



KEY ELEMENTS IN THE ADMINISTRATION OF DIY SUPER FUNDS

A GUIDE FOR FINANCIAL ADVISERS

*This guide has been compiled to assist advisers explain the key elements that the Tax Office is looking for in the administration of DIY funds and to explain the difference between the service that **smartsuper** offers and what a “once a year” provider does.*

Please note that the comments made here are of a general nature only and are not intended to provide an exhaustive list of every action that needs to be carried out in a DIY fund but rather to look at certain key elements in the administration process.

Index

INDEX	1
WHAT IS ADMINISTRATION?	2
DO I NEED TO HAVE AN INVESTMENT STRATEGY?	2
SHOULD I KEEP MINUTES FOR MY INVESTMENTS?	3
EXAMPLE.....	3
WHAT DOES THE FUND’S AUDITOR HAVE TO DO?	3
FINANCIAL AUDIT	3
COMPLIANCE AUDIT	3
AUDITOR INDEPENDENCE	4
WHAT IS AUDITOR INDEPENDENCE?.....	4
FURTHER INFORMATION	4
COMPARISON BETWEEN SMARTSUPER AND “ONCE A YEAR” PROVIDERS	5
CHECKLIST OF TRUSTEE RESPONSIBILITIES	6

WHAT IS ADMINISTRATION?

Administration is more than the preparation of an annual tax return and financial statements. There are a range of duties which a trustee must carry out which are not accounting responsibilities. In most cases it is not the function of the accountant or reasonable to presume that the accountant is carrying those duties out.

There are some 90 responsibilities as a trustee, which are not tax related. Attached is a short form list of duties.

Below are some of the most common issues relating to trustee responsibilities.

DO I NEED TO HAVE AN INVESTMENT STRATEGY?

Yes. This is one of the key areas identified by the ATO as an area of concern.

The ATO has issued a document which explains their expectations and it notes as follows:

Trustees of self managed super funds are required to prepare and implement an investment strategy for their fund, and regularly review the strategy. This requirement is to help ensure that the best possible investment decisions are being made for the fund. The investment strategy must reflect the purpose and circumstances of the fund and consider:

- investing in such a way as to provide sufficient member returns, taking into account the risk associated with the investment
- appropriate diversification and the benefits of investing across a number of asset classes (for example, shares, property, fixed deposit) in a long-term investment strategy
- the ability of the fund to pay benefits as members retire and pay other costs incurred by the fund, and
- the needs of members (for example, age, income level, employment pattern and retirement needs).

An appropriate investment strategy should set out the investment objectives of the fund and detail the investment methods the trustees will adopt to achieve these objectives. An investment strategy should be unique to the requirements of a particular fund and its members, and should be reviewed regularly and updated as required. It should allow trustees to be able to measure investment performance against their retirement income goals.

Trustees must make sure that all investment decisions are made according to the investment strategy. If in any doubt, they should seek investment advice or appoint an investment manager in writing.

Do

- ✓ develop an investment strategy and review it regularly
- ✓ ensure your investment strategy takes into account your retirement goals
- ✓ take into consideration the risks involved in certain investments
- ✓ take into consideration what bills the fund has to pay and allow enough cash to meet these expenses
- ✓ take into consideration when benefits will need to be paid out
- ✓ consider diversifying the fund's investments.

Don't

- ✗ invest without considering your strategy and your overall goals for retirement.

SHOULD I KEEP MINUTES FOR MY INVESTMENTS?

Yes. It is important that this is done, the commissioner notes the following:

Do:

- ✓ keep minutes outlining investment decisions
- ✓ keep minutes to show how decisions are made
- ✓ keep records to explain the transactions of your fund
- ✓ keep annual operating statements and annual statements of your fund's financial position
- ✓ keep records to show who the trustees of your fund are and their consent to act as trustees
- ✓ keep copies of returns and information provided to members.

Don't:

- ✗ make decisions without documenting the decision
- ✗ throw out documents that explain what your fund has been doing
- ✗ throw out documents after returns have been lodged.

Example

A married couple has a self managed super fund. They decide to buy some Australian mining shares. They prepare a minute to explain all the details of their decision to buy those shares, including the amount they are investing.

