

Switching to SMSFs in the economic downturn

With the recent economic conditions and much uncertainty moving forward, many people, especially Mums and Dads, might be considering whether they should establish their own SMSF and roll-over from their retail, industry or public sector funds. Many see the advantages of an SMSF structure as follows:

- greater control of investments, investment choice and asset allocation;
- account balances to be pooled to facilitate purchase of large assets such as real estate; and
- more certainty with running costs. Fees charged by other funds are often based on account balances and not linked to their performance.

SMSFs may also offer numerous other advantages, including flexibility in the type of benefits that can be taken.

Is an SMSF right for your client?

However, SMSFs aren't for everyone and those who do establish or join an SMSF must be aware of the associated risks and responsibilities.

- ASIC generally recommends that members should have an accumulated balance of at least \$200,000 before establishing an SMSF. Funds with balances below this may have insufficient earnings to justify the higher administrative costs of an SMSF.
- SMSF trustees (whether individuals or directors of a corporate trustee) are ultimately responsible for administration of their fund. The ATO is increasing its efforts to ensure SMSFs comply with all laws and significant penalties apply for breaches.

SMSF trustees must therefore be prepared to keep proper records, lodge documents when required and ensure the fund's investments and contributions comply with the law. Trustees should be prepared to seek advice when in doubt.

- Investors who plan to travel overseas for an extended period of time should be mindful of the hefty penalties that apply if an SMSF becomes a 'non-Australian' (or non-resident) fund. An SMSF might not be appropriate for such clients until they return to Australia.
- Superannuation laws and regulations are subject to constant change. Clients must be prepared to ensure they have sound documentation in place and update as the need arises.

Naturally, investors should seek financial advice specific to their circumstances to ensure an SMSF structure is right for them. Accountants and tax agents who do not hold an Australian Financial Services Licence should be mindful of what recommendations they can and can't make.

Top 5 estate planning hotspots

Estate planning provides a great opportunity for advisers to add value for their clients. With many investment plans being carefully reviewed, now is an ideal time to address key estate planning issues.

Here we examine 5 common areas that often need attention to achieve effective estate plans.

1. Updating Wills post-*Simpler Super*

With the largest ever reforms to Australia's superannuation system taking effect from 1 July 2007, many still have Wills in place which reflect now-abolished RBLs, limiting planning possibilities for those Will-makers.

Some Mums and Dads also have older Wills which don't fully address the payment of super death benefits to their estate (or even not at all). Given the significant benefits many clients now hold in super, it's important that this asset is given due attention.

2. Maximising certainty in BDBNs

Many SMSF members commonly had BDBNs in place prior to 1 July 2007 which directed death benefits to be paid as a pension to adult children. This is now invalid and those members should revisit their planning to tie down this exposure and provide certainty on their death.

The ATO's recent confirmation that, with an appropriate deed, an SMSF member can make an indefinite BDBN (refer to our [September 2008 newsletter](#)) should also prompt all SMSF members and their advisers to check their deed and BDBNs. Some SMSF deeds impose a 3-year sunset on BDBNs so many deeds now need amending.

3. Planning for non-personal assets

Most clients know, but many often forget, that their Will only deals with assets held in their personal name. We find that many clients with significant assets held in discretionary or unit trusts or in private companies may have a Will but little attention has been paid to the majority of their assets, ie, those not held in their name!

By seeking expert assistance, clients can be made aware of the options for trusts and companies after death and how this ties in with their personal estate.

4. Planning succession to companies

One ‘Achilles’ heel’ we sometimes encounter is a failure to plan for control of corporate entities (and similarly any trusts underneath them). As well as planning for the ‘appointor’ role, it is possible to plan control via shareholdings and, with appropriate documentation, who will become directors of a company following a key director’s death.

Trustee succession commonly causes problems after death if there is a risk of dispute between children and the surviving spouse (particularly if the children are from the deceased’s prior relationship) or if a surviving spouse finds a new partner who may not have the deceased’s family’s best interests at heart.

Many members ask whether they should plan for succession to the trustee if they have a BDBN in place anyway. The reasons are compelling:

- There are often other SMSF members who survive the deceased member. A reliable trustee is needed for ongoing management of the SMSF.
- A reliable trustee allows for smooth payment of death benefits. Even if a BDBN is in place, a troublesome trustee could delay payment or

dispute the terms or existence of a BDBN. This can be expensive and time consuming to enforce as the Superannuation Complaints Tribunal has no jurisdiction over SMSF disputes (ie, rightful beneficiaries must resort to the general court system).

- Sometimes it might be appropriate for a member not to have a BDBN and leave this decision to the trustee (eg, if there is a concern that intended beneficiaries may be subject to bankruptcy or divorce risks, or if there might be a legal dispute over the deceased’s Will). In this event, planning succession to the trustee role is critical.
- If a BDBN turns out to be invalid (eg, because of a 3 year expiry, a ‘triggering event’ such as divorce, poor drafting of the SMSF deed or simply a change in superannuation law), having a reliable trustee as backup maximises certainty.

5. Revising pension documentation

If reversionary pension documents and a BDBN are in conflict, the BDBN generally wins out but it is better to have consistency to avoid confusion or disputes.

Advisers should also determine whether members are streaming their various super interests in the most tax effective manner.

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