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Understanding Self-Managed Super Fund Trustees

A Self-Managed Superannuation Fund (SMSF) is a type of "trust" and like any trust must be run by trustee/s. However, before setting up it is important to understand the SMSF trustee structure and rules.

Who is a Trustee

A SMSF trustee is responsible for running the fund and making decisions that affect the retirement interests of each fund member. The Trustees are responsible for administering the SMSF duties including:

- Establishing the Investment Strategy
- Complying with all Super Laws
- Maintaining all records of the SMSF
- Lodging Tax and Regulatory Returns

Trustee Options

There are two SMSF trustee structure options available, one where the trustees work in their individual capacity and the second where a company is appointed as the trustee. Each option is detailed below.

In both cases, the members run the fund and as a general rule, all members are either trustees themselves or directors of the corporate trustee.

a. **Individuals as trustees:** In this case, trustees who are individual people (as the name suggests) manage the fund and each trustee is a member. It is important to note that where an SMSF has individual Trustees, it is a legislative requirement to have a minimum of two Individual Trustees. In the case of a sole member fund, the member would need to appoint an additional person to act with them as joint trustees.

b. **A company as corporate trustee:** In this option, if you have an existing established company you can nominate this Company to be the Trustee of the SMSF. If not, you can establish a company for a "special purpose", where the sole purpose of the company is to act as Trustee for an SMSF.

   Generally, all of the members will need to be directors of the trustee company. In the case of a sole member fund, that member can be the sole director of the trustee company

Trustee Rules & Exceptions

SMSF trustee rules state that:

- Trustees (or trustee directors) cannot generally be in an employee/employer relationship (unless they are related)
- Trustees cannot be paid by the fund for carrying out their trustee duties. However, they could be paid for professional services supplied such as bookkeeping, legal or taxation services.

- Trustees need to be Australian residents as the place of central management and control of a SMSF must always be in Australia
- All trustees must sign a declaration acknowledging their roles and responsibilities.
- People acting as trustees must not be "disqualified persons" – for example, those who have been convicted of an offence involving dishonesty or who are undischarged bankrupts.

In a Self-Managed Superannuation Fund, all members of the fund must be trustees and all trustees must be members. However, some exceptions to this rule are:

1. **Where a member is under 18 years of age** – they will require a representative to act as a trustee on their behalf
2. **Where a member loses capacity** – they will also require a representative to act for them
3. **In the case of a single member fund** - where the trustee is not a company, they will require an additional person to act with them as trustees

Individual or Corporate Trustee: making the right choice

Statistics from the Australian Taxation Office indicate that as of 30 June 2017, the majority (58.6%) of all SMSF's had a corporate trustee.

The current "best practice" recommendation from most professionals in the industry is to use a trustee company and it is evident that more than 80% of newly established funds have a corporate trustee. The reasons for this are varied but include:

i. **Sole member funds**. Single-member funds with a corporate trustee can have a sole director and no additional trustees are required. As the sole Director and Shareholder of the Company, this gives one total control of the SMSF.

ii. **Administration simplicity**. Members can move in and out of a fund through death, marriage, divorce, etc. Where this occurs when the trustees are individuals, the fund will be required to change all of the ownership details of its assets and investments and this can be a daunting and time-consuming task.

   On the other hand, changing the directors of a trustee company is very simple and no other changes are required to assets or investments

iii. **Continuity when members change**. Unlike other types of trusts which have a limited life (80 years) due to the "rule against perpetuities", a superannuation fund is exempt from this and can last for multiple generations. A company lasts until it is wound up or deregistered.

iv. **Concessional tax guarantee**. The rules for SMSF's provide that where the fund has individual trustees, its sole or primary purpose must be to pay old-age pensions. Where funds have both member pension accounts and accumulation accounts this could be brought into question.

This may become more significant with the latest round of changes to superannuation law which limit the total amounts that can be held in pension accounts and may result in some cases where accumulation accounts are held long term. Having a company as a trustee will avoid these uncertainties.

v. **Asset protection**. In the case of a fund being sued, individual trustees could potentially be liable but this would not normally be the case for directors of a trustee company.

vi. **Borrowing.** It is easier for an SMSF with a corporate trustee to borrow (via a limited recourse borrowing arrangement) as often lenders will insist that an SMSF has a corporate trustee.

vii. **Reduced penalties.** In the event that any super laws are breached, the ATO levies administrative penalties on each trustee per violation. If the fund has a corporate trustee and the trustee is charged a penalty, it is only charged one penalty amount and the directors of the corporate trustee are jointly liable to pay that penalty.

However, where a fund has individual trustees a penalty would be imposed on each individual trustee. For example, if the fund has four members the penalty is four times that of the penalty imposed on a corporate trustee for the same superannuation law infringement.

It is also generally recommended that the trustee of a SMSF should be a “special purpose superannuation trustee company”. This means that the company only acts in that single capacity and does not operate a business or act as trustee of another trust (these conditions are set out in the company’s constitution). The advantages of this approach include that there is no possible confusion over the separation/ownership of superannuation fund assets and the annual ASIC filing fees are only around 20% of the usual fee.

The additional one-off set up costs for a company trustee will generally be less than $1,000 (with annual filing fees of less than $50) but this represents good value in light of the advantages outlined above.

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Mr Locke has been an accountant and taxation expert for 35 years. His company, Practical Systems Super, provides an all-in-one SMSF solution with a full administrative service, SMSF management software, and independent, licensed advice, tailoring their package to meet the individual needs of trustees and SMSF professionals.

To find out more about Practical Systems Super, visit www.pssuper.com.au, or call 1800 951 855.