SUPERMATTERS

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INSIDE

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How to conduct succession planning for your SMSF

Managing a self-managed super fund (SMSF) in the event a trustee passes can be a difficult and complicated process.

While succession planning may not be one of the first responsibilities that comes to mind when managing an SMSF, it can ensure a funds stability for remaining members as well as providing certainty and peace of mind for a deceased trustee's family. There are a few avenues for trustees to take when future-proofing their SMSF.

Binding death benefit nomination:

By using a binding death benefit nomination (BDBN), trustees can dictate where their super goes if they pass away. Since a person's superannuation does not make up part of their estate and is therefore not automatically covered by their will, a BDBN is often a good solution to help with the distribution of super member benefits.

Enduring power of attorney:

SMSF trustees may choose to appoint an enduring power of attorney as a replacement trustee. An enduring power of attorney is someone who makes decisions on behalf of the trustee if they become incapacitated or pass away. Common power of attorneys include accountants, financial advisors and lawyers; people who understand SMSF management and the associated challenges. For an enduring power of attorney nominee to be appointed, legal documents, i.e. the succession documents appointing the replacement director, must be in place before the member loses their capacity to be a member.

Appoint a new trustee:

In the event of a trustees death, sole member funds can nominate another trustee. Note that the non-member trustee cannot be the employer of the member unless they are related. This would not be an option for a fund with two members as the available exemptions only apply to single member funds. Those who appoint a family member or close friend must first consider whether they are suitable for the role; running an SMSF requires expertise and knowledge, and appointing someone with limited experience may not be in the best interest of the fund's future.

There are alternative strategies that may be more appropriate than an SMSF, depending on your individual financial situation. Investment decisions are best made with the input of an appropriate financial advisor.

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What is the sole purpose test?

SMSF trustees should ensure that they understand the sole purpose test because it is an integral part of superannuation regulation enforced by the ATO.

Failing to qualify the sole purpose test will mean that a trustee loses tax concessions on their SMSFs. Breaching this test will also open trustees up to civil and criminal penalties, making it especially important to ensure compliance.

Sole purpose test states that an SMSF must be maintained for the sole reason of benefitting its trustees after retirement or their descendants if the trustee passes away. The criteria is not being met if a trustee is directly or indirectly receiving a financial benefit from the fund. For example, collectibles bought for personal use would result in a breach of the test.

The ATO relies on the sole purpose test to determine whether a trustee continues to receive tax concession. In the case that there are benefits being yielded from the fund which are not included in the SMSF fund, a number of factors will be considered to determine if the test was breached. Predominantly, these factors pertain to ensuring that the breach is unintentional or in accordance with specifications set out by the ATO. Additionally, the ATO has created a provision which states that incidental, remote of insignificant benefits will not be considered a breach of the sole purpose test.

Breach of the test may be costly, so trustees should ensure they are taking measures to comply with it.

Salary sacrificing for your super

One of the most effective ways to add to your super balance is through salary sacrifice. Salary sacrifice involves the employee agreeing to exchange a portion of their salary (before tax) for an increase in superannuation contribution by their employer.

Contributions made through salary sacrifice are classified as employer contributions, not employee contributions.

These are taxed at a maximum of 15% (if you earn under $250,000 per year) which is lower than the marginal tax rate most employees are charged. The amount that you 'sacrifice' cannot be assessed for taxation purposes i.e. it is not subject to PAYG. Employees should ensure that their contributions per year are not above $25,000 as this is the cap on concessional contributions and if surpassed, will require additional tax to be paid.

Salary sacrifice is an effective way to minimise tax liability and increase super contributions if individuals are earning a greater amount than they require for annual expenses.

After beginning the salary sacrificing process, employees should keep a look out for two important matters. First, the calculation of ordinary time earnings by your employer that super applies to, does not change. Second, the amount which is paid to your super through the salary sacrifice agreement does not contribute towards any super guarantee contributions that are required of your employer. Employees should verify that neither of these occur, and verify any confusion with their employer.

Cryptocurrencies for your SMSF: risks and benefits

The hype surrounding cryptocurrency may tempt you to invest through your SMSF, but you should know all the risks before you commit.

Your first step should be to check that your trust deed allows this kind of investment. Even though most modern deeds give the trustee freedom to invest in what they like, they are all different. Currently, there is no explicit legislative prohibition or restriction on investing in SMSFs so long as you follow investment rules for trustees.

Risks

Risks associated with cryptocurrencies in your SMSFs extend to:

- Unpredictability of the asset due to its short history
- Instability of the investment due to the potential for future government regulation
- High volatility of the investment due to dramatic rises and falls in recent times
- High risk due to no physical asset backing up the investment; if it fails you lose everything

Benefits

Some advantages to adding this asset to your SMSF include:

- Further diversification of your SMSF by adding a new type of asset to your portfolio
- Security of the investment as transactions using cryptocurrency are trackable through blockchain technology
- Potential for high windfalls for those wanting a high risk, high return investment strategy
- Reduced tax on the returns for SMSFs in comparison to investing as an individual

Salary sacrifice is a trade off between income earned in the present, and contributions made for the future. Employees may experience difficulty in finding a balance which suits them or taking different aspects of their finances into consideration for the agreement with their employer. Asking for professional assistance to determine specifications for the agreement could help simplify this procedure.