

Do-it-yourself (DIY) super via a self managed super fund (SMSF) is becoming an increasingly popular choice for investors who want to have control of how their superannuation monies are invested.

Simplicity



Freedom

However, if you are thinking of leaving your public offer fund to get better returns or other benefits from your own DIY fund, you'll want to make sure you discuss your options in detail with your financial adviser. It's important that you are fully briefed on exactly what will be required of you from an SMSF administrative and compliance perspective. The following discussion may answer some of your questions and highlight responsibilities and obligations specific to DIY super.

What is a Self Managed Super Fund?

An SMSF is a trust where money or assets are held and managed on behalf of up to four members to provide future retirement benefits. Subject to certain exceptions, all members of an SMSF must be trustees of the fund or directors of the fund's corporate trustee. The Superannuation Industry (Supervision) Act 1993 and Regulations (SIS) and related legislation govern Australian superannuation funds and the Australian Taxation Office (ATO) is responsible for overseeing the regulation of SMSFs.

Why establish an SMSF?

Three key reasons for establishing your own SMSF are control, flexibility and investment choice. The trustee of your fund (you) decides on your fund's investment strategy and chooses what

your fund's assets are invested in. This means your fund's investments can be tailored to suit the specific needs of members before and after retirement. Your fund can also invest in almost anything, including investments typically not available in public superannuation funds, though investments are subject to certain limitations and legal restrictions.

Additionally, like all super funds, an SMSF receives concessional tax treatment. The top tax rate for the investment earnings of your SMSF is 15% – probably well below the top tax rate applicable to your own income. It's important to note that this tax concession is only available where you operate a 'complying fund', ie an SMSF that complies with all the rules set out by SIS and the ATO.

Understanding the rules and obligations of an SMSF

While there are undoubted benefits to members in establishing an SMSF, running your own fund is complex and there are many things you have to consider including your investment strategy, the administration of your fund and compliance with superannuation and other laws. In fact, many investors who choose the DIY super path are employing the services of specialist SMSF administrators to undertake the onerous compliance activities on behalf of their fund, while they still enjoy the benefits of investment control and flexibility.

As a DIY investor, you need to give consideration to your fund's investment philosophy – investing successfully takes time, effort and discipline. How will you spread your money to manage risk and how long will you give an investment to prove itself? With regard to investment choice, you need to establish what is an acceptable rate of return and how much risk you are willing to take with your retirement savings. Another important consideration is monitoring your own fund's performance – how is it performing relative to other funds after all your costs are factored out? If it's not doing better, or at least as well, perhaps professional management of your superannuation monies may be your better option.

Your fund's compliance with superannuation laws is essential and you are legally responsible for making sure your fund complies with all the rules – even if you pay for professional advice and/or administration. While the ATO's regulatory approach to SMSFs focuses on education and information, it is fast becoming more aggressive in its stance on fund compliance.

The key areas of compliance for an SMSF relate to:

- meeting the sole purpose test
- documenting an investment strategy and investing in line with it
- prohibition on financial assistance to members and their relatives

- in-house asset rules
- conducting all transactions at arm's length
- prohibition against borrowing
- acquisition of assets from related parties.

Underpinning the SMSF regulatory regime is the sole purpose test – the sole purpose of your fund must be to provide retirement benefits to fund members. In line with this, trustees are required, first and foremost, to have an investment strategy which they invest in accordance with.

A fund must also maintain its assets separately from those of a business in which one or more of the trustees is involved. For example, if assets are held in the name of one of the trustees rather than being clearly held as part of the fund, the fund risks the loss of the asset if the trustee is declared bankrupt or if their business is placed in receivership. A failure to separate assets is a clear contravention of SIS.

To help ensure that the assets of an SMSF will be available to provide retirement income, SMSFs are restricted in the investments they can make. However, one of the concessions that SMSFs enjoy is their ability to invest up to 100% of the fund's assets in business real property – though an issue for trustees to consider is whether this lack of investment diversification is a prudent investment strategy. The ATO also pointed out in its benchmark study that trustees and their advisers should bear in mind that residential property rarely fits the conditions necessary for it to be considered 'business real property'.

While there are no restrictions on SMSFs investing in collectibles such as

art, the ATO has highlighted that the sole purpose test means that members cannot enjoy a benefit from the investment prior to preservation age, when they can legitimately access their benefits if they have retired. This means that, unless strict conditions are met – like in the case of leasing the art to a member or related party in line with the in-house asset and arms-length rules – the art cannot be displayed in the trustee's home or office. The in-house asset rules mean that the particular investment can make up no more than 5% of the fund's total assets and the arms-length requirement means that it must be leased to the related party at commercial rates.

The meeting of fiduciary responsibilities by SMSFs is also important, particularly in relation to the fund holding its own bank account (rather than banking being done through personal accounts of one or more of the trustees) and not overdrawing that account.

SMSFs that comply with the superannuation and other laws that relate to them are signalling to the ATO that they are appropriately managed, have acceptable levels of governance and have the necessary elements in place to underpin the provision of retirement benefits to members. However, the cost of sound administration of an SMSF, including compliance with all the regulations, aside from the initial set-up costs, generally means that fund members need between \$200,000 and \$250,000 to invest in an SMSF to make the exercise worthwhile. Contact your financial adviser to discuss what superannuation options are available to you and what solution may best suit your circumstances and investment needs.



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