

Trusteeship of Self Managed Superannuation Funds

Currently in Australia the majority of self managed superannuation funds are established with individual trustees rather than a corporate trustee. Currently over 70 per cent of SMSFs have individual trustees and in recent years, about 90 per cent of all new SMSFs have been set up with individual trustees.

Individual trustees tend to be used due to the perception that the costs of incorporating and maintaining a corporate trustee outweigh the benefits. However, there can be good reasons for having a corporate trustee.

For existing SMSFs with individual trustees it is possible to change to a corporate trustee.

Individual Trustees

Where individuals are to act as the trustees of an SMSF they are simply appointed as part of the normal super fund establishment process without any additional costs being incurred.

A corporate trustee will incur additional costs as the costs to establish a trustee company are in the order of \$1,000 including ASIC establishment fees (currently \$457).

Each year ASIC charges a reduced annual fee if a company solely acts as a super fund trustee (currently \$45). If a super fund trustee company acts in another capacity - for example, running a business a higher ASIC fee applies is (currently \$243).

Once individuals are appointed fund assets must be registered in the name of all trustees as trustees for the fund.

Corporate Trustee

There are a number of reasons why a corporate trustee may be considered. These include:

- Limited liability for directors

Individual trustees can be personally liable for any actions taken against the Fund, as they hold the assets of the Fund in their individual names. Should any litigation against the Fund exceed the assets held in the name of the trustees as trustees for the Fund, the personal assets of the individuals personally may become at risk. This could occur with a personal liability action if a fund holds real property.

As Companies have limited liability any litigation against the Fund is limited to the assets held by the company and does not pass to the directors of the company. Where a company is a sole purpose SMSF Trustee any claim against the Fund is limited to the assets held by the company as trustee for the Fund.

- Administrative ease for changes in members

With an SMSF members may change over time. New members may join as the parents who established an SMSF may wish introduce adult children as members, Members of an SMSF may pass away requiring them to exit as members and trustees. An executor of a member may also need to be appointed as a trustee for a short period of time from the death of the fund member until the death benefits exit the fund.

For any of the above changes with a corporate trustee there is no need to change the trustee or the registration of Fund's assets. Rather, only the directors of the company are changed with new directors appointed or resigned.

For individual trustees, any changes to members with resulting trustee changes will result in higher costs as it is necessary to prepare a deed of appointment and retirement to officially retire any outgoing trustees and appoint any incoming trustees.

- Simpler segregation of SMSF assets

As the assets of an SMSF must be held in the names of the trustees once a deed for a change in individual trustees is executed, the registration of all fund investments must be changed to the current trustees to reflect the new ownership. This involves notifying the fund's investment managers including all relevant share registries and banks of the change in trustee. For real property title registrations need to be changed.

By contrast with a corporate trustee you never have to change the names in which the Fund assets are held, regardless of how many times you change the membership of the Fund.

- Simpler trustee succession

A corporate trustee will continue in the event of a member's death and there is no uncertainty or doubt in dealing with fund assets.

For a fund that consisted of two members, it ensures the Fund still continues to comply with the SMSF trustee/member rules without the need to appoint an additional trustee to the Fund.

It ensures that the remaining member can continue to manage the fund without having to admit an outside person to be a trustee, ensuring the remaining member can continue will full control of the Fund.

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It also ensures the name in which the assets of the Fund are being held will not need to be changed.

From a death benefit point of view, it also provides more certainty in ensuring the deceased member's benefits will be paid in accordance with their wishes, as an external trustee will not need to be admitted (the preparation of a binding death benefit nomination can assist in this regard).

- Access to limited recourse borrowing arrangements
Lenders often insist an SMSF has a corporate trustee.
- SMSF Administrative penalties

The SMSF administrative penalties rules commenced from 1 July 2014 providing the Australian Taxation office with the ability to apply monetary penalties for certain breaches of the Superannuation Industry (Supervision) Act 1993

The rules imposes a penalty on a 'person' who contravenes a particular provision. A person is defined as either a trustee or a director of a corporate trustee.

For contraventions, each individual trustee would be liable to their own separate penalty as opposed to a corporate trustee, which would receive only one penalty for which the directors would be jointly and severally liable.

In the event of a fund not being fully compliant the penalties for a fund with a corporate trustee may be less than for individual trustee.

Single-member funds

Special rules apply for single member SMSFs as a single member cannot be a sole individual trustee.

A corporate trustee structure allows the sole member to be the only director of the company and have full control over the running of the fund. If the fund had individual trustees it would be necessary for another individual to act as the second trustee and assist in the running of the fund.

Changing individual trustees to a corporate trustee

For an existing SMSF it is possible to change from individual trustees to a corporate trustee. The new corporate trustee is established and deed of appointment and retirement of trustee prepared. If the Fund's Trust Deed has not been updated recently there can be economies in arranging an update of the Trust Deed at the same time.

