overall strategy, is time-consuming. Strictly speaking, it requires free time on an ongoing basis to attend to matters as and when they arise. For this reason, it can be difficult to do justice to the role if you are working full-time. On the other hand, many retirees have the time, although their energy levels, capabilities or interest levels may wane with age or ill-health.

Being a trustee of an SMSF also demands a reasonable level of skill and knowledge or support from a suitably skilled financial adviser.

Typically, trustees of SMSFs do not have the expertise to operate/administer the fund without professional help. Often there is a heavy reliance on professional guidance, so a key consideration is the availability of the right type of support which is both cost-effective and of good quality.

## Personal circumstances

Other personal considerations include:

- **size and cohesiveness of family** – A family of more than four may not be suited to an SMSF as not all can be members of the same fund – an SMSF cannot have more than four members. Also, the relationship between the members of the fund can be important for the harmonious operation of the fund, therefore family dynamics are an important consideration
- **trustee capability** – A condition of an SMSF obtaining favourable tax treatment is that it is an 'Australian superannuation fund'. If the trustees are located overseas, the status of the fund can be jeopardised (see page 37 – *SMSF must be 'Australian'*). Alternatively, where a member's health is deteriorating it may be inappropriate for that member to remain a trustee.

Being a trustee of an SMSF also demands a reasonable level of skill and knowledge or support from a suitably skilled financial adviser.

### Access to professional help

SMSFs operate in a highly regulated and technical environment. Persons considering establishing an SMSF may choose to employ the services of a number of professionals. When choosing a professional it is important to ensure the professional specialises in SMSF advice and services. SMSF specialists should have a suitable level of training and experience, often indicated by specialist SMSF credentials (eg SMSF Association accreditations, please see [smsfassociation.com](http://smsfassociation.com) for more information).

Table 3 lists some of the professionals who may provide services to SMSF trustees.

**Table 3: SMSF professionals**

Professional	Assistance
Financial planner	Can help with establishing an investment strategy, setting appropriate asset allocation, controlling cash flows and selecting and managing investments. They are also important providers of advice on strategic superannuation, tax and estate planning issues.
Legal practitioner	Is required to draft <i>trust deeds</i> and other fund documentation, as well as the provisions of specialist advice in the areas of estate planning, tax and superannuation.
Auditor	Must complete the financial and compliance audit of the fund annually. The auditor must be both approved and independent.
Accountant	Can be employed to generate the <i>financial statements</i> and member statements. In addition they can produce and lodge the superannuation fund annual return as well as provide tax advice as required. Some accountants offer administration support, such as managing investment paperwork, PAYG withholding obligations and production of meeting minutes. In many cases the accountant will facilitate the establishment of the SMSF.
Administrator	Can offer assistance in managing the many administrative tasks associated with SMSFs. Services can include recording all fund transactions, production of meeting minutes and general record keeping. Some administrators will also produce and lodge the superannuation fund annual return, provide annual accounts for the auditor and generate member statements.

## Establishing an SMSF

Establishing an SMSF requires the skills of a variety of professionals, potentially including a financial planner, lawyer and accountant.

It is important that all the applicable issues are given due consideration and the various requirements are correctly implemented.

When establishing an SMSF, you will be required to consider and decide on a number of matters, some of which will be simple and others which will require more thought. This section outlines some of the key considerations and tasks involved in the establishment process.

### Deciding on the trustee structure

An SMSF is a trust structure. That means it must have trustees in place who are ultimately responsible for all the affairs of the fund. An SMSF will have one of two types of trustee:

- individual members as trustees, or
- a corporate trustee.

Figure 2 illustrates some examples of trustee structures.

**TIP**

In choosing to establish an SMSF, you will be a trustee, or a director of a corporate trustee, of your SMSF. You will be legally responsible for all affairs of the fund even if you delegate some decisions to professionals such as accountants or financial planners. You must be competent and willing to take on this level of responsibility if you are establishing an SMSF.

### Are you eligible to be a trustee or director?

Ensure all members are eligible to be a trustee or director.

Generally, anyone 18 years or over can be a trustee of a super fund, as long as they're not under a *legal disability* (eg bankrupt or mentally impaired) or a 'disqualified person'.

A person is disqualified from being an SMSF trustee if they:

- have ever been convicted of an offence involving dishonesty
- have ever been subject to a civil penalty order imposed by *superannuation law*
- are considered an insolvent under administration
- are an undischarged bankrupt, or
- have been disqualified by a regulator (ie ATO or APRA).

... all members have an interest in the administration and decision-making of the fund.

### Individual trustee structure

In the case of individual trustees, generally all trustees must be members of the fund and all members must be trustees (but there are special rules that apply in the case of single member funds – as outlined below).

This is a way of providing members with input into and control of the administration and investment decisions of the fund.

### Corporate trustee structure

A corporate trustee involves the use of a company as the trustee of the SMSF.

Generally, all directors must be members of the fund and all members must be directors (with the exception of a single member fund – see below). This upholds the principle that all members have an interest in the administration and decision-making of the fund.

### Single member funds

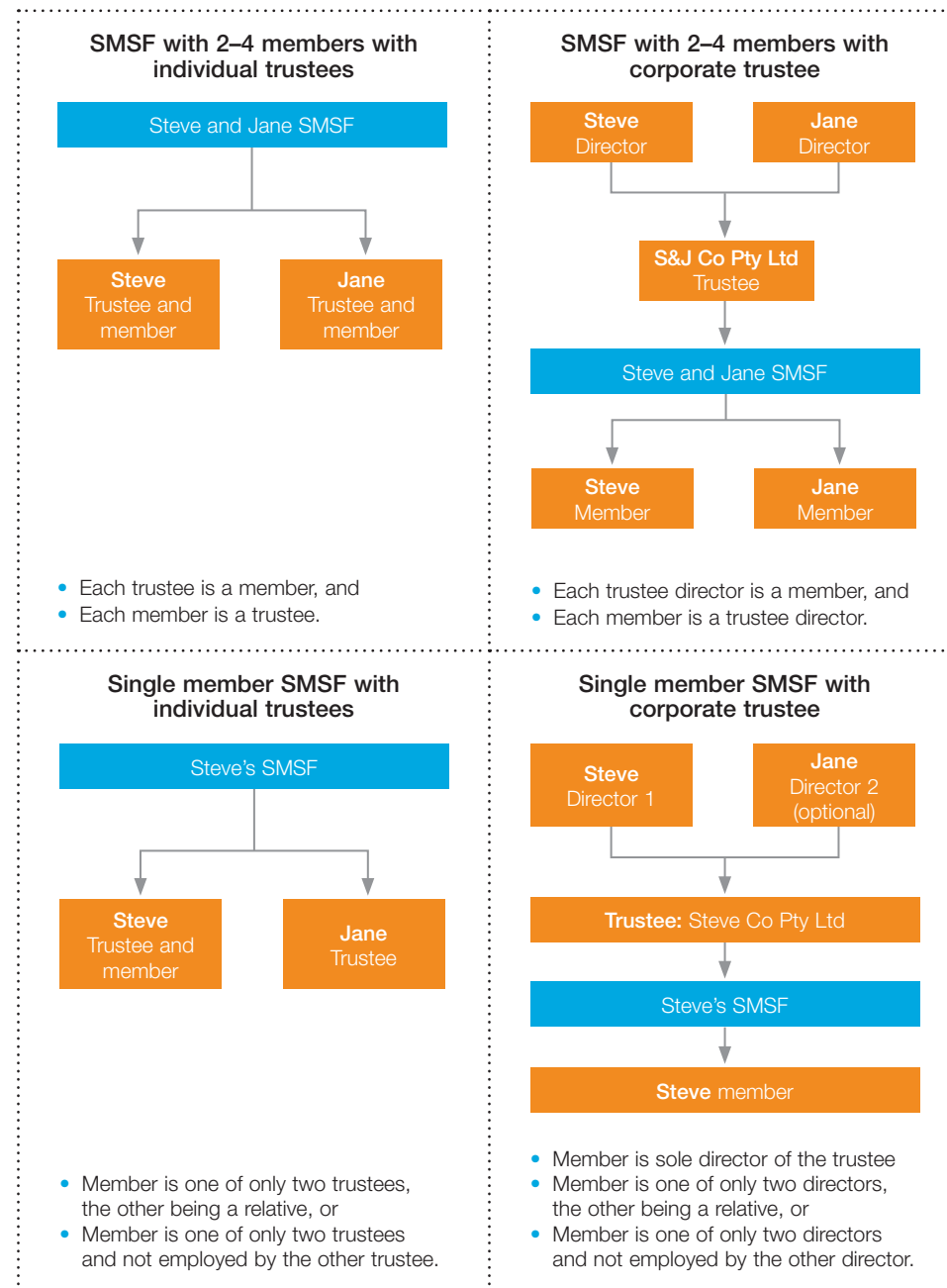
Under trust law principles, a person cannot be a sole trustee and beneficiary of a trust, as there is no trust relationship. As such, special rules have been established for the trustee structure of single member SMSFs.