WHAT DOES THE FUND'S AUDITOR HAVE TO DO?

There are 2 different audits that need to be done each year:

Financial audit

"In undertaking a financial audit, you should comprehensively examine the accounts and the financial report of the self managed fund to enable you to form an opinion on whether the financial report presents fairly the financial position of the fund and its operations for the income year under review."

Compliance audit

"When auditing a self managed superannuation fund for compliance with the SIS Act and the SIS regulations, you must be satisfied that the fund has met the five main areas of compliance. You must ensure that:

1. the fund meets the definition of a self managed superannuation fund and has elected to be a regulated fund (sections 17A and 19 of the SIS Act)
2. the fund is maintained for the sole purpose of providing benefits to fund members upon their retirement, or to their dependants in the case of the member's death before retirement
3. the trustees have an investment strategy and comply with the investment restrictions
4. the trustees adhere to contribution and benefit payment standards, and
5. the trustees carry out their administrative obligations.

The auditor must report all instances of non-compliance to the trustees in writing, in accordance with section 129 of the SIS Act. In addition, where you are of the opinion that the contravention may affect the interests of the members or beneficiaries of the fund, you should report to the Tax Office by lodging the Auditor/actuary contravention report (NAT 11239)."

The above are direct extracts from publications released by the Australian Taxation Office namely:

"Role and Responsibilities of Trustees" (Publication NAT 11375-06.2004)

"It's your money ... but not yet" (Publication NAT 11375-06.2004)

"Role and responsibilities of approved auditors" (Publication NAT 11375-06.2004)

AUDITOR INDEPENDENCE

What is Auditor Independence?

Guidelines to this are set out in:

- APES 110 – Code of Ethics for Professional Accountants Section 290; and
- Auditing Standards ASA 200 (Objective and General Principles Governing an Audit of a Financial Report) and ASA 210 (Terms of Audit Engagements)

The Tax Office notes that:

“Audit independence defines independence as a freedom from any interest incompatible with integrity and objectivity. As an auditor, you must not only be independent, but must also appear to be independent. Independence requires a freedom from bias, personal interest or association and susceptibility to undue influence or pressure.”

“[if you are] an accountant involved with the accounting/management functions of the fund, it would be difficult to argue that the question of auditor independence would not be compromised as a result of your other duties associated with that fund.”

The Institute of Chartered Accountants notes that:

“As a significant part of the regulatory framework for self managed funds it is important that the audit is performed independently of the accounts preparation. The standard of independence applied is that contained in the Code of Ethics for Professional Accountants, Section 290 (formerly Professional Statement F1). This is applied to all self managed fund auditors not just CA’s and CPA’s.

As a result of benchmarking the ATO has identified that where the same firm performs both the tax return and the audit there is an increased risk of a breach not being identified or reported. This is therefore one of the risk criteria used when selecting funds for an ATO review. During a review the firm is required to show how it has complied with the independence standards when performing these roles.

As a best practice approach it is recommended firms consider the segregation of roles within the firm and outsource the audit function where appropriate.”

FURTHER INFORMATION

Extracts quoted here are from publications released by the Australian Taxation Office namely:

- “Role and Responsibilities of Trustees” (Publication NAT 11375-06.2004)
- “It’s your money ... but not yet” (Publication NAT 11375-06.2004)
- “Role and responsibilities of approved auditors” (Publication NAT 11375-06.2004)
- “Self managed superannuation funds – investment strategy and investment restrictions” (Publication NAT2063)

- More detailed information on running a Self Managed Superannuation Fund can be found on the Tax Office web site (www.ato.gov.au/super)
- For information on the above please call Bill Davies from **smartsuper*** Client Services on 1300 138 348.
- Speak to your financial adviser
- Speak to your taxation adviser

