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SMSF ESTABLISHMENT STEPS & CONSIDERATIONS

Potential member should carefully consider the steps involved in the initial decision to establish of a self managed superannuation fund (SMSF) and the issues which flow from such a decision:

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Pre-establishment issues

Step	Consideration
Is a SMSF suitable for you?	The responsibilities of running a SMSF may not suit all those considering a SMSF. Potential members should consider whether: • They are willing to accept the duties and responsibilities of being a trustee • Whether the fund can be justified on a cost perspective • If they have the investment skills and experience required to manage the fund's investments • If they are disqualified from acting a trustee • The Australian residency of the members needs to be considered at the time of establishment and on an ongoing basis, as it can affect the tax position of the SMSF.
Determine fund membership	Potential fund membership considerations include: • The ability of each member to act as a trustee and to make decisions for the fund • The nature of the relationship between the different members and the potential for dispute between members i.e. complex family arrangements • Whether the members will want or trust others to be involved in the fund
Determine trustee structure	A SMSF must either have a corporate trustee or no more than four individual trustees. In general terms: • each member must be either a trustee of the fund or a director of the trustee company; and • each trustee or director of the trustee company must be a member of the fund. A member cannot be an employee of another member (unless they are relatives). The Australian residency of the members needs to be considered at the time of establishment and on an ongoing basis, as it can affect the tax position of the SMSF. The appointment of the trustees will affect the cost structure and ownership/separation of assets. Succession needs to be carefully considered, as trustees need to be competent and prepared to manage the SMSF.
Develop/Obtain a Trust Deed	The Trust Deed of a SMSF provides the rules under which the trustees of a SMSF must operate, in conjunction with the provisions of the superannuation legislation (SIS Act). A well drafted trust deed which provides proper guidance to the trustees, whilst allowing a degree of discretion, is imperative for a SMSF and its trustees Key considerations include: • the appointment/removal of trustees • rules for investment, insurance, borrowing, reserves strategy and payment of benefits • dispute resolution procedures • windup provisions • requirement for trustees to comply with the SIS Act and regulations

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Establishment of a fund

Step	Consideration
Sign fund application forms	Potential members must complete application forms to become members of the fund. This information is then used to prepare the fund's trust deed.
Execute trust deed & appoint members	Members/directors must execute the trust deeds, sign trustee consent and complete the formal trustee declaration All newly appointed SMSF trustees, or directors of a corporate trustee, are required to complete a formal Trustee Declaration, which must be signed within 21 days of becoming a SMSF trustee. The declaration contains a number of detailed statements confirming that the individual understands their specific obligations in a number of key areas including: • sole purpose test • investment strategy; • investment; • contribution and benefit payment restrictions; and • administration of the SMSF.
Adopt Investment Strategy (including insurance)	SMSF trustees are required to formulate an investment strategy for the fund. Formulating the investment strategy involves developing and documenting a plan for making, holding and realising fund assets, considering (among others) appropriate risks of the investments, the ability of the SMSF to meet its liabilities and general liquidity issues. As part of the investment strategy, trustees must also consider whether the SMSF should hold life and disability insurance cover for its members. If members have insurance cover in a separate superannuation fund, and intend to transfer their benefits from that fund to the SMSF, the fact that the cover will lapse should be considered.
Open SMSF Cash account	Trustees of SMSFs must keep all money and other fund assets separate from any personal or business assets. This includes ensuring that the fund has its own bank account for all fund transactions , which can include: • accepting contributions and receiving rollovers • funding the acquisition of SMSF assets • receiving the investment income and proceeds from the sale of fund assets • paying benefits and funding operating expenses and liabilities. The bank account should be opened in the name of the trustee or trustees with a designation indicating that they hold the account in trust for the (named) SMSF.

Step	Consideration
Register the fund with the ATO	The next step is for the fund to elect to be a regulated fund under the SIS legislation. The notice is irrevocable and must be lodged with the ATO within 60 days of the fund being established. Regulation as a complying superannuation fund means the SMSF is entitled to the lower tax rates available to superannuation funds. As part of the election to be regulated, the trustees also need to obtain a TFN and ABN for the fund. The same form can also be used to register for GST purposes, if the fund either needs to register or decides to do so. Funds do not need to register for GST if their annual turnover (e.g. taxable supplies) is under $75,000 p.a.
Accept contributions and receive rollovers	After the fund has received an ABN, it is able to receive contributions and rollovers to the SMSF's cash account.
Invest fund assets	Trustees must invest fund assets in accordance with the fund's trust deed and investment strategy. The trustees must also comply with the SIS investment rules. Ownership must be recorded in the name of all the individual trustees, as trustees for the fund or in the name of the corporate trustee.
Appoint external service providers	Trustees will be required to appoint service providers to undertake certain tasks in relation to their fund. These could include an approved auditor to audit the fund, a lawyer, a valuer/actuary, a financial planner, accountant or SMSF administration service.

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Post-establishment

Once the SMSF has been established, there are a number of tasks that the trustees will need to complete regularly. These include:

- invest and manage fund assets
- regularly review the investment strategy, including insurance
- document any trustee decisions
- manage the SMSF's bank account
- assessing any superannuation benefit claims
- establishing and paying any income streams, if applicable
- value assets at market value at 30 June (each year)
- prepare the SMSF's financial records, including a SMSF approved audit every year
- maintain all fund records
- provide annual returns and supervisory levy to the ATO
- confirm that they have acted in accordance with super and tax laws

What you need to consider

- A SMSF may provide the opportunity to tailor your investment strategy for retirement. Every investment carries investment risk, so there is no guarantee that the SMSF will achieve the funds objective or will be liquid to fund retirement payments. Trustees should consider diversification, insurance and liquidity risk when formulating investment strategy.
- Establishment and ongoing costs will apply to the SMSF. For superannuation with lower balances, it may be better to consider externally managed funds. You may also need tax, audit and financial advice.

You should consider whether you wish to undertake the responsibility of acting as a SMSF trustee. SMSF trustees must manage the trust prudently in the best interest of all beneficiaries as per trust law and comply with the SIS Act. This includes exercising the same degree of care, skill and diligence as an ordinary person in managing the fund, administering the investment/ insurance strategy, managing the trust's accounts and protecting the fund's assets in line with the sole purpose test. Trustees are personally liable for their decisions.

- Failure to run the fund in compliant way can lead to fines, penalties, higher taxes, frozen fund assets and even criminal prosecution.
- Loss of central control and management in Australia can cause the fund to lose complying fund status which can mean the loss of tax concessions for the SMSF and its members

- SMSF trustees/members do not have access to the Australian Financial Complaint Authority (AFCA). SMSFs are not eligible for compensation if they suffer loss as a result of fraud of theft
- The government can change legislation at any stage
- The SMSF Trustees can be audited by the ATO at any time.

References

You may wish to refer to the following websites for further information about SMSF investment Rules:
• www.ato.gov.au/super/self-managed-super-funds/
• www.moneysmart.gov.au

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