For a single member fund where the member does not wish to implement a corporate trustee structure, the member must be one of two individual trustees. The non-member trustee can be anyone who is not disqualified or legally disabled, however, the member trustee cannot be an employee of the non-member trustee unless they are relatives.

In the case of a corporate trustee, there are two options in terms of directorship:

- the member is the sole director, or
- the member is one of only two directors. Broadly, the second (non-member) director can be anyone who is not disqualified or legally disabled, however, the member director cannot be an employee of the non-member director unless the directors are relatives.

Figure 2: SMSF trustee structures





“Most SMSF specialist professionals now recommend a corporate trustee structure over individual trustees.”

### Pros and cons of corporate and individual trustees

Your financial advisers may assist you in deciding between an individual or a corporate trustee structure. The table below highlights some issues to consider. The ticks indicate which type of trustee has an advantage over the other for each issue.

Table 4: Comparing individual and corporate trustee structures

Issue	Individual trustees	Corporate trustee
<b>Change of member/trustee:</b> When a member joins or leaves (including upon death) an SMSF with individual trustees, there is a change in the trustee of the fund. Hence the SMSF must ensure all records are updated accordingly, including bank accounts, shares and managed investments. Note that this process can be simplified where all investments are held within one custodial structure.		✓
<b>Change of trustee:</b> There are similar complications for individual trustee SMSFs when a member wishes for a person appointed under an enduring power of attorney to become trustee in their place (see page 38).  In both situations, less administration is required in the case of a corporate trustee as the assets remain in the company name which continues to act as trustee. The trustees will need to ensure the Australian Securities and Investments Commission (ASIC) is notified of the change in directorship within 14 days.		✓
<b>Costs:</b> The costs of a corporate trustee, particularly in the establishment phase, are higher than those for individual trustees.  Setting up a company for the particular purpose of SMSF trusteeship, carries with it the cost of incorporation plus an annual ASIC fee of \$46.  If a company is to be trustee of an SMSF then it is prudent that the company's only function is to act as the fund trustee. That is, it is generally not a good idea for a fund trustee to also be the company running a member's business or acting as trustee of another trust.  It is also important that the constitution is specifically designed for the purpose of the company – ie to operate an SMSF.	✓	

Issue	Individual trustees	Corporate trustee
<b>Fund rules:</b> If a company is chosen, it is important that the relevant parties familiarise themselves (and become comfortable) with the company rules (ie the constitution), as well as the SMSF <i>trust deed</i> rules.  The company rules will generally include the power to make decisions in certain circumstances, including decisions about changing the rules on rights and obligations, and what happens when the directorship or shareholdings change.  Therefore, for SMSFs with a corporate constitution, in addition to superannuation law there are two sets of rules for members to contemplate – the <i>trust deed</i> rules and the company rules. For SMSFs with individual trustees, all the rights and obligations will be set out in the SMSF <i>trust deed</i> .	✓	
<b>Liability:</b> As trustee of a trust, an SMSF trustee can be subject to litigation. An example is where a contractor is injured while repairing a rental property owned by the SMSF and the contractor subsequently sues for damages.  A limited liability corporate trustee may provide greater protection of the personal assets of SMSF members than will generally be available to an SMSF with individual trustees. Individual trustees may be found liable for the settlement or damages. The fund may purchase appropriate insurance to reduce liability risks.		✓
<b>Single member funds:</b> A corporate trustee provides the member the option of being the sole director – ie there is no need to involve any other person in the trusteeship of the SMSF. In contrast, where the individual trustee option is chosen, the member must be one of two individual trustees.		✓
<b>Separate ownership of fund assets:</b> One legislative requirement for all SMSFs is the separation of a member's fund assets from their personal assets. This is particularly relevant in the case of <i>real property</i> as the lands titles offices only record the owner of the property, not the capacity in which it is held. More administration is required for individual trustees to appropriately document the ownership of <i>real property</i> purchased with assets of the fund, compared to when a trustee company is the legal owner of the <i>real property</i> .  A corporate trustee structure therefore can help avoid confusion regarding which assets belong to the SMSF.		✓

### Industry trends

ATO data shows that over time there has been a shift away from corporate trustees. As at 30 June 2014, only around 23 per cent of all SMSFs had a corporate trustee and approximately 92 per cent of newly registered SMSFs in 2014 had individual trustees.<sup>5</sup>

.....

**Importantly, the trust deed can impose more stringent rules than those set out in *superannuation law*.**

.....

### Preparation of a trust deed

SMSFs, like most superannuation funds, are a form of trust. An SMSF requires a document which sets out the rules for establishing and operating the fund, known as the '*trust deed*'. The *trust deed* is a legal document which is usually prepared by a legal practitioner, ideally a *superannuation law* specialist.

Importantly, the *trust deed* can impose more stringent rules than those set out in *superannuation law*, however it cannot create rules that are more lenient than those in this legislation. If the *trust deed* does attempt to make rules which are outside the law, the legislative rules will prevail over the fund deed rules.

Some common areas that the *trust deed* covers include:

- compliance with *superannuation law*
- rules prescribing how trustee decisions about the fund are made (including the voting rights of particular trustees, if the trustees are individuals)
- how trustees are appointed or removed
- preparation of accounts
- record keeping
- who can join the fund as a member
- what and how investments and insurances can be effected
- circumstances in which benefit entitlements arise
- how to transfer benefits to or from the fund
- how to vary the rules
- how to wind-up the fund.

**SMSFs are a form of trust.**

### Important tasks in establishing an SMSF

There are a number of tasks required to establish an SMSF. These tasks, although important, are often relatively simple and in some cases only involve the SMSF trustee completing and signing a form or application.

The following ☒ check boxes provide a summary of some of the tasks required to establish an SMSF.

☐

#### Consent by trustees and directors

Trustees or directors of corporate trustees need to consent in writing to their appointment, indicating awareness of their responsibilities. The consent includes a declaration that they are not disqualified from performing the role, and must be signed within 21 days of their appointment.