COMPARISON BETWEEN SMARTSUPER AND "ONCE A YEAR" PROVIDERS

	Smartsuper	Once-a-year providers *
Features and Permitted Investments		
Direct shares - Australian	✓	✓
Direct shares - International	✓	✗
Retail managed funds	✓	✓
Wholesale managed funds	✓	✓
Direct Property	✓	✗
Other non-standard investments	✓	✗
Complying pensions	✓	✗
Reserve accounts	✓	✗
Estate Planning Benefits	✓	✗
Multiple Members	✓	✓
Segregation of assets for members	✓	✗
Pooling of assets for members	✓	✓
Accumulation Account & Allocated pension in one account	✓	✗
Trust Deeds		
Provision of continuously complying trust deeds	✓	✗
Fund Establishment		
Application to become a regulated fund	✓	✓
ABN and TFN application	✓	✓
Completion of establishment minutes and member application documentation	✓	✓
Handle rollovers from current funds to your own fund	✓	✓
Actuarial		
Arranging for Lump sum, RBL, Pension and Allocated Pension calculations	✓	✗
Statutory Obligations		
Preparation and lodgement of APRA or ATO statutory Returns	✓	✓
Lodgement of all statutory reporting forms – RBL, pension commencement, commutations etc	✓	✗
Preparation of annual statutory financial accounts and members' statements	✓	✓
Preparation of all minutes for the trustees to sign	✓	✗
Fund Reporting, Trustee Obligations and Administration		
Monthly reconciliation of accounts	✓	✗
Quarterly fund reporting to the members, trustees and any financial advisors including reporting on investment values and performance	✓	✗
Annual fund reporting to the members, trustees and any financial advisors including reporting on investment values and performance	✓	✗
Advise trustees of their upcoming obligations (SAF obligations are met by the Approved Trustee)	✓	✗
Keeping the Members advised of movements of assets outside of the Investment Strategy	✓	✗
Maintenance of records for each member including balances, contributions, allocation of contributions and drawdowns to the correct components	✓	✓
Monitoring of non-standard assets to advise of need for revaluation	✓	✗
Retention of records in digital format for the mandatory 10 year period	✓	✗
Taxation and Audit		
Determination of the correct taxation payments for the fund and its members	✓	✓
Surcharge reporting and taxation payments	✓	✓
Arranging for preparation and lodgement of the fund's annual Taxation Return	✓	✓
Preparation and lodgement of GST, BAS and IAS Returns as applicable	✓	✓
Preparation of all Rollover documentation to the regulator	✓	✗
Preparation of comprehensive workpapers at year end to simplify the audit process. Client is free to use their existing auditor or we can provide one that specialises in the area.	✓	✗

* Some accountants may provide some of these services (at additional cost), most other providers do not



CHECKLIST OF TRUSTEE RESPONSIBILITIES

This checklist (provided by the ATO) highlights some of the more important rules under the Superannuation Industry (Supervision) Act 1993 (SIS Act) and the Superannuation Industry (Supervision) Regulations 1994 (SIS regulations) that you, as a trustee, must comply with. The ATO recommends that you consult the checklist regularly to ensure you are complying with all requirements in running your self managed fund. If the ATO identifies that you have contravened your legislative requirements, you may be penalised and lose your tax concessions.

All trustees must be able to answer the following questions in relation to their fund.

Trust deed

My fund's trust deed must:

- be properly executed
- state the name of the fund
- include a statement that the fund must appoint a corporate trustee or that the sole or primary purpose of the fund is to provide old age pensions.

It also sets out:

- who the trustees are
- how trustees are appointed and how they can be removed from the fund
- the powers of the trustees

Deeds may also cover:

- that the members agree to act as trustees
- confirmation that the trustees are not 'disqualified persons'
- that trustees cannot accept payment for services as trustees
- paying benefits to members
- what contributions the fund can accept
- who can be members
- winding up the fund.

Overall:

- I have read and understand my trust deed
- I know the deed sets out the rules that all the trustees of the fund must comply with.

! As a trustee, you are bound by your deed and responsible for any contravention of the rules set out in the deed. For these reasons, it is very important that you know the contents of the deed.

Trustees and members

My fund is a self managed superannuation fund because it meets all these requirements:

- there are fewer than five members in the fund
- all members of the fund are trustees of the fund (or directors of the trustee company)
- each individual trustee of the fund, or director of the trustee company, is a member of the fund
- no member of the fund is an employee of another member of the fund, unless those members are related
- no trustee of the fund receives any remuneration for their services as a trustee.

