

Duty summary — SMSF deeds

An instrument (including a deed) that establishes or varies the governing rules of a complying SMSF is generally not dutiable anywhere in Australia, except where there is a connection to the Northern Territory. This assumes that, for an establishment of a fund (not connected to the NT), there is no dutiable property on establishment making the deed subject to ad valorem duty.

Northern Territory — duty payable

Typically, a deed that relates to property in the NT (even if executed outside the territory) is liable to NT duty of \$20 (see s 2 of sch 1 and s 9B of the *Stamp Duty Act 1978* (NT)). Once executed, the deed must be lodged with a completed Stamp Duty Lodgement Form (available from the Department of Treasury and Finance website) together with payment made via EFT or cheque for \$20 (plus \$5 for each duplicate deed) with the Territory Revenue Office, GPO Box 1974, Darwin NT 0801 for stamping within 60 days of execution to avoid penalty duty.

Jurisdictions other than Northern Territory — generally no duty payable

VIC — No duty assessment is necessary for an instrument that establishes or amends provisions governing a complying superannuation fund: s 39 of the *Duties Act 2000* (Vic).

NSW — No duty assessment is necessary for an instrument that establishes or amends provisions governing a complying superannuation fund: s 65(10)(a) of the *Duties Act 1997* (NSW).

WA — No duty assessment is necessary for an instrument that establishes or amends provisions governing a complying superannuation fund (*Duties Act 2008* (WA) ch 2).

QLD — No duty assessment is necessary for an instrument that establishes or amends provisions governing a complying superannuation fund provided the fund is established with a settlement of cash or without any dutiable property (cash or otherwise) (*Duties Act 2001* (Qld) ss 9 and 10).

SA — No duty assessment is necessary for an instrument that establishes or amends provisions governing a complying superannuation fund provided that amending an instrument does not create a new trust over dutiable property and does not affect the interests of any member — Schedule 2, Part 2, Item 30 Stamp Duties Act 1923 (SA). You may nevertheless, if so desired, still lodge the instrument with RevenueSA, GPO Box 1353, Adelaide SA 5001 to be stamped 'exempt'.

ACT — No duty assessment is necessary for an instrument that establishes or amends provisions governing a complying superannuation fund (*Duties Amendment Act 2008* (ACT)).

TAS — No duty assessment is necessary for an instrument that establishes or amends provisions governing a superannuation fund (see repealed s 44 of *Duties Act 2001* (Tas)).

Legal notice

This summary has been prepared for our client only on the basis of our limited instructions and is based on the law in Australia as of 16 May 2023. The law is subject to constant change, and accordingly, expert advice should be obtained if the above information is not acted upon shortly after today's date or if there is any doubt in relation to this document. Unless specifically instructed by you in writing, and subject to you entering into an ongoing client agreement and payment of our required yearly fee, there is no obligation whatsoever upon DBA Lawyers to notify you in respect of any changes to the law, state/territory tax office policies, etc, and how any such changes might impact upon any information previously given. Copyright belongs to DBA Lawyers and our prior written consent should be obtained before releasing it to any person other than our client.