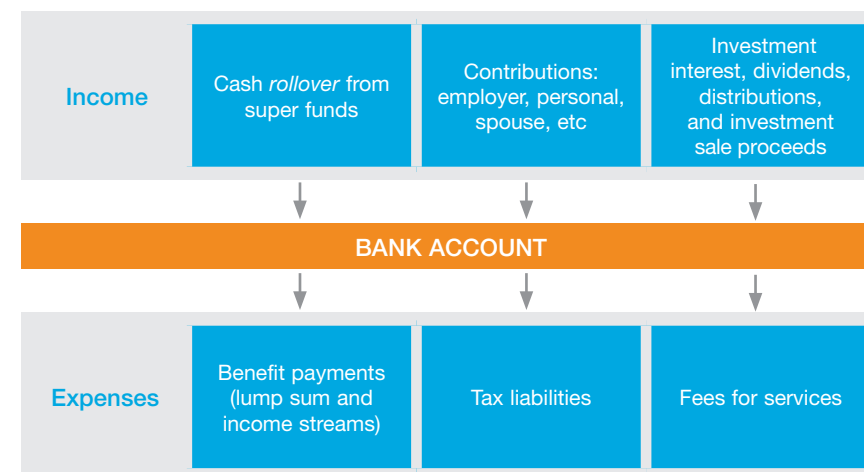
☐

#### Open a bank account

To establish the SMSF as a trust, usually a small contribution is made into the fund bank account when the *trust deed* is executed. Further contributions and transfers can be made into this bank account.

The bank account can be viewed as the central hub of the SMSF and is used for all sorts of transactions, as shown in Figure 3. In some circumstances, it may be appropriate for an SMSF to operate more than one bank account, eg one for pension accounts and one for other accounts.

Figure 3: SMSF cash flow movements within a SMSF



### ☐ Elect to be regulated, apply for the fund's Tax File Number (TFN) and Australian Business Number (ABN)

This non-revocable notice advises the regulator (the ATO) that the fund elects to be subject to the Commonwealth laws and will therefore be entitled to concessional taxation treatment as a complying superannuation fund.

This can be done by lodging ATO form NAT 2944 *Application for ABN registration for superannuation entities* with the ATO, or online by going to: [abr.gov.au](http://abr.gov.au) and clicking on Apply for an ABN.

#### TIP

This notice is required to be lodged within 60 days of the signing and stamping of the trust deed.

### ☐ Register for GST

You may also wish to consider registering your SMSF for GST purposes. This is optional for an SMSF where the taxable supplies are less than \$75,000 per annum.

Registering for GST enables a superannuation fund to claim reduced input tax credits on financial supplies provided and input tax credits on taxable supplies. Registration will also subject a superannuation fund to certain tax compliance obligations, such as completing a GST return. Whether you should register will depend on the circumstances of your fund. You should seek advice from your tax adviser.

### ☐ Accept members and provide PDS

Trustees should make and document a decision to accept the members of the fund. Prospective members of an SMSF may require a product disclosure statement (PDS) about the fund, which the trustees must provide to ensure *Corporations Act* disclosure requirements are satisfied.

Trustees of SMSFs are exempted from having to provide a PDS to members if the conditions in section 1012D(2A) of the *Corporations Act* are satisfied, that is:

- the financial product is an interest in an SMSF and
- the issuer or financial adviser has reasonable grounds to believe that the member joining the SMSF has received, or has access to, all the information that the PDS would be required to contain.

If required, a PDS is generally prepared by the SMSF trustee with assistance from the legal practitioner who created the *trust deed*, the financial planner who assisted with the SMSF investment strategy and other relevant advisers.

### ☐ Rollover benefits from other super funds

There are various considerations involved when moving benefits to an SMSF. For example, insurance benefits may lapse or exit fees may be payable upon leaving existing superannuation funds. A financial planner can provide you with advice about the implications of moving your existing superannuation benefits to your SMSF.

#### TRAP

#### Replacing existing insurance cover

You may wish to effectively 'transfer' an existing insurance policy to your SMSF. This is most effectively done by cancelling the existing policy and starting a new policy within the SMSF. The existing policy may be inside a super fund already, or may be held in the member's name.

However, before embarking on this course of action, note a few important areas.

1. Check the type of insurance cover and the terms of the cover are consistent with superannuation rules. Certain types of insurance cannot be taken out within superannuation, for example, trauma insurance.
2. It is important that the new policy is in place prior to the cancellation of the existing policy to avoid the situation where an existing policy is cancelled and the member subsequently finds the new insurer will not accept the replacement insurance application.

If the existing insurance is held inside super and the new insurance application is denied, it will be necessary to leave a small balance in the existing super account to fund the ongoing premiums. This outcome may also be appropriate if the insurance in the existing super fund is more attractive or cheaper than the SMSF can source.

3. Where the existing insurance is held outside of super, to avoid superannuation compliance issues, ensure the existing policy is cancelled and a new policy is commenced inside the SMSF, rather than transferring the ownership of the existing policy to the SMSF. Many life insurance offices will waive the underwriting process for the replacement insurance in these circumstances.

## ☐ Insurance applications

Ensure the SMSF applies for the appropriate types and levels of risk insurance eg life insurance, total and permanent disability (TPD) insurance and/or disability income insurance (also known as income protection insurance).

TIP

TRAP

### Insurance and SMSFs

It can be attractive to hold certain kinds of insurance policies within an SMSF. The premiums paid by an SMSF for insurance on the life of a member and on certain types of disability of a member may be tax deductible to the SMSF, or alternatively a tax deduction may be available upon the payment of benefits. These tax concessions are generally not available if a member holds the insurance outside super.

However, aside from the advantage of this tax deductibility, it is important to consider *superannuation law*, including restrictions on the types of insurance that can be taken out within superannuation and the limitations on access to superannuation benefits. Death and terminal illness benefits can generally be accessed from superannuation funds, but the circumstances when a disability benefit can be paid are sometimes more restrictive than if the insurance is held outside of super.

In addition, in some circumstances tax is payable on the benefit paid by the superannuation fund upon death or disability, so an overall tax comparison needs to be made.

Taking all these factors into account, it is often in an SMSF member's best interests to structure their death and disability insurance via their SMSF. Consult with a qualified financial adviser about the advantages and disadvantages.

## ☐ TFN collection

Record the TFN for each member. This will ensure the SMSF can receive member contributions and avoids additional tax being paid on employer contributions.

## ☐ Accept death benefit nominations for members

A death benefit nomination states who the member wishes to receive their superannuation benefit on death. Depending on who the benefit is paid to, a member may also be able to stipulate whether the benefit should be paid as a lump sum or pension. There are limitations on who can receive a death benefit and different tax treatments apply to different types of beneficiaries.

You may want to incorporate the ability to make binding death benefit nominations in your *trust deed*.

A common question from members of SMSFs is 'why should I make a death benefit nomination when I am also a trustee of the fund?'. The nomination only applies upon the member's passing, at which point they will no longer have a say in how the fund is run as they are no longer a trustee. A death benefit nomination will give the remaining trustees guidance as to whom you want your benefits to be paid. A valid binding death benefit nomination, which provides even greater certainty, will help ensure the remaining trustees implement your wishes.

## ☐ Prepare an investment strategy

An important establishment responsibility for an SMSF trustee is formulating and giving effect to an investment strategy that has regard to the whole of the circumstances of the fund. The investment strategy provides the trustees with a framework for making and maintaining investments. In addition, an SMSF may be required to implement an investment strategy for fund reserves, and in some cases may also choose to have a separate investment strategy for pension assets.

An SMSF should seek professional advice or appoint an investment manager if the members do not have the skills or time to develop a strategy.

See *Maintaining the fund's investment strategy* on page 33 for more detail.

Speak  
to a legal  
practitioner or  
financial planner  
for guidance.

## Useful references

- ATO, *Setting up a self-managed super fund*. Search for NAT 71923 at [ato.gov.au](http://ato.gov.au)
- Australian Business Register, *Application for ABN registration for superannuation entities*. Search for NAT 2944 at [ato.gov.au](http://ato.gov.au)
- Visit [superfundlookup.gov.au](http://superfundlookup.gov.au) to search a database of publicly available information about super funds that have an Australian Business Number (ABN). When you are choosing a name for your SMSF you can check this database to make sure there is not another SMSF with that name.

## Running an SMSF

.....

**The trustee remains ultimately responsible for any outsourced tasks.**

.....

