

SMSF Strategies

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“The trust deed of any superannuation fund is its strategic engine while the trustee of the fund is its driver. A company is a better trustee vehicle than the individual members themselves.”

If the SMSF trust deed is the strategic engine of the fund, the trustee is the driver

The trust deed of a SMSF is its strategic engine. A poor SMSF trust deed limits the strategic opportunities in the fund whereas a good SMSF trust deed ensures that not only will the fund be set up to make the most of the Simpler Super revolution in terms of concessional taxation benefits but also ensure the maximisation of any SMSF estate planning possibilities.

If the SMSF trust deed is the engine, *the trustee of the fund is the driver*. That means to make the most of any strategic opportunity it is crucial to make sure the driver has the best vehicle.

Essentially there are two SMSF trustee options — the members themselves as individual trustees or a special purpose SMSF corporate trustee.

Although there is a small initial expense to create a special purpose corporate trustee there are four significant practical, taxation, family and financial benefits in choosing to do so.

1. Creating a SMSF for future generations

It is a requirement under equity law that a trust may last no more than 80 years. Although a SMSF is a trust, the Superannuation Laws provide that the rule against perpetuities does not apply to trusts established as superannuation funds including a SMSF. Strategically this means that “a SMSF lasts forever”.

If the fund lasts forever by virtue of the Superannuation Laws it is also important for the trustee to have the capacity to last forever. The only entity that makes the grade is a company which lasts until wound up or deregistered. Current and future members may come and go as directors but the company remains constant as the trustee.

2. Concessional taxation guaranteed with a company trustee



“Unfortunately the Superannuation Laws provide that only SMSFs with corporate trustees can pay lump sums as well as pensions. If a SMSF has individual trustees, only pensions can be paid. This is not practical in the 21st century and especially for a SMSF. ”

The most significant strategic change implemented under the Simpler Super revolution is the abolition of the mandatory cashing requirement at age 65. The Superannuation Laws previously forced a member of a fund who was not engaged in part time gainful employment to take their superannuation benefits as a lump sum and/or a pension. Surprisingly this law was abolished in 2007.

For many SMSF members, there is now no need to ever commence a pension account in the fund but rather, the member may retain all of their superannuation benefits in an accumulation account until their death. The member can then live off lump sums drawn from their accumulation account as and when needed. In some cases, where the member is independently wealthy outside of the fund, they may take no superannuation benefits from the fund during their life such that their accumulation benefits on death pass out to their dependants or legal estate, hopefully by way of a SMSF Will. *This strategy, although not utilised by many SMSF trustees, is now a crucial component of running a modern day SMSF.*

Unfortunately the Superannuation Laws provide that only SMSFs with corporate trustees can pay lump sums as well as pensions. *If a SMSF has individual trustees, the sole or primary purpose of the fund must be to pay old age pensions — otherwise the fund and its members will lose their concessional taxation status.* Unfortunately lump sums and estate planning benefits do not fit within these tight individual trustee guidelines. A SMSF with individual trustees seeking to run a modern day SMSF with accumulation (and also pension) accounts for a retiree member, as well as having extensive SMSF estate planning needs to change trusteeship to a corporate trustee or limit superannuation benefits to pensions only. Running a modern day fund for pension purposes only is not practical in the 21st century.

3. Ease of SMSF administration

It is important at all times that the members of the fund remain as trustees or directors of a corporate trustee. If not the trustee of the fund must become licensed – an expensive proposition.

Members move in and out of the fund over time as a consequence of marriage, divorce, death, disability or bankruptcy. This means a change in the trustees of the fund for funds with individual trustees – but no change for a SMSF corporate trustee (only a change in directors). Any change in trustees requires numerous administration forms to be completed. In addition it is a legal requirement under the Superannuation Laws that the SMSF trustee must hold all of its assets in the names of the trustee. Where a member leaves the fund or a new member joins the fund and there are individual trustees, this requires the trustee to notify all share and unit holder registries, land title offices and other asset registries that there has been a change in trustee. After a divorce or death this can be a sizable administrative task, and can also be costly. Using a SMSF corporate trustee provides a long term administrative benefit.

4. Litigation protection

Trustees are potentially confronted with being sued should an event occur to an asset of the fund. For example, the trustee of a fund may own a residential property and as a result of an accident or for some other reason a tenant or visitor may sue the trustee personally under owner's liability. If a corporate trustee is in place, the director's are personally protected, but not so for individual trustees. The threat of litigation is a major reason why the sole purpose of a SMSF trustee company should always be to act as a trustee of a SMSF not running a business or acting as a trustee of another trust.



A SMSF company protects the trustee from litigation where a third party or a member takes action against the trustee for an action against an asset of the fund such as a residential property. Not so for an individual trustee where they may become personally liable under any litigation.

The trustee company must be a special purpose SMSF trustee company

As with SMSF Trust Deeds, not all companies are suitable to act as a SMSF corporate trustee. A corporate trustee of a SMSF must be built specifically for a SMSF in order to ensure that the trustee is focused on SMSF strategy rather than the ordinary business and shareholder principles found in most proprietary limited and shelf companies.

There is also a legal and financial reason to put in place a special purpose corporate trustee for a SMSF. In 2003 the government introduced company laws that provided for a "special purpose company" which acted as trustee of a SMSF. The benefit of being a special purpose SMSF company is that the annual ASIC fee is only \$43 compared with the normal \$230 for a proprietary company. In fact for the cost of \$320 a special purpose SMSF corporate trustee can pay ten years ASIC fees upfront – a significant saving over using a traditional or shelf company as the SMSF trustee which would cost \$2,265 over the same period.

To put in place a corporate trustee for your SMSF or to change a corporate trustee to a special purpose corporate trustee please contact us.



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