

Thinking about self-managed super

Steps to work out if managing
your own super is right for you



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If you follow our information in this publication and it turns out to be incorrect or misleading, and you fail to comply with the law as a result, we must still apply the law correctly. However, we will take the fact that you followed our information into account when deciding what action, if any, we should take.

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We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at ato.gov.au/smsf or contact us.

This publication was current at **March 2013**.

Finding the right information for you

If you need more information about self-managed super funds (SMSFs), refer to our other products:

How your self-managed fund is regulated (NAT 71454) – provides information about the ATO's role in regulating SMSFs.



Running a self-managed super fund (NAT 11032) – highlights your responsibilities and obligations as a trustee when operating your SMSF.



Setting up a self-managed super fund (NAT 71923) – provides basic information about how to set up an SMSF.



Paying benefits from a self-managed super fund (NAT 74124) – is designed to assist trustees who are required to make payments out of an SMSF.



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Foreword

Managing your own super is a big responsibility. Super is meant for your retirement, so there are special rules about how it is managed and when you can access it.

The Australian Taxation Office (ATO) regulates self-managed super funds (SMSFs). The Australian Securities & Investments Commission (ASIC) regulates financial services and company laws to protect you.

The ATO and ASIC want to make sure anyone considering setting up or joining an SMSF has the information they need to make the right decision.

If you want to manage your own super, there are many factors you need to think about. To work out whether an SMSF is right for you, it is important you take into account the following matters:

- Consider your options and seek professional advice.
- Make sure you have enough assets, time and skills to run your own fund.
- Keep up to date with the super and tax laws and understand the risks.
- Tailor your trust deed and investment strategy to suit the members of your fund.
- Make sure you can meet your record-keeping and reporting obligations.
- Make sure you understand your annual auditing obligations.

There are strict rules that govern how you can use an SMSF and how you manage the fund's investments. Your fund must be maintained, at all times, for the sole purpose of providing retirement benefits to your members.

It can be difficult to manage an SMSF, so at times you might need to consult with professionals and advisers, which can add to the cost of running your own fund. You should consider if the costs and other regular fees and charges will affect the benefits you may get from having an SMSF. There are also member benefits and protections provided by Australian Prudential Regulation Authority (APRA) regulated funds that are not available to ATO-regulated SMSFs. For example, if you lose money in an SMSF due to investment fraud, you will not have access to any special compensation schemes as you would with an APRA-regulated fund.

Starting an SMSF is a very important decision, so we recommend you see a qualified and licensed professional to help you decide if it is the right super fund for you.



Chris Jordan
Commissioner of Taxation



Greg Medcraft
Chairman
Australian Securities
& Investments Commission

Finding what you need to know

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Self-managed super and you

Like other super funds, SMSFs are a way of saving for your retirement. Generally, the main difference between an SMSF and other types of funds is that members of an SMSF are the trustees. This means the members of the SMSF run it for their own benefit.

SMSFs are not suitable for everyone and you should think carefully before deciding to set one up. It is a major financial decision and you need to have the time and skills to do it. There may be other, better options for your super savings.

This publication provides you with some practical information if you are considering an SMSF for your super savings. Licensed financial advisers, tax agents and accountants can also help you understand what is involved.

If you decide that an SMSF is the appropriate vehicle for your super savings, you need to ensure the fund is set up and maintained correctly so that it is eligible for tax concessions, can pay benefits and is as easy as possible to administer. *Setting up a self-managed super fund* (NAT 71923) provides you with some basic information on this and the steps you need to follow to set up the fund correctly.

Once your SMSF is established you, as trustee, control the investment of the contributions and fund earnings. Your SMSF must have a trust deed that forms part of the governing rules for operating the fund. You must also prepare and implement an investment strategy and ensure that it is reviewed regularly. There are rules and

regulations that you must follow to ensure the fund's assets are protected to provide benefits in retirement.

While contributions are being made to the fund it is considered to be in the accumulation phase. The publication *Running a self-managed super fund* (NAT 11032) explains the responsibilities and obligations of trustees operating an SMSF.

When one or more members retire you as trustee need to understand and follow the requirements of the law and regulations governing the payment of benefits. The payment standards contained in the legislation and regulations, the sole purpose test and the preservation rules ensure that money in the fund is paid to members in the appropriate manner.