Once an SMSF is established, the ongoing tasks commence. The number of tasks required will depend on the circumstances of the fund, however, there are certain tasks that must be completed by every fund, each year.

This section covers a number of the more common tasks and is broadly divided into two parts.

- 1 Administration tasks
- 2 Ad hoc and ongoing requirements

The ongoing management of an SMSF may appear daunting due to the large number of responsibilities. Despite this, many of the tasks may be outsourced to SMSF specialist service providers such as accountants and administrators.

Although reducing the time-cost burden on an SMSF trustee, outsourcing tasks will generally involve a monetary cost. Such costs are borne by the fund, hence ultimately reducing benefits available to members. The trustee remains ultimately responsible for any outsourced tasks.

The trustee may have the time and capability to perform many of the required tasks themselves, which may minimise some of the administrative costs.

**TIP**

The only task which must be performed by an external party is the annual audit.

### Administration tasks

Many of the annual administration tasks may be managed by an SMSF administrator or accountant. However given the procedural nature of these tasks, some trustees choose to perform a number of the tasks themselves.

### Fund income tax and regulatory returns

All SMSFs must lodge a combined fund income tax and regulatory return called the *Self-managed superannuation fund annual return* (the annual return) with the ATO each year (see also NAT 71226 at ato.gov.au). SMSF trustees are required to lodge the annual return with the ATO to report fund information, including:

- income tax position of the fund
- superannuation regulatory information, and
- member contributions (to assist the ATO to measure the value and type of contributions against the various contribution cap limits).

To complete the annual return, the trustee, fund accountant or another party will firstly prepare an *operating statement* and *statement of financial position*.

Next, the SMSF's approved auditor will conduct a financial audit of the fund. The auditor must also complete a compliance audit which will determine whether the *superannuation laws* are being followed. The findings from the audit are then relayed back to the trustee and accountant for comment and potential amendment. The accounts may go back and forth between the trustee, accountant and auditor a number of times.

Once the audit is finalised, the fund income tax and regulatory return can be lodged.

For some SMSFs, the due date for lodgment is 31 October, but most SMSFs will have a later due date, for example, if the return is lodged by a tax agent as part of the tax agent lodgment program. SMSFs are sent a reminder letter from the ATO each year notifying them of their actual lodgment and payment due dates.

At the time of lodging the annual return, the SMSF must pay the supervisory levy (\$259 for the financial year ending 30 June 2016).

“

**All SMSFs must lodge a combined fund income tax and regulatory return.**

”



## Valuing fund assets

From 1 July 2012, SMSFs are required to account for fund assets on a market value basis, rather than historical cost or some other valuation method.

Valuations are required to complete the SMSF's *financial statements* and annual return, as well as for *member benefits* reporting purposes. Valuation should be effective at a reporting date which, in most cases, is 30 June each year.

The ATO has indicated that where the value of an asset is relatively simple or easy to calculate, the trustees (or others) can value the asset. Where the asset is difficult or complex to value, the trustees should engage a qualified valuer.

*Superannuation law* requires some assets to be valued by a qualified independent valuer, for example *collectables and personal use assets*.

In addition, valuing assets will assist the trustee to calculate investment performance and aid in the investment decision-making process. See the ATO's publication *Valuation guidelines for self-managed superannuation funds* for more information.

## Engagement of an auditor

It is important that you obtain the services of an approved auditor. Approved auditors, through the annual audit of each SMSF, perform a critical role in maintaining the legal compliance of the SMSF. Approved auditors identify and report relevant matters associated with an SMSF and accordingly provide a strong positive influence.

Approved auditors must be members or fellows of a prescribed professional accounting association and must comply with the professional principles outlined by their association. Additionally, these associations have outlined mandatory competency requirements for members who audit SMSFs.

ASIC is the registration body for SMSF approved auditors. Approved auditors are required to meet independence standards as part of their ongoing registration. Independence in this context refers to an arms-length relationship between the auditor and the SMSF's financial planner, accountant, administrator and/or trustee.



***Superannuation law requires some assets to be valued by a qualified independent valuer, for example *collectables and personal use assets*.***



## Acceptance of contributions

*Superannuation law* contains standards that must be met in order for a super fund to accept a superannuation contribution. It is the trustee's responsibility to ensure the SMSF is able to accept any particular contribution. In addition, superannuation funds, including SMSFs, are required to accept certain employer contributions electronically in compliance with data and payment standards introduced as part of the SuperStream reforms.

Additional tax can be imposed by the ATO if the various superannuation contribution caps are exceeded.

Detailed discussion of these issues is beyond the scope of this booklet. A financial adviser can provide more information about making contributions to your SMSF. See also *Your super – booklet 1: Getting the best out of your superannuation savings*.

## Notification of change in fund details

SMSFs are required to notify the ATO of any change in fund details within 28 days of the change. Changes that need to be reported include:

- contact details and person
- name
- address
- membership
- trustees (including directors in case of a corporate trustee).

## How to change details for super entities

There are several options available to SMSFs when changing details:

- trustees can change some details online through [abr.gov.au](http://abr.gov.au) or the fund's tax agent may make changes online through the Tax Agent Portal. Information that can be updated online includes postal, email, business addresses, contacts and financial institution details
- trustees or their authorised contacts may phone the ATO on 13 28 66 between 8.00am and 6.00pm, Monday to Friday – not all details can be changed over the phone
- trustees can change details by downloading the ATO's *Change of details for superannuation entities* form (search NAT 3036 at [ato.gov.au](http://ato.gov.au))
- trustees may also order a paper copy of this form by phoning the ATO's automated publications distribution service on 1300 720 092.

Speak to  
your financial  
adviser for more  
information.

Information  
that can be  
updated online  
includes postal,  
email, business  
addresses,  
contacts  
and financial  
institution details.

## Record keeping

It is imperative that SMSF trustees keep proper and accurate tax and superannuation records in order to manage the fund effectively and efficiently.

SMSFs need to keep the following records for a minimum of five years:

- accurate and accessible accounting records that explain the transactions and financial position of the SMSF
- an annual *operating statement* and an annual statement of the SMSF's financial position
- copies of all SMSF annual returns lodged
- copies of any other statements you are required to lodge with the ATO or provide to other super funds.

SMSFs need to keep the following records for a minimum of ten years:

- minutes of trustee meetings and decisions (where matters affecting the SMSF were discussed)
- records of all changes of trustees
- trustee declarations recognising the obligations and responsibilities for any trustee, or director of a corporate trustee, appointed after 30 June 2007
- members' written consent to be appointed as trustees
- copies of all reports given to members.

Accurate and timely record keeping will reduce compliance risk and can also help to reduce accounting costs.



It is imperative that SMSF trustees keep proper and accurate tax and superannuation records ...



## Rollovers out of the fund

Sometimes an SMSF member may wish to transfer all or part of their benefits to another superannuation fund. This process is generally referred to as a '*rollover*'.

When a *rollover* of benefits from an SMSF occurs, the trustee must complete a *Rollover Benefits Statement* (search NAT 70944 at ato.gov.au) and provide copies to the receiving fund (or funds) and the relevant member.

The *Rollover Benefits Statement* allows the receiving fund to:

- apply the correct income tax treatment to the components rolled over
- maintain the preservation status of the benefits rolled over, and
- record the superannuation contributions made to the SMSF for the financial year the *rollover* took place. It is then generally up to the receiving fund to report these contributions to the ATO.

The trustee should also ensure that the *rollover* is to a complying superannuation fund.

## Making benefit payments

The payment of superannuation benefits to members is an important trustee duty. In most circumstances, benefits can be paid either as a lump sum or income stream.

Contributions and fund earnings are generally classified as '*preserved benefits*' and cannot be accessed by a member until a 'condition of release' is met. The common conditions of release are described in the Table 5 on the following page – note that this is not an exhaustive list of all conditions of release.



The payment of superannuation benefits to members is an important trustee duty.



