STRAT X ADVISORY

An Introduction to Self-Managed Superannuation Funds

(SMSF)

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What is a SMSF

A Self-Managed Superannuation Fund (SMSF) is a trust where money or assets are held and managed on behalf of members to provide retirement income in the future. Essentially, SMSFs are for family members and close business associates who wish to take **more control of their retirement savings.**

Briefly, a SMSF is defined in the following way:

- has 4 members or less;
- all members must be trustees and all trustees must be members (except for single member funds);
- where the trustee is a company, all members must be directors of the trustee company and all directors must be members of the fund (except for single member funds);
- no member of the fund can be an employee of another member unless they are also related; and,
- the trustee cannot receive any remuneration for fulfilling his or her duties as a trustee of the fund.

Where there is only one member of the fund, there are only three trustee structures that are allowed:

- a company with the member as sole director;
- a company with the member as a director in addition to another director where, if the member is an employee of the other director, that director must be a relative; or,
- two individuals acting as trustee where one is the member. The member cannot be an employee of the other trustee, unless the other trustee is a relative.

Being a small super fund and controlled by trustees who are also members of the fund, it is imperative that all individuals within a SMSF are prepared to be involved and actively participate in decisions which affect their retirement savings.

Why Establish a SMSF

For many people the greatest advantage of a SMSF is the greater control, flexibility and investment choice they provide. Through a SMSF you have:

- **Greater control** over the investment strategy for the fund. This provides greater ability to tailor an investment strategy to suit circumstances and preferences.
- **Flexibility to** change types of assets you invest your superannuation in and vary the allocation to each.e.g. increasing the allocation to property and or varying the allocation to shares at particular points in time.

- **A wider range of investment options** such as direct property, direct shares and fixed interest securities
- A SMSF can be **tailored** to meet your own personal circumstances in relation to **estate planning**. You can include family members as long as there are no more than 4 members in the Fund at any given time.
- The **confidentiality** that these funds provide. Highly paid executives who are able to have employer contributions paid to a SMSF may be able to keep their employment details confidential.
- A SMSF can be used as a vehicle to accumulate superannuation benefit whilst employed and can be **maintained well into retirement** and beyond, particularly where there are other family members in the Fund.

Compliance Obligations

A major consideration in establishing a SMSF is the administration and compliance obligations that go with operating a SMSF.

If you decide to establish a SMSF, you will be a Trustee(s) of the Fund and it will be your responsibility to ensure the fund complies with the trust deed and superannuation/taxation laws at all times.

As Trustee(s), you will need to cover a broad range of responsibilities, which include:

- lodging appropriate documents with the ATO to establish and register the SMSF;
- documenting an investment strategy (including insurance) for the Fund;
- investing the assets of the Fund;
- maintaining proper records for the Fund;
- ensure annual accounts are prepared;
- having the accounts audited;
- submitting annual returns to the ATO; and
- ensuring that the Fund at all times complies with the relevant legislation.

You should be aware that there are severe penalties for Trustee(s) who fail to ensure a SMSF is properly administered.

SMSF Investment Restrictions

Although you do have more flexibility in the investments you can make through a SMSF, it is important that you are aware of the regulatory restrictions that do apply. The key areas relate to:

- meeting the sole purpose test;
- in-house asset rules
- conducting all transactions at arm's length
- acquisition of assets from related parties
- prohibition against borrowing
- prohibition on financial assistance to members and their relatives.

Underpinning the SMSF regulatory regime is the sole purpose test – the sole purpose of your fund must be to provide retirement benefits to fund members. In line with this, trustees are required, first and foremost, to have an investment strategy which they invest in accordance with.

A fund must also maintain its assets separately from those of a business in which one or more of the trustees is involved. For example, if assets are held in the name of one of the trustees rather than being clearly held as part of the fund, the fund risks the loss of the asset if the trustee is declared bankrupt or if their business is placed in receivership.

