



## Setting up a self managed superannuation fund

There are a number of trust law and legislative requirements in setting up a self managed superannuation fund (SMSF). If you wish to set up your own fund it may be useful to consult with a professional adviser before committing to this option. Many accountants, solicitors and superannuation specialists have packages and 'kits' available which simplify the process. This fact sheet is a guide to the steps involved.

### Obtain a Trust Deed

The first thing you need to do is to have a trust deed prepared, which evidences the existence of the trust and establishes the rules of operation of the fund. An accountant, solicitor or legal service company may prepare the deed. You should ensure that the deed is correctly drafted to achieve the fund's objectives.

The trust deed may set out the following:

- details of who the trustees are
- how trustees may be appointed or removed
- the powers of trustees
- eligibility for membership
- conditions relating to acceptance of contributions
- conditions for payment of benefits to members
- procedures for winding up the fund

- provisions relating to valuation of assets.

The deed must be dated and properly executed.

### Corporations basis or Pensions basis?

In order to become a regulated fund [i.e. a fund that has elected to be bound by the *Superannuation Industry (Supervision) Act 1993 (SIS)*], the trustee must ensure that the trust deed:-

- requires the fund to appoint a corporate trustee (Corporations basis). A corporate trustee is subject to the requirements of the Corporations Law administered by the Australian Securities and Investments Commission (ASIC). A fund with a corporate trustee may pay benefits in the form of a lump sum; OR
- states that the sole or primary purpose of the fund is to provide old-age pensions (Pensions basis). The trust deed may also permit (but not compel) benefits to be paid as a lump sum. Under this option, the trustees may be individuals.

### Appoint Trustees

All superannuation funds are required to appoint trustees. Trustees are responsible for ensuring the fund is properly managed and that it complies with the SIS rules and





broader legal obligations. To be a SMSF all fund members must also be appointed as trustees of the fund.

**Who can be a trustee?**

Essentially anyone over the age of 18 can be a trustee of a superannuation fund except if they are a 'disqualified person' under the law. An individual is a 'disqualified person' if:

- at any time, the person was convicted of an offence involving dishonesty, or
- at any time, the person has been subject to a civil penalty order under the SIS legislation, or
- the person is an insolvent under administration (e.g. an undischarged bankrupt).

A corporation would not be permitted to act as trustee if:

- a responsible officer of that company is a disqualified person (a responsible person includes a director, secretary or executive officer); or
- a receiver, official manager, or provisional liquidator has been appointed to the company; or
- action has commenced to wind up the company.

**Elect to become a regulated fund**

A trustee must elect to be 'regulated' under SIS if the fund wishes to

receive concessional taxation treatment. The trustees of a new SMSF must, within 60 days after establishment of the fund, give the Regulator a notice of election to be a regulated superannuation fund.

Elections must be lodged with the Australian Taxation Office (ATO) by completing an Application to Register for the New Tax System Superannuation Entity form. The form and instructions may be obtained by contacting the ATO Superannuation Infoline on **13 10 20**.

Once a trustee has elected to become regulated, the decision cannot be reversed (that is, the fund would have to be wound up to cease to be regulated under SIS).

**Obtain a Tax File Number (TFN)**

A tax file number (TFN) is a unique number issued by the ATO for each taxpayer. The trustees of a superannuation fund must obtain a TFN for the fund from the ATO.

Since 1 November 1999 superannuation funds are allocated a TFN after lodgment of the [Application to Register for the New Tax System Superannuation Entity](#) form referred to above.

**Obtain an Australian Business Number (ABN)**

The ABN is the new public identification system introduced to support business to government interactions across all agencies. An





ABN will be allocated to new superannuation funds who lodge an *Application to Register for the New Tax System Superannuation Entity form*.

**Other considerations**

- Trustees should open the fund’s bank account (or other appropriate investments) in the name of the fund. The assets of the fund should be kept separate from any assets owned personally by any of the trustees or from those belonging to a business (where partners in a business set up the SMSF).
- Trustees need to establish an appropriate investment strategy for the fund. This is discussed in the fact sheet titled – Investment Strategy and Investment Restrictions.
- In addition, trustees need to be aware there are numerous administrative obligations that must be met throughout the life of the fund. These are outlined in the fact sheet titled – Administrative Obligations.

**Need more information?**

For further information on this topic:

- visit the ATO superannuation website at [www.ato.gov.au/super](http://www.ato.gov.au/super)
- phone the Superannuation Infoline on **13 10 20** for the cost of a local call
- obtain *A Fax from Tax* on **13 28 60**

- if you do not speak English and need help from the ATO, phone the Translating and Interpreter Service on **13 14 50**
- people with a hearing or speech impairment with access to appropriate TTY or modem equipment can communicate with the ATO by first contacting the Australian Communication Exchange Relay Service on **13 25 44**.

**Note: This publication is available free from the Australian Taxation Office (ATO), which prohibits any party from selling it. Please get help from the ATO or a professional adviser if you feel this publication does not fully cover your circumstances. We regularly revise our publications to take account of changes to the law and you should make sure that this edition is the latest.**

**As part of our commitment to produce accurate publications, taxpayers will not be subject to penalties if they can demonstrate that they based a tax claim on wrong information supplied by the ATO. However, interest could be payable depending on the circumstances of each case.**NAT 2059