When a *rollover* of benefits from an SMSF occurs, the trustee must complete a *Rollover Benefits Statement*.

Table 5: Conditions of release

Condition of release	Definition	Comment
<b>Retirement</b>	1. From preservation age, if an arrangement under which the member was gainfully employed has ended, and the trustee is reasonably satisfied that the member intends never to be gainfully employed for at least 10 hours per week, or  2. From age 60, if an arrangement under which the member was gainfully employed has ended after turning age 60.	No restrictions.  Either definition can be relied on from age 60.
<b>Attaining age 65</b>	N/A	No restrictions.
<b>Attaining preservation age</b>	N/A	Restricted access.  Benefit can only be taken as a transition to retirement (TTR) or non-commutable income stream.
<b>Death</b>	N/A	No restrictions.
<b>Permanent incapacity</b>	Physical or mental ill health where the trustee is reasonably satisfied the member is unlikely to engage in gainful employment for which the member is reasonably qualified by education, training or experience.	No restrictions.
<b>Terminal medical condition</b>	The member has an illness or injury, certified by two registered medical practitioners, that is likely to result in death within 24 months of certification date.  At least one of the medical practitioners specialises in an area related to the illness or injury.	No restrictions.
<b>Temporary incapacity</b>	Physical or mental ill-health that has caused the member to temporarily cease gainful employment, but not permanent incapacity.	Restricted access.

## Preservation age

A number of conditions of release rely on the member attaining preservation age. Preservation age varies according to date of birth as shown in the following table.

Table 6: Preservation age

If you were born ...	... your preservation age is:
Before 1 July 1960	55 years
From 1 July 1960 to 30 June 1961	56 years
From 1 July 1961 to 30 June 1962	57 years
From 1 July 1962 to 30 June 1963	58 years
From 1 July 1963 to 30 June 1964	59 years
After 30 June 1964	60 years

SMSF trustees may have PAYG withholding obligations in relation to the payment of benefits (see PAYG withholding below).

## Paying benefits 'in specie'

A common question is whether a benefit payment can be made by transferring an asset instead of cash. The answer depends on the type of benefit payment.

Lump sum payments (including death benefits) can either be paid via cash or by *in specie transfer* of an asset out of the fund to the member. The requirement here is that the asset be valued at market value at the time of the payment.

The regulators hold the view that pension payments can only be paid in cash, which therefore requires the SMSF to hold requisite liquidity.

## PAYG withholding

An SMSF trustee must withhold tax, known as Pay As You Go (PAYG) withholding, where a taxable benefit is paid to a member. The most common circumstances of PAYG withholding are where the member is under age 60 and either receives an income stream or lump sum *member benefit*.

Details of the payment must be reported on a 'payment summary' to both the ATO and the member within the following time frames:

- in the case of an income stream, by 14 July following the end of the relevant financial year
- in the case of a lump sum, within 14 days of the payment.

The amount withheld must be remitted to the ATO on either a quarterly or annual basis depending on the SMSF's circumstances. The ATO, the fund's accountant or administrator will be able to assist in this area.

Before making a decision to invest in any particular asset, the SMSF trustees should ensure it is compliant with both superannuation law and the fund's trust deed rules.

## Investment-related tasks and issues

Although the legislative intention generally is to provide superannuation trustees with a wide discretion to invest as they see fit, trustees do face some investment restrictions which are strictly enforced. These restrictions are in addition to any explicit or implied restrictions that exist in the SMSF *trust deed*. Before making a decision to invest in any particular asset, the SMSF trustees should ensure it is compliant with both the *superannuation law* and the fund's *trust deed* rules.

The main SMSF investment restrictions imposed by legislation are summarised below, with further detail later in this booklet.

### Investment restrictions summary

- **Sole purpose test** – This test requires superannuation funds be maintained for the sole purpose of providing members with retirement benefits, death benefits and certain other ancillary benefits (see the *sole purpose test* on page 37). The fund is prohibited from allowing members or other parties to benefit from assets other than in compliance with the *sole purpose test*.
- **Acquiring assets from a related party** – Trustees are generally prohibited from acquiring assets from members and related parties. Exceptions to this rule apply.
- **In-house assets** – The fund must not hold in-house assets exceeding 5 per cent of the value of the fund's assets. Broadly, an in-house asset is a loan to, or an investment in, a related party of the fund. An in-house asset may also include investments in *related trusts* and certain lease arrangements with related parties.
- **Maintaining the fund's investment strategy** – The trustees must follow the fund's investment strategy and ensure it is reviewed regularly.
- **Keeping assets separate** – Members must keep personal assets and business assets separate from assets of the SMSF.
- **Individual member investment objectives** – The investment strategy may have to accommodate different investment objectives of members.
- **Using derivatives** – A derivatives risk statement must be put in place.

- **Borrowing** – The trustees are prohibited from borrowing unless the arrangement satisfies one of the exceptions contained in the superannuation legislation.
- **Financial assistance to members or relatives** – Trustees are prohibited from providing financial assistance to members or relatives.  
The trustees must deal with other parties of an investment transaction on an arm's length basis or the terms and conditions of the transaction must be no more favourable to the other party than those on an arm's length basis.
- **Collectables and personal use assets** – Restrictions apply to SMSF investments in *collectables and personal use assets* to ensure that these investments do not give rise to current day benefits for members, but rather are held for the purpose of providing retirement benefits.

### TIP

You are not permitted to transfer your home into your SMSF.

Transferring a residential property you own into your SMSF will breach the acquisition of asset from related parties rule, the *sole purpose test*, and potentially other investment restrictions. For similar reasons, if your SMSF invests in a holiday house you are generally not permitted to make personal use of the property.

### Acquiring assets from a related party

Care is required when an SMSF acquires an asset from a related party (refer to the definition of a related party on page 32). 'Acquire' in this context includes both in specie contributions (ie contributions other than money) to the fund and purchases of assets by the fund.

In general, superannuation funds are prohibited from acquiring assets from related parties to the fund, but certain exceptions apply to SMSFs, including:

- a security listed on an approved stock exchange (eg shares listed on the Australian Stock Exchange)
- *business real property* (see *Tip* on page 32)
- approved bank deposits
- *pooled superannuation trust* units
- widely held unit trust units
- certain non-geared unit trusts
- certain other assets purchased at market value, where the acquisition of the asset would not result in the level of in house assets (see 'In house assets' on page 33) of the superannuation fund exceeding 5 per cent of the value of the fund's assets (eg units in a widely held unit trust).

In all cases the acquisition must occur at market value.

## TIP

**Business real property**

Some points for consideration when contemplating *business real property*.

- *Business real property* is property used wholly and exclusively in one or more businesses. It cannot be vacant land that is earmarked for development.
- There is no specific restriction on who owns or is involved in the business that is conducted on the *business real property*. However, where the business is owned by a related party, a legally enforceable lease arrangement must exist between the two parties.
- The property can be purchased by the fund, or contributed to the fund (or a combination of both), by a related party to the fund.
- The property can be held by the SMSF as *tenants in common* with another party, including a related party to the fund. However, SMSF trustees should take care where the other ‘owner’ has borrowings for which the property is held as security, as *superannuation law* compliance issues may arise.

**What is a related party?**

A ‘related party’ in the SMSF context includes:

- a member or trustee/director of the SMSF
- a *standard employer-sponsor* of the fund
- a relative of a member of the fund
- a business partner or partnership, or a spouse or child of that business partner
- the trustee of a trust that is controlled by the SMSF member
- a company that is sufficiently influenced by a related party or where a related party has a majority voting interest.

This list is not exhaustive. Trustees should seek advice before dealing with assets where there is any concern that the other party to the transaction has connections with the SMSF.



**Trustees should seek advice before dealing with assets where there is any concern that the other party to the transaction has connections with the SMSF.**

**In-house assets**

An ‘in-house asset’ is:

- a loan to a related party of the fund
- an investment in a related party of the fund
- an investment in a *related trust* of the fund or
- an asset of the fund where a lease agreement exists between the fund and a related party.