Costs to change the trustee including establishing the trustee company would be in the order of \$1,500 to \$1,750 depending on whether the current trust deed needs updating. Additional costs could apply to arrange the update the registration of fund assets.



Splitting of super contributions with a spouse may have benefits

Superannuation rules do not allow your SMSF to simply reallocate part of your superannuation entitlements across to your spouse. However, one of the lesser known strategies is the possibility to split concessional contributions with your spouse.

By splitting contributions couples may be able to even out their superannuation balances where one partner is younger, earning a lower income or not working. There can also be financial planning opportunities such as where one spouse may be closer to age 60 (being the age at which superannuation benefit payments are tax free).

What type of contributions can be split

Super contributions splitting generally operates as follows:

- a member may apply to have a maximum of up to 85% of their concessional capped contributions made in any financial year transferred to a superannuation account in the name of their spouse (Concessional contributions include superannuation guarantee and other employer contributions, salary sacrifice, and personal contributions for which you claim a tax deduction.) The remaining 15% equates to the expected tax payable on the contributions.
- the application by a member to transfer the contributions for a financial year can only be made after the end of that financial year (or during the financial year where the member's entire benefit is being withdrawn from the fund), and must be made in writing and given to the fund to which the member's contributions were paid.

You can apply to split contributions regardless of your own age, but your spouse must be either:

- less than 55 years old
- 55 to 64 years old and not retired.

If you wanted to split contributions made for you in the 2014 financial year a completed application form must be provided to your fund by 30 June 2015.

Example

John's employer contributed \$25,000 to his SMSF in the 2013-14 financial year. John wishes to split these contributions with his wife Mary.

John completes the Superannuation contributions splitting application form and lodges it with his SMSF in January 2015. He requests that \$21,250 in taxed splittable contributions be transferred to Mary. His SMSF is able to accept his application because \$21,250 is:

- less than or equal to 85% of the \$25,000 contributed by his employer, and
- less than the concessional contributions cap.

His super fund transfers \$21,250 to Mary's account in February 2015.

Seek Financial Advice

Further information on super contributions splitting is available on the ATO's website. To ensure benefits are maximised and to satisfy the necessary conditions, you should seek professional advice.

Superannuation Contributions 2014-15

From 1 July 2014 the concessional contributions cap limit for individuals aged under 50 is \$30,000 (previously \$25,000). A higher concessional contributions cap of \$35,000 applies to individuals that are aged 50 and over (previously individuals needed to be aged 60 and over to access the higher cap).

Additionally from 1 July 2014 the non-concessional contributions cap has increased to \$180,000 from the previous limit of \$150,000.

The amount of contributions that can be made to superannuation on behalf of an individual depends on a member's age and the contribution caps. The contribution eligibility rules are illustrated in the table below.

Age	Member's Employer	
	Superannuation Guarantee/mandated	Voluntary/non-mandated
Under Age 65	Allowable	Allowable
Age 65 - 74	Allowable	Only if you have worked at least 40 hours in not more than 30 consecutive days in the financial year
Age 75 and over	Allowable	Not allowed

Member	
Under Age 65	Allowable
Age 65 - 74	Only if you have worked at least 40 hours in not more than 30 consecutive days in the financial year
Age 75 and over	Not allowed

Member's Spouse	
Under Age 65	Allowable
Age 65 - 69	Only if the member has worked at least 40 hours in not more than 30 consecutive days in the financial year
Age 70 and over	Not allowed

The table below summarises the *main* types of concessional and non-concessional contributions and limits for 2014-15 year as well as the penalties for breaching the caps:

Type of Contribution	Consists of	Annual Limit 2014-15	Breach of Cap
Concessional Contributions (CCs)	Employer contributions (including Salary Sacrifice) Personal contributions where a tax deduction is claimed Certain amounts allocated from a reserve unless the allocation meets the exemptions	\$30,000 (indexed annually with average weekly ordinary time earnings (AWOTE) and rounded down to the nearest \$5,000). \$35,000 (not indexed) if aged 50 or over on 30 June 2015 An increased contributions tax can apply for high income earner	From 1 July 2013 <ul style="list-style-type: none"> All excess CCs will be included in the individual's assessable income and taxed at the individual's marginal tax rate plus an interest charge. A tax offset of 15% will also apply in the individual's income tax return to account for the 15% contributions tax already paid by the superannuation fund. Individual has the option to withdraw 85% of the excess amount from super (net of 15% contribution tax already paid) to assist in paying the income tax assessment arising from the excess contributions.
Non-concessional Contributions (NCCs)	Personal contributions not claimed as a tax deduction Contributions made by a spouse Amounts in excess of the CCs cap (excluding the amount of excess CCs made from 1 July 2013 which are withdrawn (grossed up to include the 15% fund tax))	\$180,000 Members under age 65 at any time in the financial year may bring forward up to two future years' entitlements by making NCCs in a financial year of more than \$180,000 (if member age 65 or more at time of contribution, work test applies). Where bring forward used, total NCCs in a 3 year period (starting on 1 July of first financial year NCCs exceeded \$180,000) cannot exceed \$540,000.	Excess taxed at 49% The Government has proposed that amounts over \$180,000 may be withdrawn, along with any associated earnings. The earnings would be taxed at your marginal tax rate. At the time of writing this proposal has not yet become law.