Paying benefits from a self-managed super fund (NAT 74124) is designed to assist trustees who are required to make payments out of their SMSF. It also provides information for funds that have members in both the accumulation and retirement phase. It is important to note that the rules and regulations that apply to funds in the accumulation phase continue when one or more members retire; however, additional rules apply to the retirement phase.

You should continually reassess the circumstances of the fund and each individual member to determine whether an SMSF is still the most appropriate option for your retirement savings. In some cases you may find that you no longer have the capacity to deal with the complexity or the time required to manage your SMSF.


You may decide that it is not cost-effective to continue to run your own fund. Depending on the circumstances, it may be necessary to transfer member benefits to another complying super fund.

Other reasons why you might wind up your SMSF include when all the members have left the SMSF (for example, they have rolled over their benefits to another fund or have died) or all the benefits have been paid out. *Winding up a self-managed super fund* (NAT 8107) details the process you need to follow to wind up your fund.

Super reform measures

The government has supported many of the Super System Review's recommendations to reform super, including the self-managed super fund sector.

A number of these measures are aimed at improving the operation, efficiency and integrity of the SMSF sector and are relevant to the way you set up and run your SMSF. Some of the changes have been implemented and are included in this publication. Others await legislative change and will be introduced in the future.

 **For more information about the changes, refer to 'News' on the self-managed super funds homepage at ato.gov.au/smsf**

Thinking about an SMSF

Super is the way most Australians save money to retire. Usually, you start saving for your retirement when you start work and your employer pays super for you – the ‘super guarantee’.

Generally, there are three options for saving your super:

- 1 APRA-regulated super funds – your super is pooled together with a large number of other members and the fund is professionally managed by trustees in compliance with super law. This is where most people have their employer-paid super (super guarantee).
- 2 Retirement savings accounts – you have your own special deposit account with a bank or other deposit-taking institution. This option is not commonly used.
- 3 Self-managed super funds (SMSFs) – you are the trustee of your own fund and are responsible for making the fund’s investment decisions and making sure the fund complies with the super laws.

➤ **For more information to help you with your decision making about super, refer to ASIC’s free booklet, *Super decisions*. Get a copy from ASIC’s Infoline on **1300 300 630** or from ASIC’s MoneySmart website for consumers and investors at **moneysmart.gov.au****

Carefully consider which option is best to provide for your retirement. If you are thinking about setting up an SMSF, follow the steps in this introduction to help you to work out:

- if this type of fund is right for you
- the things you will need to do to set it up and run it successfully.

Consider your options and seek professional advice

You should consider all your super options before making a decision about managing your own super.

There are many professionals who specialise in SMSFs and can provide advice to help you understand:

- what an SMSF is
- the costs and requirements to set up a fund and keep it running
- your investment options and risks.

They can also help you set up and run your fund if you think this type of fund is right for you.

Licensed financial advisers

A licensed financial adviser will consider your personal situation and recommend a suitable product for you. By using a licensed financial adviser, you get extra protection if anything goes wrong because you have recourse to an independent complaints scheme.

If you have any complaints about the advice you receive you should complain to the adviser first, and, if you are not satisfied with the outcome of that complaint, you may be able to refer the matter to the Financial Ombudsman Service (FOS). The FOS is a free and independent complaints scheme.

Tax agents and accountants

Tax agents or accountants can help you set up an SMSF and advise you on the structure, establishment and operation of an SMSF. However, they cannot advise you about which super fund best suits your needs or which investments should be made by your fund unless they are also a licensed financial advisory business.

The government has announced arrangements that will allow accountants (and other advisers) to apply for a new limited Australian financial services licence (limited AFS licence) from ASIC from 1 July 2013. In addition to being able to advise on SMSFs and some issues in relation to a client's existing super investments, limited AFS licence holders will be able to give 'class of product advice' on basic deposit products, general and life insurance, securities, super and simple managed investment schemes. It is important to note that advisers who provide advice under a limited AFS licence will need to meet all the existing conduct and disclosure obligations under the Corporations Act that apply when giving advice, including the best interests duty and related obligations (when giving personal advice).

! If you decide to set up an SMSF, you will either be a trustee of the fund or a director of the company that is a corporate trustee for the fund. Therefore, you are legally responsible for all the decisions made even if you get help. A professional can provide advice and assistance but you are ultimately responsible for all matters relating to the SMSF.