In general, in-house assets must not exceed 5 per cent of the SMSF’s total assets. As outlined earlier, in-house assets cannot be acquired if the acquisition would result in the SMSF exceeding the 5 per cent threshold. If changing asset values cause the 5 per cent threshold to be exceeded, the SMSF trustee must take appropriate action to reduce the in-house asset level to within the threshold.

In-house asset management in the SMSF context is a complex area – speak to a qualified professional for further guidance.

**Maintaining the fund’s investment strategy**

Once implemented, the SMSF’s investment strategy is required to be regularly reviewed to ensure it remains appropriate.

The investment strategy must contemplate a number of considerations including:

- the risk and likely return from the investments, having regard to the fund’s objectives and expected cash flow requirements
- diversification, that is the composition of the fund’s investments and the extent to which the fund is exposed to risks from inadequate diversification. Often this is achieved by investing across a number of asset classes – eg shares, property, fixed interest and cash
- the fund’s ability to pay benefits and other costs as they become due, and
- whether the fund should hold insurance cover for members of the fund.

It must also outline the investment objectives of the SMSF and the investment approach the fund will take to achieve them. The trustee must ensure all investment decisions are consistent with the investment strategy.

The ATO suggests that the investment strategy of an SMSF should be documented. Having a written strategy can provide some legal protection if an investment decision (made in accordance with the fund’s strategy) goes wrong. All investment management decisions and any external advice should be recorded in writing.

An SMSF should seek professional advice or appoint an investment manager if it does not have the skills or time to develop a strategy. When receiving financial advice, the member/trustee should be clear whether they are seeking advice as a trustee of the fund, or as an individual member (see *Individual member investment objectives* on page 34). Also, SMSF trustees should bear in mind that even if an investment manager is appointed, the trustee is still ultimately responsible for all investment decisions.

**Speak to a qualified professional for more information.**



## The segregation of member assets helps to facilitate multiple investment strategies in an SMSF.

### Individual member investment objectives

Generally, the SMSF investment strategy is formulated in respect of the fund's assets as a whole. Individual member investment strategies may be appropriate in some cases, where the SMSF members have varying needs and circumstances.

For example, an investment strategy designed to generate retirement income for the soon-to-retire senior members of the fund may not deliver the long-term capital growth needed by members who are many years from retirement.

In addition, the fund may decide that each member of the SMSF may have their own investment strategy reflecting each member's particular risk profile and objectives.

The segregation of member assets helps to facilitate multiple investment strategies in an SMSF. If an SMSF elects for a *segregated* approach to managing the fund's assets, segregation should be established in contemplation of the fund's *trust deed* rules and may require separate account set-up.

Individual investment strategies should be reviewed regularly to reflect other changes that may impact the members' investment objectives such as marriage, divorce, children, business partners, etc.

### Reviewing the portfolio

Regular rebalancing of the investment portfolio will be required to maintain the fund's investment strategy and, if applicable, to ensure in-house assets remain below 5 per cent of the value of the fund.

### Keeping fund assets separate

Fund members must keep their personal and business assets separate from the fund's assets. All assets of the fund must be appropriately registered in the name of all trustees or in the name of the corporate trustee as trustee for the fund.

#### EXAMPLE

The Brown SMSF has two individual trustee-members, Allan and Carol. Where possible, the fund's assets should be held in the name of 'Allan Brown and Carol Brown as trustee for the Brown SMSF'.

If Carol and Allan have a corporate trustee in place, ABC Pty Ltd, then where possible the fund's assets should be held in the name of 'ABC Pty Ltd as trustee for the Brown SMSF'.

In some Australian states where it's not possible to use the name of the fund, SMSF trustees should clearly show and document the fund's ownership of the asset, for example by using one of the following:

- a caveat
- legal instrument, or
- declaration of trust.

Even if only one member is going to operate a particular account, the names of *all* trustees should be registered as described above so that in the case of the death of a trustee, the other trustees can appropriately administer the fund's assets.

### Using derivatives

An SMSF may, subject to its *trust deed* rules, use derivatives (involving a charge over fund assets) as part of its investment strategy if it has in place a derivatives risk statement. The derivatives risk statement is a separate document to the SMSF's investment strategy.

See a qualified professional for further information.

**All assets of the fund must be appropriately registered in the name of all trustees or in the name of the corporate trustee as trustee for the fund.**

See  
a qualified  
professional  
for more  
information.

Trustees considering an LRBA involving a related party or otherwise should ensure they obtain specialist advice from a qualified professional.

Obtain specialist advice from a qualified professional.

### Borrowing

SMSFs are generally prohibited from borrowing money. There are however some limited exceptions, including:

- temporary borrowing to pay a benefit to a beneficiary
- temporary borrowing to cover settlement of certain securities transactions, or
- a correctly structured gearing arrangement, commonly referred to as a limited recourse borrowing arrangement.

### Limited recourse borrowing arrangements

An SMSF must comply with a number of SIS requirements, and its own *trust deed* rules, to borrow on a limited recourse borrowing arrangement (LRBA) basis. These SIS rules include:

- the borrowed funds are applied for the purchase of an 'acquirable asset' ie:
  - a single asset such as a property, or
  - a collection of assets, all of which are identical and each with the same market value (eg a parcel of listed shares) – this collection of assets must be treated and traded as a single asset and therefore the individual assets cannot be sold down over time
- the asset is held by a separate holding trust
- the SMSF holds a beneficial interest in the separate holding trust
- the SMSF has a right to acquire legal ownership of the asset, generally after the repayment of the loan, and
- the lender's rights in case of default on the borrowing are limited to the asset – that is, no other SMSF assets can be used as security for the borrowed funds.

An LRBA may be structured with a related party (including an SMSF member) as lender to the SMSF. Trustees considering an LRBA involving a related party or otherwise should ensure they obtain specialist advice from a qualified professional. For further information about LRBAs, see *Your super – booklet 6: Self managed super funds: A guide to super borrowing*.

### Lending to members or relatives

An SMSF is prohibited from lending or giving financial assistance to a member of the SMSF or a relative of the member.

Even short-term assistance, for example to help a child with a loan repayment, until their next payday, is prohibited.

## Trusteeship issues

### Trust deed review

The *trust deed* should be reviewed regularly to accommodate changes in superannuation, taxation, estate planning and other laws that affect superannuation, as well as the potentially changing circumstances of the fund members and beneficiaries.

### Breaches of the trust deed

A breach of a rule within the *trust deed* is considered a breach of *superannuation law*. To remain compliant, the SMSF trustee is required to understand the rules contained within the *trust deed*, and act within those rules. While the trustee is responsible for any breaches, it may claim damages or losses by taking action against any other persons (including financial advisers) 'involved' in the breach.

### The sole purpose test

One key requirement for SMSFs is compliance with the 'sole purpose test'. Essentially, a trustee must ensure that the fund is maintained solely for one or more of a list of core purposes (member's retirement, reaching age 65 or earlier death) plus certain ancillary purposes (employment termination insurance, salary continuance, reversionary benefits and other approved benefits).

The fund must be maintained solely to provide the above benefits and must not be used to satisfy other immediate needs of members. For example, it cannot be used to provide financial assistance to members.

### SMSF must be 'Australian'

A condition of an SMSF obtaining favourable tax treatment as a complying superannuation fund is that it is an 'Australian superannuation fund'. If any members are located overseas the status of the fund can be jeopardised.

### TRAP

#### Relocating overseas

Careful consideration should be given to the impact on the trusteeship of an SMSF when a member relocates overseas for an extended period of time.

At worst, an SMSF can lose its 'complying status', resulting in taxable income being taxed at the highest marginal tax rate. That is, the tax liability may be applied to the taxable income attributable to all members of the fund, not just the member who is overseas.

