

Special ANNUAL UPDATE SERVICE (www.smsf.com.au) issue

Congratulations on subscribing your clients' SMSFs (or your personal SMSF) to the Annual Update Service. This complementary newsletter is sent to advisers and trustees who subscribe to the Annual Update Service.

About the Annual Update Service

The Annual Update Service keeps SMSF governing rules up to date. Whether you are an adviser taking care of 1,000 SMSFs or an individual running your own SMSF the Annual Update Service benefits you:

- **Compliance** — SMSF governing rules are kept up to date with all the latest legal changes.
- **Rules available online 24/7** — no more trying to hunt down copies of governing rules. Simply log in to www.smsf.com.au and access governing rules.
- **Trustee/member sign-off** — to adopt new rules, trustees/members must sign one set of resolutions per year. This helps prove that important trust law requirements are met.
- **Maximum convenience** — no more 'ad hoc' updates. This means governing rules are updated without filling in forms, photocopying deeds, couriering to lawyers, etc.
- **Administrative ease for advisers** — all SMSF clients using the Annual Update Service have the same governing rules. This means advisers only need to familiarise themselves with one set of governing rules.

First annual update

The first annual update occurred on 1 July 2008. Every SMSF subscribed to the Annual Update Service at this time received:

- new governing rules; and
- new tailored resolutions adopting the governing rules.

These become viewable when the 2008-09 resubscription invoice is paid.

The new governing rules are exactly the same for each SMSF. This is very important for advisers and auditors who only need to familiarise themselves with one set of governing rules.

Of course, the new governing rules comply with all of the latest law, right up to the Tax Laws Amendment (2008 Measures No. 2) Bill 2008 (passed on 23 June 2008).

The last 12 months have seen massive changes to superannuation and taxation laws (as well as the popular strategies associated with them). Those subscribed to the Annual Update Service can rest easy knowing that when the trustee resolutions are signed, they have adopted new governing rules that allow for all of these new laws and strategies.

Naturally, the new governing rules allow for all of the following:

- **SMSF borrowing arrangements** (also known as 'instalment warrant' borrowings) — SMSFs can now borrow subject to meeting certain requirements. One requirement is that governing rules must allow for the borrowing. The ATO have confirmed this, stating '[t]he governing rules of a super fund must allow the trustee of the fund to borrow before any instalment warrant type arrangement can be entered into.' See rule 7.3(j).
- **Tax free superannuation payouts now available for terminal illness** — superannuation lump sum payments are now tax free when paid to individuals suffering from terminal medical conditions. The government also has introduced a new condition of release to give persons with terminal medical conditions unrestricted access to their superannuation benefits. Naturally, the governing rules must also allow these benefits to be accessed, which they do. See rule 17.3
- **Simpler/better super regime** — all of the new rules introduced by the simpler/better super regime, such as the new types of pensions, the ability to convert from an older style of pension (eg, allocated pension) to one of the new types of pensions, have been provided for. See, for example, rule 14.5.

We are always advising on and researching various SMSF matters. We use this experience to build new strategies into the governing rules. Popular strategies that the governing rules contain include:

- **Succession planning** — the governing rules have one of the most clear and certain binding death benefit nomination (ie, a Will for your

super) powers in the country. See rule 19. Also, the governing rules allow for an individual trustee to nominate a successor trustee to step into their shoes upon death. See rule 3.3.

- **Segregation of assets** — the governing rules are one of few available that contain express power to allocate segregated assets from one member or account to another. See rule 6.2.
- **Appointment of trustees** — day-to-day control of an SMSF rests with the trustee, but real ultimate control rests with the person who can appoint and remove the trustee. The governing rules give this power to the members. The governing rules are also one of the few that expressly allow a member's legal personal representative to exercise this power upon the member's death or disablement. This is vital to ensure that upon death, the deceased's legal personal representative still has an appropriate level of control over the SMSF. See rule 3.2.

Outstanding invoices

Remember: if you haven't paid your 2008-09 resubscription invoice you won't have access to your new set of governing rules and your new trustee resolutions adopting the rules.

Your invoice was emailed to you on 24 June 2008. To receive another copy of the invoice either log in to your password-protected Annual Update Service homepage (www.smsf.com.au) or contact us.

Receive a special discount with direct debit facilities

Receive a special discount on your annual update fee if you sign up to direct debit. The usual annual update fee is \$150 pa for each SMSF, but those who enter into direct debit arrangements with us, the annual fee is only \$137.50 pa.

How does the Annual Update Service work?

Every 1 July, the following occurs:

- A new set of governing rules will be added to the SMSF's homepage on the Annual Update Service. This by itself has no legal effect.
- Trustee resolutions adopting the new governing rules will be placed on the SMSF's homepage.
- The resolutions are printed and executed by the relevant parties. Upon execution, the new governing rules will be adopted by the SMSF.

Frequently Asked Question: Why is trustee/member sign-off so important?

For each annual update to become effective, the trustees and members must sign the resolutions that we prepare for them. This is a crucial element of the Annual Update Service.

If trustees do not consider and sign-off each update, a court is likely to hold this to be invalid. Aggrieved parties (eg, a spouse upon divorce or a child upon death) could take legal action undermining the process.

Further, the PDS rules require ongoing disclosure of information where there is a material change (eg, governing rules updated). SMSFs are exempt from this where members have available to them all relevant information, however, without member sign-off, proving that members did indeed have this information is difficult.

Trustee/member sign-off provides solid written evidence to help rebut any such claims and gives trustees and advisers peace of mind.

If you have other questions, please visit www.smsf.com.au/faqs or contact Bryce Figot (bfigot@dbabutler.com.au).

For further Information regarding the Annual Update Service, visit www.smsf.com.au

For all other general queries, please contact:

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