A failure to separate assets is a clear contravention of SIS. To help ensure that the assets of an SMSF will be available to provide retirement income, SMSFs are restricted in the investments they can make. However, one of the concessions that SMSFs enjoy is their ability to invest up to 100% of the fund's assets in business real property – though an issue for trustees to consider is whether this lack of investment diversification is a prudent investment strategy. You should also understand that residential property rarely fits the conditions necessary for it to be considered 'business real property'.

While there are no restrictions on SMSFs investing in collectibles such as art, the ATO has highlighted that the sole purpose test means that members cannot enjoy a benefit from the investment prior to preservation age. This means that it is unlikely that the art can be displayed in the trustee's home or office.

The meeting of fiduciary responsibilities by SMSFs is also important, particularly in relation to the fund holding its own bank account (rather than banking being done through personal accounts of one or more of the trustees) and not overdrawing that account.

Cost to run a SMSF

Given the technical nature and the penalties that apply for not meeting trustee obligations, it is expected that you may choose to use the services of accounting professionals such as Strat X Advisory, who can assist you in ensuring the Fund's compliance, provide an investment strategy and product recommendations, lawyers who help prepare the SMSF trust deed.

The outsourcing of these functions to external professionals means there are costs involved in running your own SMSF.

It is generally accepted that these additional costs make the establishment of a SMSF too expensive for individuals with less than $190,000 in superannuation funds.

Fund Establishment

There are a number of administrative steps to establish the Fund which Strat X Advisory can assist you with.

Obtain a trust deed

The deed is an important legal document which must be accurately drafted to ensure the smooth operation of the fund. It is often referred to as the governing rules of the fund.

Appoint Trustee(s)

The trustees are responsible for the proper management and compliance of the fund. If individual trustees are appointed, all members must be trustees and all trustees must be members. If a corporate trustee is appointed, all members must be directors of the corporate trustee and all directors must be members. Special rules apply for single member funds.

Elect to become a regulated fund

For the Fund to receive concessional tax treatment, the Trustee must elect to be regulated under SIS Act. A notice of election must be lodged with the ATO within 60 days after establishment of the fund. This is done by completing an Application to Register for the New Tax System Superannuation Entity form.

Obtain a tax file number (TFN)

The Fund is allocated a TFN by the ATO after lodgement of the above form.

Obtain an Australian Business Number (ABN)

The super fund is allocated an ABN after lodging the Application to Register for the New Tax System Superannuation Entity form.

Development of an Investment Strategy

One of the most important duties of a Superannuation Fund Trustee is the arrangement of the Fund's investments. It is a requirement of current superannuation legislation that funds must establish and implement a suitable investment strategy. Failure to do so could result in considerable penalties.

A strategy is a plan for making, holding and realising investments which reflect the objectives which the Trustees wish to achieve for the Fund.

As a licensed financial planner Strat X Advisory can assist with preparing and implementing the Investment Strategy. We can also provide periodical reviews of the investment strategy and investments to ensure it continues to meet the objectives of the Fund.

Review and or placement of Insurance

Arrange to review the insurance requirements of all members-this now is an obligation under the law and included in the Fund's investment strategy.

Solutions to satisfy Administration and Trustee(s) Compliance duties

As explained above, there are a number of additional administration and compliance obligations that go with operating a SMSF.

It is important that you understand all your obligations and you have solutions in place to satisfy them.

Overview of a self-managed super fund – Elements & Descriptions

On the following page is a flow chart showing the various elements of a SMSF

Overview of a SMSF – Elements & Descriptions

SMSF-Super Fund (Trust)

Lawyer

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Trustee (Company)

Trust Deed & Rules

Members

Binding Death Benefit Nominations

Insurance

- Member directed
- Trustee liability (loans)

Investments

- Investment strategy
- Insurance consideration
- Actual investments
- Bank account

Compliance

- Accounts
- Tax return
- Annual audit
- ASIC fee
- Trustee sign off
- Minutes
- Members Statements