Have enough assets, time and skills to run your own fund

Consider the amount of time, money and skill you will need to devote to running your own super fund and whether it is worth your while. Operating an SMSF means you are responsible for the fund. If you fail to perform your duties according to the law you may face severe penalties and your fund may suffer serious tax consequences.

You need to make sure you have enough assets, time and appropriate skills to:

- make the best investment decisions
- meet all your obligations as a trustee of your fund.

As a trustee of an SMSF, your primary responsibility is to make sure you have invested your fund's money appropriately, so ask yourself the following questions:

- Am I a confident and knowledgeable investor?
- Will an SMSF do as well as, or better than, other super funds after I pay all the costs?

If you are not confident you can get a better result, you may be better off leaving your super in a fund which is professionally managed.

You need to make sure you have enough super savings to make your fund viable. The costs of establishing and running a fund can vary significantly but as a general guide, to be competitive with an APRA-regulated fund, you will need around \$200,000.

To be legally established, your fund needs to hold assets so you will need to make sure you are in a position to contribute or transfer assets into your fund in a timely manner.

You should get advice about your circumstances, including the proposed number of members and how you plan to run the fund. It will also cost around \$2,000 to run a medium-sized fund each year. However, it can often cost more depending on the cost of the professional accounting services you use, together with the cost of financial, tax, audit, investment and legal advice you obtain to run the fund.

All SMSFs are subject to an annual supervisory levy designed to fund the regulatory costs of making sure funds comply with their super obligations. The amount payable is included in the SMSF annual return for the relevant financial year. The levy is subject to change. Some costs, including the audit fee and supervisory levy, will be incurred on an annual basis regardless of the assets held in the fund.

You need to consider if you and the other members have adequate insurance in case of death or inability to work because of an illness or accident. Most APRA-regulated super funds offer insurance benefits up to a certain level if you die or are unable to work because of an illness or accident. They can provide this insurance at a low cost because they can buy group policies. You may need to consider any additional costs for insurance when comparing the benefits of an SMSF with your existing fund.

Super laws allow for the provision of financial assistance to be granted to APRA-regulated funds that suffer losses as a result of fraudulent conduct or theft. Under existing super laws there is no government or industry compensation available for members of super funds operating outside the regulation of APRA.

However, you do have certain rights and options available should your fund suffer a financial loss due to fraudulent conduct or theft. Legal options are available under corporations law if you received advice or services from an Australian financial services licensee who was involved in the fraudulent conduct or theft. You should seek legal advice about taking action against a person who engaged in fraudulent conduct. You may also approach the Financial Ombudsman Service (FOS) if the trustee's adviser, or other service provider involved in the fraudulent conduct, is a member of FOS.

If you want your super to be covered by the financial assistance program, you can choose to join an APRA-regulated fund or appoint a registrable super entity licensee as trustee (that is, become a small APRA fund).

You should also understand that you cannot seek resolution of SMSF disputes via the Superannuation Complaints Tribunal (SCT).

You will need to:

- be aware of the requirements of being an SMSF trustee
- understand the level of protections available for SMSF members
- devote time to running your own super fund (and you should consider if you are able to dedicate this time).

Keep up to date with the super and tax laws and understand the risks

All financial decisions carry risk, so it is important to think carefully about how you choose your investment options to balance the level of risk against the level of financial return. You also need to be sure your super investments are legal.

When choosing your investment options and thinking about how to manage the risks associated with your investment options, we recommend you also consider:

- your planned retirement date and age
- what level of risk you are comfortable with
- the objectives you have for your fund.

Spreading the risk

Avoid risking all your retirement savings in one or a few investments. By spreading your investments (diversifying) you can help control the total risk of your investment portfolio. If one or more of your investments perform poorly or fails, the other investments may perform better which will help to lessen the loss.

Effectively spreading your risk means investing not just in different companies or different sectors of the market, but in different sectors of the economy. Investing your money in different companies within the same group or only in different companies of the same type, such as resources or banks, is not spreading risk.

! For a wide range of investment tips and safety checks, visit ASIC's MoneySmart website for consumers and investors at moneysmart.gov.au

Following super and tax laws

Super funds, including SMSFs, receive significant tax concessions as an incentive for members to save for their retirement. However, you need to follow the super and tax laws to receive these concessions.