The issues and solutions to the problem are complex and beyond the scope of this publication. Seek the advice of a qualified professional when a member of your SMSF goes overseas for anything more than a holiday.

## Appointing a replacement trustee

On occasions, an SMSF trustee may wish to delegate their trustee duties to another party. This situation may arise because of loss of health by the member or because they are overseas for an extended period (see *SMSF must be 'Australian'* on page 37).

### TIP

#### Appointing an enduring power of attorney

Simply appointing a person via an enduring power of attorney (EPOA) agreement is not sufficient at law to pass on the trusteeship to the EPOA holder.

In the case of an individual trustee, the member must be formally removed as trustee, and the EPOA holder appointed as a trustee in place of the member.

With a corporate trustee, the EPOA holder will generally be appointed as a replacement director of the trustee company, upon resignation of the original director.

Seek the advice of a financial adviser when appointing an EPOA holder to take on SMSF trustee responsibilities.

## Dispute resolution – between member and trustee

Members of *non-SMSFs* who have a complaint about the operation of the fund or a decision of the trustee can generally seek resolution through the fund's internal dispute resolution facility. Beyond that, they may escalate their complaint on certain issues to the Superannuation Complaints Tribunal (SCT).

SMSFs have a limited number of members (up to four) and all members are directly involved in the running of the fund through the member/trustee arrangement (see *Deciding on a trustee structure*, page 11). Accordingly, they do not have recourse to the SCT to have complaints heard and adjudicated. If an SMSF issue between a member and the other trustees/directors cannot be resolved by the trustees/directors themselves, the only formal alternative for dispute resolution is via the court system.



**If an SMSF issue between a member and the other trustees/directors cannot be resolved by the trustees/directors themselves, the only formal alternative for dispute resolution is via the court system.**



## Dispute resolution – between member/trustee and service providers

Where an SMSF has a complaint about a service provider to the fund, a number of options may be available. Firstly the Financial Ombudsman Service resolves disputes between consumers (ie the SMSF) and member financial services providers (ie the service provider to the SMSF). However this option is only available if the service provider is a member of the Financial Ombudsman Service.

Alternatively if a complaint involves a member of a professional association, that association may be willing to mediate and/or adjudicate.

A third option, and generally the last resort, is to refer that issue to the courts if there is legal basis.

### TRAP

#### Government financial assistance protection

Members of APRA-regulated funds receive protection against fraudulent conduct or theft under Part 23 of the SIS Act. An APRA-regulated superannuation fund may apply for financial assistance from the government if the fund has suffered a loss as a result of fraudulent conduct or theft.

This assistance is not available to SMSF members.

## Useful references

- ATO, *Running a self-managed super fund*. Search NAT 11032 at ato.gov.au
- ATO, *Rollover Benefits Statement*. Search NAT 70944 at ato.gov.au
- ATO, *Change of details for superannuation entities*. Search NAT 3036 at ato.gov.au

## Winding up an SMSF

### Winding up an SMSF requires careful management of a number of tasks.

Another aspect to contemplate when deciding whether or not to establish an SMSF is the process of exiting from the fund if you later decide an SMSF is not for you. As mentioned at the outset, this booklet is an overview of the SMSF lifecycle and a quick reference guide for each step of the journey – the wind-up of an SMSF is the last step in that lifecycle.

#### Why wind-up an SMSF?

SMSFs are wound up for many reasons. For example:

- members/trustees have tired of the responsibility and administrative burden
- the failing health of a key member/trustee may result in an inability to run the fund in the future
- the fund's assets have reduced to a level such that it is no longer cost effective to run the fund, or
- a key member/trustee has become a non-resident for Australian taxation purposes.

#### Issues in winding up

Winding up an SMSF requires careful management of a number of tasks. Much more is involved in winding up an SMSF than exiting from most other types of superannuation fund.

If an SMSF is not wound up correctly, it is possible it will remain open. As such, the fund may need to pay for an additional year's *financial statements*, audit and lodgement of annual return.

#### Check the trust deed

The first place to turn should be the SMSF *trust deed*, as this may contain certain requirements regarding the wind-up process.

#### Obtain written agreement

To ensure all parties are properly informed and to avoid unnecessary complications, each trustee/member should sign an agreement to close the fund. This could be in the form of signed minutes to the meeting where it was resolved to wind-up the fund.

#### Verify with members how they would like existing benefits paid

Each member must notify how and where they want their benefits to be paid, specifically whether they want their benefits to be rolled over to another super fund or paid out (as a lump sum).

For *rollovers*, each member must submit their request in writing to the trustee. Members can use the ATO form '*Rollover initiation request to transfer whole balance of superannuation benefits between funds*' (search NAT 71223 on ato.gov.au).

For lump sums paid to the member, where the benefit contains a *preserved component*, ensure the member has satisfied a condition of release and is therefore eligible to receive their benefit (refer to *Table 5: Conditions of release* on page 28 for eligibility).

#### Prior year's tax and compliance obligations

Ensure all prior year *financial statements*, tax returns and other tax and compliance obligations have been finalised.

#### Preparation of draft financial statements

Trustees should have draft *financial statements* prepared. The draft *financial statements* will determine the value of each member's benefit.

The draft *financial statements* should include all income and expenses to date. In addition, they should factor in both actual and estimated future expenses, including:

- accounting fees for the draft *financial statements*
- accounting and audit fees for the last set of *financial statements* and tax return
- annual supervisory levy
- actuarial fees where applicable
- tax payable by the fund in the final tax return, including any tax on any capital gains associated with selling or transferring assets out of the fund, and
- income expected to be received after the draft *financial statements* are complete and before the wind-up of the fund.



Each member must notify how and where they want their benefits to be paid ...



## “ The trustees will need to organise the relevant change of ownership documentation ... ”

### Sale or transfer of assets

The trustees may need to arrange the sale of assets to facilitate the transfer of benefits from the SMSF.

Alternatively, the assets in some cases may be transferred in specie either to the member (in the case of a lump sum *member benefit*) or to the receiving fund (in the case of a *rollover*). In the case of a *rollover*, it is important to check with the receiving superannuation fund to ensure it can accept an *in specie transfer*.

The trustees will need to organise the relevant change of ownership documentation when transferring assets out of the SMSF. In addition to the capital gains tax implications of transferring the assets, the member receiving the benefit should consider the potential stamp duty implications as any stamp duty liability rests with the receiving party.

#### TIP

#### In specie rollovers from other super funds

Some, but not all, superannuation funds accept in specie *rollovers* from other funds, including SMSFs. This can be a convenient way to transfer funds out of an SMSF. However consideration should be given to the capital gains tax, stamp duty and transaction costs, including comparison with similar costs associated with selling the assets and rolling over the cash proceeds.

### Final annual return

The fund should lodge its final annual return with the ATO once:

- the necessary assets have been sold
- *member benefits* and *rollovers* have been paid, and
- final financial statement and audit reports have been received.

Trustees must ensure they complete the relevant section of the annual return that indicates that the fund is being wound up during the income year.

### Informing the ATO

Once the SMSF is wound up, the SMSF must notify the ATO in writing within 28 days.

Once all compliance and tax obligations have been met, the ATO will then write to the former trustees confirming that the SMSF's ABN has been cancelled and they have amended their records to show that the fund has been closed.

### Corporate trustee wind-up issues

In the case of a corporate trustee, the directors must decide whether the company should remain running or be wound up.

A company remains registered even after it ceases trading. While registered it is still subject to the legal requirements of a registered company, including payment of the annual review fee.

If you have no further use for your company and it is not in financial difficulty or insolvent, you may wish to close it down (deregister). A company ceases to exist on deregistration.

If your company is suffering financial difficulty, see ASIC's information sheet *Insolvency information for directors, employees, creditors and shareholders* (search for INFO 39 at [asic.gov.au](http://asic.gov.au)).