Other Contributions

Personal injury contributions may also be permitted.

In addition certain payments made into superannuation are also treated as contributions. These include:

- Contributions from either:
 - the capital proceeds of asset sales that meet the CGT small business 15 year exemption (or would have if a capital gain had arisen), or
 - a capital gain that meets the CGT small business retirement exemption.

Choice is made using an ATO form no later than the time the contribution is made.

A small business lifetime limit of \$1,355,000 applies (indexed annually with AWOTE).

- Foreign termination payments transferred from overseas funds after a person has taken up residence in Australia.

Please contact our office if you need information on these types of contributions

Government co-contributions

If you earn less than \$49,488 per year (before tax) and make after-tax super contributions, you are eligible to receive matching contributions from the Government. This is called the Government co-contribution.

If you earn less than \$34,488 the maximum co-contribution is \$500, based on \$0.50 from the government for every \$1 you contribute. The amount of co-contribution reduces as your earnings increase.

To receive the co-contribution you will need to lodge a tax return for the year. Assuming you are eligible, the government will then work out how much you are entitled to and pay the co-contribution directly to your fund

Low income super contribution

If you are eligible and earn \$37,000 or less per year, the Government may make a further contribution to your super. This amount, up to \$500 annually, will be 15% of the before-tax contributions you or your employer made to your super account during the financial year.

You do not need to apply - the ATO will work out your eligibility and it will be paid directly to your fund account. If you are eligible, you will receive the payment whether or not you lodge a tax return. However, if you do not lodge a tax return the process may take up to 14 months.

Limited Recourse Borrowing Arrangements (LRBAs) matters

Financial System Inquiry recommends LRBAs be banned prospectively

In December 2014 the final report of the Financial System Inquiry (FSI) was released. One of the recommendations of this report was that LRBAs in superannuation funds should be banned. The specific terms of the recommendation were:

Government should restore the general prohibition on direct borrowing by superannuation funds by removing Section 67A of the Superannuation Industry (Supervision) Act 1993 on a prospective basis.

The FSI panel believed LRBAs creates risks for the financial system and is "inconsistent with the objectives of superannuation to be a savings vehicle for retirement income."

The FSI report also recommended the grandfathering of existing arrangements stating:

In implementing this recommendation, funds with existing borrowings should be permitted to maintain those borrowings. Funds disposing of assets purchased via direct borrowing would be required to extinguish the associated debt at the same time.

The FSI Inquiry is not a law making body and its recommendations do not constitute law. However, as the FSI was commissioned by the government it is likely the Government will consider implementing at least some of its recommendations. Whether these recommendations are eventually reflected in law can depend on many factors.

As the next federal budget night is a possible time for any changes to be announced, there is a possibility that trustees of superannuation funds may not be able to enter into new LRBAs after May 2015.

Look-through treatment for LRBAs

Exposure draft legislation released in January 2015 will amend the income tax law to provide look through treatment for LRBAs for taxation purposes.

In administering LRBAs a common question from an administration perspective is whether a separate income tax return is required for bare/asset holding trust of the LRBA.

In ATO Practice Statement Law Administration PS LA 2000/2, the ATO had stated that no income tax return is needed for a 'Transparent Trust'. The long-standing industry practice for certain types of LRBAs has been to ignore the trust and to treat the investor as the owner of the asset. Bastion has adopted this approach for the LRBAs we administer.

The draft law is set to clarify that the SMSF trustee should be treated as the owner of the LRBA asset of the bare/asset holding trust instead of the trustee of the bare/asset holding trust. This means that the bare/asset holding trust is ignored and anything that happens to or results from being the owner of the asset, such as receiving dividends and franking credits, affects the SMSF trustee and not the bare/asset holding trust trustee providing a 'look through' approach.

As the proposed changes are set to apply retrospectively, from 1 July 2007 these changes if enacted will clarify that such treatment and the current industry approach is appropriate.

About Bastion Superannuation Solutions

Bastion Superannuation Solutions specialises in the provision of administration and compliance services to self managed superannuation fund trustees and advisers.

For further information on our range of services please see our web site.

Our range of services include:

- Self managed superannuation fund establishment
- Fund Administration including preparing financial accounts and maintaining member records
- Superannuation compliance and technical guidance
- Group Life Insurance Pool for superannuation fund members
- Assistance with updating self managed superannuation fund trust deeds

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