The assets and money in your fund are solely for your retirement benefits, and are not to give rise to a current-day benefit for trustees of your fund. This means that the personal use of fund's holiday homes, displaying fund's art in your house and buying golf club membership with fund's money almost certainly will not comply.

➤ New rules for SMSF investments in collectables and personal use assets were introduced from 1 July 2011.

For more information, refer to ato.gov.au/smsf and search for 'Collectables and personal use assets – questions and answers'.

⊖ Schemes that try to get your super money out of existing funds early are usually illegal and fraudulent. Because of this, if you are caught in one of these schemes you will pay heavy tax and legal penalties.

Tailor your trust deed and investment strategy to suit your members

Your trust deed and investment strategy should reflect the requirements of the fund. They should be reviewed regularly, and updated when required, to make sure they continue to meet the current and changing needs of your members and the fund.

Trust deeds

A trust deed is a legal document that sets out the rules for establishing and operating your fund. Together with the super laws, they form the fund's governing rules. The trust deed needs to be:

- tailored to your fund
- correctly drafted to meet
 - legal requirements
 - the fund's objectives
 - the members' needs.

Investment strategies

An investment strategy sets out the fund's investment objectives and your plan to achieve them. It provides you and the other trustees with a framework for making investment decisions to increase member benefits for their retirement. Your investment strategy needs to take into account the personal circumstances of all the fund members, including:

- risk tolerance
- attitudes to risk
- age.

One strategy may not suit every member, especially where the members of the SMSF are at different stages of life. In these situations, you need to select and manage investments so they grow in value and meet the investment objectives of all members.

You need to make asset allocation decisions by choosing from a range of investment assets including:

- cash
- bonds
- property
- shares.

Insurance to protect the fund's assets also needs to be considered when you form your investment strategy.

Defensive investments

Cash and bonds are defensive investments with the lowest risk of losing money, and the returns may seem reasonably high. However, you will lose some of the return in taxes and some to the effect of inflation. These safer (defensive) investments do not provide long-term capital growth.

Capital growth investments

Property and shares are capital growth investments and tend to be more tax effective. This means the value of your investment should grow faster than inflation, creating real wealth. However, capital growth is not guaranteed and there can be a lot of ups and downs over the investment time period.

Each year, the amount and frequency of your gains or losses will be uncertain and could differ, perhaps significantly, from reasonable long-term estimates. Specific assets may lose value and never regain it.

 **For a wide range of investment tips and safety checks, visit ASIC's MoneySmart website for consumers and investors at moneysmart.gov.au**

To make sure your fund is set up and operates according to the law, we recommend you seek professional advice.

Meet your record-keeping and reporting obligations

One of your responsibilities as a trustee of an SMSF is to keep proper and accurate tax and super records.

It is a good idea to take minutes of all investment decisions including:

- why a particular investment was chosen
- whether all trustees agreed with the decision.

Decisions about storage of any collectables and personal-use assets must be documented.

If, as one of the fund's trustees, you invest the SMSF's money in an investment that fails, the other trustees could take action against you for failing to be diligent in your duties. However, if your investment decision was recorded in meeting minutes that were signed by all trustees, you will have a record to show they agreed with your actions.

You need to make records available to your auditor when they audit your fund each year. You will also need to provide accurate records to us if we ask to see them.

You need to report changes in certain aspects of your fund to us when they happen and you also have annual reporting obligations, so make sure you are familiar with these requirements and comply with them.

Understand your annual auditing obligations

You have a legal obligation to have your SMSF independently audited annually.

You need to appoint an auditor who is required to:

- provide you with a report on your SMSF
- report to us if your fund has breached any super rules.

SMSF auditors play an important role in maintaining the health of SMSFs.

More information

Obtaining our publications

If you need general information about super, refer to the *Super decisions* booklet available from ASIC's MoneySmart website for consumers and investors at moneysmart.gov.au

To obtain a copy of our publications or for more information:

- refer to ato.gov.au and search for 'Order Tax Office products online'
- visit ASIC's MoneySmart website for consumers and investors at moneysmart.gov.au
- phone us on **13 10 20** or ASIC on **1300 300 630**
- phone our publication ordering service on **1300 720 092**
- write to us at
Australian Taxation Office
PO Box 3100
PENRITH NSW 2740

Useful services

If you do not speak English well and need help from the ATO, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone the ATO through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on relayservice.com.au and ask for the ATO number you need.

