

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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160 | SMSF Trustee Responsibilities

SMSF trustee responsibilities are many and varied. The road is full of roadblocks and pitfalls. You can engage specialists to help you. But in the end the buck stops with you.

SMSF Trustee Responsibilities

An SMSF trustee has a long list of responsibilities. And these responsibilities can't be delegated. In the end it is always the trustee who is held accountable. Not a job to be taken lightly. So we asked Rani Gandha of [Turnbull Hill Lawyers](#) in Newcastle to tell you more.

Here is what we learned but please listen to this episode of Tax Talks as Rani Ghanda explains all this much better than we ever could and in much more detail.

To listen while you drive, walk or work, just access the episode through a podcast app on your mobile phone.

SMSF Trustee

Running an SMSF is very different from belonging to a large fund where someone else looks after your benefits. In an SMSF you are responsible for all of the administration of the fund including all compliance, reporting and tax obligations.

No Delegation

As trustee of an SMSF you are ultimately responsible for running your fund. You may be able to delegate some of the tasks to service providers but as trustee you cannot delegate your duties, responsibilities or obligations.

So make sure that each trustee / member of your fund understands their duties, responsibilities and obligations of being a trustee. There are significant penalties waiting for you if you fail.

Rules and Regulations

As trustee of an SMSF, you must comply with the trust deed, the SIS Act and SIS Regulations as well as tax and trust law. And if you have a corporate trustee, then the Corporations Act also has a few things to say.

Read the Deed

Most problems stem from trustees and advisers not reading the deed. The trust deed sets out the rules for your fund. It sets out your responsibilities as trustee. The SIS Act expressly states the trustee must comply with all of the trust deed provisions.

SIS Act and the SIS Regulations

You will find the SIS Act in the Superannuation Industry (Supervision) Act 1993. And the SIS Regulations in the Superannuation Industry (Supervision) Regulations 1994.

The SIS Act and SIS regulations sets the rules for your fund. There are five sets of rules that are particularly important.

1 Sole purpose test

You can't just use your SMSF as you desire. Your SMSF must pass the sole purpose test. Your SMSF must be maintained for the sole purpose of providing benefits to members upon their retirement, or their dependants in the case of the member's death before retirement

2 Contribution Caps

You can't just put as much as you like into super. There are rules about who can contribute, how much can be contributed, when it can be contributed and the tax on contributions. These caps apply no matter whether you have an SMSF or use a retail or industry fund.

3 Investment Rules

Once the money is in your SMSF, you can't just do with it whatever you want. There are investment rules. And the six most important ones tell you to:

- 1 – Have an investment strategy.
- 2 – Make investments at arm's length.
- 3 – Not to borrow.
- 4 – Not to lend or provide financial assistance to members.
- 5 – Not to acquire assets from related parties
- 6 – Not to invest in in-house assets.

There are some exceptions to these very strict rules, but let's leave these for another day.

4 Benefit Payments

And once the money is in the fund, you can't just pay it out again. Whether you can make a benefit payment and how this is taxed will depend on your age and employment status, your beneficiaries' age and financial dependence, your trust deed as well as the relevant law at the time. The SIS Act and SIS Regulations are constantly changing.

5 Administration

And then there is the tedious topic of administering your fund. Your SMSF must be audited by a registered SMSF auditor. It must lodge an annual return that goes well beyond just tax And it must report each year to members informing them about the state of their super.

Investment Strategy

In our interview with Rani we spent quite a while on the investment strategy. As trustee you have a duty to make, carry out and document decisions about investing the assets of the fund and to carefully monitor their performance. This duty involves formulating and implementing an investment strategy for the benefit of all members.

This important duty is prescribed in the SIS Act as a covenant (an obligation of the trustee) under section 52(g).

It is a fundamental duty of the trustee which if your trust deed does not include this fundamental duty the SIS Act deems it to be so included.

The SIS Act sets out what trustees must take into account when formulating an investment strategy.

Professional advice

Seek professional advice on an ongoing basis. Because of the responsibility of the trustees of a SMSF for the compliance obligations, the reporting obligations, the administrative obligations and the taxation obligations trustees should seek professional help on ongoing basis even where the trustees have decided to do everything themselves to ensure they are complying with the requirements of the legislation and their trust deed. It's possible that the professional advisors may fulfill more of a coach or mentoring role rather than getting involved in the nuts and bolts of your SMSF.

But regular advice in this very regimented area is essential to ensure you maintain your compliance with your role as trustee.

Documentation

Document all decisions.

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