### Deregistering a company

Generally, there are two ways to deregister a company if it is not in financial difficulty or insolvent. These are:

- by applying to ASIC to voluntarily deregister a company (assuming it meets certain legal requirements) or
- through a members' voluntary winding up, which is initiated by the company's members and involves the orderly winding up of the company's affairs.

You should seek your own independent professional advice to determine which option is appropriate for your company.

### When can a company be voluntarily deregistered?

ASIC will only deregister a company if it meets all of these requirements:

- all members of the company agree to deregister
- the company is not carrying on business
- the company's assets are worth less than \$1,000
- the company has no outstanding liabilities
- the company is not a party to any legal proceedings, and
- the company has paid all fees and penalties payable under the *Corporations Act 2001*.

A company remains registered even after it ceases trading.

Seek independent professional advice.



### How to apply for voluntary deregistration

After you are sure that the company meets the requirements to deregister, complete ASIC's *Application for voluntary deregistration of a company* (search for ASIC Form 6010 at [asic.gov.au](http://asic.gov.au)) and pay a lodgement fee of \$38.

ASIC will write to tell you if your application is approved. ASIC will publish a notice of the proposed deregistration in the next Commonwealth of Australia ASIC Gazette. Two months after the notice is published, ASIC will deregister the company unless they receive a request to defer or cancel the deregistration. When the company is deregistered ASIC will send you a confirmation letter.

### Keeping the company's books after deregistration

The directors of the company must keep its books for a period of three years after deregistration.

## Post wind-up issues

### Expenses

Certain expenses may not fall due until after the SMSF is due to be wound up. Rather than keep the SMSF running and delaying the wind-up process, the SMSF can be closed and the necessary cash can be retained on trust by the former trustees until the liability is paid. This avoids the risk of having to pay for another set of *financial statements* and annual return.

### Tax refund

In some cases, the SMSF will be entitled to receive a tax refund from the ATO upon completion of their final annual return. This is common in the case where all members are receiving income streams (ie the SMSF is in a tax exempt environment) and the SMSF has received dividend income with imputation credits which need to be refunded to the SMSF. In this situation a bank account should be kept open to receive this refund.

Alternatively, if the SMSF's accountant or administrator has a trust account, the refund could be deposited in this account and dealt with in accordance with the member's instructions from there (eg rolled over to another fund or cashed where a condition of release is met).

## Useful references

- ATO, *Rollover initiation request to transfer whole balance of superannuation benefits between funds*. Search for NAT 71223 at [ato.gov.au](http://ato.gov.au)
- ASIC, *Application for voluntary deregistration of a company*. Search for ASIC Form 6010 at [asic.gov.au](http://asic.gov.au)

## Helping with the SMSF decision

By this stage we hope you have learned a lot about the various stages in the SMSF lifecycle, as well as the responsibilities placed on SMSF trustees. This booklet is intended as a useful and informative guide for those contemplating establishing an SMSF, and also those who have already established their SMSF.

To this point we have focussed on primarily SMSF specific matters, however to fully appreciate SMSFs and the environment they operate in, an understanding of the broader superannuation and taxation fields is advisable.

The other booklets in the series should assist in this education process – see page 1 for details.



**Consult your financial adviser if you would like more information on the best approach for you.**



# Glossary

Term	Definition
<b>Business real property</b>	<ul style="list-style-type: none"> <li>any freehold or leasehold interest of the entity in real property or</li> <li>any interest of the entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer or</li> <li>if another class of interest in relation to real property is prescribed by the SIS regulations – any interest belonging to that class that is held by the entity,</li> </ul> <p>where the real property is used wholly and exclusively in one or more businesses (whether carried on by the entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate.</p> <p>For further detail please see ATO SMSF Ruling 2009/1 available at <a href="http://law.ato.gov.au">law.ato.gov.au</a></p>
<b>Collectables and personal use assets</b>	<p>The SIS regulations list the following items as collectables and personal use assets:</p> <ul style="list-style-type: none"> <li>artwork (as defined under <i>taxation laws</i>)</li> <li>jewellery</li> <li>antiques</li> <li>artefacts</li> <li>coins, medallions or bank notes</li> <li>postage stamps or first day covers</li> <li>rare folios, manuscripts or books</li> <li>memorabilia</li> <li>wine or spirits</li> <li>motor vehicles</li> <li>recreational boats, or</li> <li>memberships of sporting or social clubs.</li> </ul>
<b>Financial statements</b>	Financial statements include the fund's statement of financial position and operating statement.
<b>In specie transfer</b>	In specie is derived from Latin term meaning 'in kind' or 'in its own form'. An in specie transfer is a transfer of the actual asset and not the cash equivalent.
<b>Legal disability</b>	<p>Lack of legal capacity or qualification to enter into a binding contract.</p> <p>Generally, a person is under a legal disability if they are under 18, or are physically or mentally incapacitated.</p>

Term	Definition
<b>Member benefit</b>	A lump sum or pension payment made by a superannuation fund to a member while the member is alive.
<b>Non-SMSF</b>	A superannuation fund that is not an SMSF. Non-SMSFs are generally regulated by APRA.
<b>Operating statement</b>	Previously known as an income statement or a profit and loss statement – a financial statement showing the SMSF's net income or net loss for a specified reporting period.
<b>Pooled superannuation trust</b>	A pooled superannuation trust (or PST) is a unit trust with a corporate trustee that is only used for investing the assets of a superannuation fund, life assurance company, another PST or certain other tax-advantaged entities.
<b>Preserved component or preserved benefit</b>	Part of a superannuation account balance that a member is restricted from accessing until they meet certain conditions of release.
<b>Real property</b>	Land-related property such as a house or business premises.
<b>Related trust</b>	A related trust of a superannuation fund is generally a trust that a member or a standard employer-sponsor of the fund controls.
<b>Rollover</b>	A transfer of assets from one superannuation fund to another within the Australian superannuation system.
<b>Segregated vs pooled assets</b>	Members of the SMSF may have particular assets allocated to each of them, or they may each have a particular interest in a pool of assets allocated to their account.
<b>Self managed superannuation fund (SMSF)</b>	<p>Is a fund that, in general terms, meets the following requirements:</p> <ul style="list-style-type: none"> <li>it has less than five members</li> <li>each member of the fund is a trustee and each trustee is a fund member</li> <li>if the trustee of the fund is a body corporate each director of the body corporate is a member of the fund</li> <li>no member of the fund is an employee of another member of the fund, unless they are related and</li> <li>no trustee of the fund receives any remuneration for their services as trustee.</li> </ul>

Term	Definition
Standard employer-sponsor	<p>If an employer contributes, or would contribute, wholly or partly pursuant to an arrangement between the employer and a trustee of a regulated superannuation fund, the employer is a standard employer-sponsor of the fund.</p> <p>If the employer only contributes, or would contribute, pursuant to arrangements between the employer and a member or members of the fund, the employer is not a standard employer-sponsor.</p>
Statement of financial position	Previously referred to as a Balance Sheet. Provides a summary for the assets and liabilities of the fund at the beginning and end of the reporting period.
Superannuation law	Includes the Superannuation Industry (Supervision) Act 1993, Superannuation Industry (Supervision) Regulations 1994, collectively referred to as SIS, and other relevant superannuation laws.
Taxation law	Includes the Income Tax Assessment Act 1997, Income Tax Assessment Act 1936, Taxation Administration Act 1953 and other relevant taxation laws.
Tenants in common	A type of co-ownership where two or more persons own distinct interests in the same property.
Trust deed	The document that sets out the rules for establishing and operating the fund.

**If you have any questions or require more information, we recommend you speak to your financial adviser or contact Macquarie on 1800 806 310, email [macquarie.com.au/personal](mailto:macquarie.com.au/personal) or write to us at PO Box 192, Australia Square NSW 1215.**

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