OR, for single member funds:

- no trustee of the fund receives any remuneration for their services as a trustee
- the member is the sole director of the trustee company
- the member is related to the other director of the trustee company (and there are only two directors of that company)
- the member is not an employee of the other director of the trustee company (and there are only two directors of that company)
- the member is one of only two trustees, of whom one is the member and the other is a relative of the member, or
- the member is one of only two trustees and the member is not an employee of the other trustee, and
- no trustee of the fund receives any remuneration for their services as a trustee.

There are some exceptions to these general rules, for example, where a member is under a legal disability.

Electing to be regulated

- An election that the SIS Act is to apply to the fund was lodged with the Tax Office within 60 days of establishing the fund.

A fund must elect to be a regulated superannuation fund and comply with the requirements of the SIS Act to ensure it is a complying superannuation fund. If it does not, the fund may not receive concessional tax treatment and/or other sanctions may be imposed on the trustees of the fund for contravening the SIS Act where the fund is a regulated superannuation fund.

Tax file number

- The fund has its own tax file number.

Australian business number

- The fund has its own Australian business number (ABN).

Although it is not compulsory that your fund has its own ABN, it may be beneficial to the fund to obtain an ABN.

Separate bank account

- A separate bank account has been opened so that money belonging to the fund can be kept separate from accounts of the members, the trustees and related employers (employer-sponsors).

This is very important to prevent the fund contravening the SIS Act rules and also assists trustees in preserving and protecting their retirement income.

Accepting contributions

- The trustees are aware of the SIS Act rules that relate to gainful employment, and age restrictions for accepting contributions.
- The trustees are aware that funds can accept contributions only in accordance with their fund's deed. The deed can also impose restrictions on the fund's ability to accept contributions so trustees need to decide what contributions they wish to accept and to ensure the fund's deed allows those contributions to be accepted.
- The trustees are also aware they cannot accept contributions from related parties in the form of assets other than money (known as 'in specie' contributions), except assets that are expressly allowed to be acquired from related parties under the SIS Act.

According to my trust deed, the fund:

- can accept contributions from a member's employer
- can accept contributions from members
- can accept rollover payments
- can accept contributions in respect of a member's non-working spouse
- can accept contributions in respect of minors.

Investment strategy

My fund has a medium to long term investment strategy that considers:

- a wide range of investment possibilities, including such things as:
- cash-based, low-risk investments
 - growth investments, for example, shares
 - combinations of investment types
- the return on investments compared with risks involved
- the ease of converting assets to cash in order to meet payments due by the fund
- members' ages and individual retirement benefit needs
- overall, the aim of my fund's strategy is to increase members' benefits over time.

Contravention of the requirement to have an acceptable investment strategy can result in the trustees being fined or sued for loss or damages. The fund can lose its compliance status and, as a result, its concessional rate of tax.

Investing

The assets of the fund are kept separate at all times from those of:

- the members
- the trustees
- related employers.
- Each member has a separate account in the fund.
- The fund's accounting and banking records are kept entirely separate from those of members/trustees/employers.
- All transactions by the fund are conducted on a strict commercial basis.
- The fund can demonstrate that market value has been paid and received on all transactions.

These requirements are very important to prevent the fund:

- contravening the sole purpose test, and
- exposing the members' retirement benefits to unnecessary risk.

Investment restrictions

The trustees can demonstrate that they have not:

- lent money to or provided financial assistance using the resources of the fund to a member or member's relative
- borrowed money
- acquired assets from 'related parties' of the fund. Related parties include all members of the fund and their associates and all employer-sponsors of the fund and their associates
- leased, loaned or invested more than 5% of the fund's total assets in related parties of the fund. These assets are known as 'in house assets'.

Record keeping

Wherever possible, responsible accounting practices will be adopted by the trustees, such as:

- joint signatories to signing cheques
- separating of accounting functions, for example, receipts and payments
- segregation of duties

Trustees must keep the following records for at least five years:

- accurate and accessible accounting records that explain the transactions and financial position of the fund.
- an annual operating statement and an annual statement of the funds financial position
- copies of annual returns lodged

Trustees must keep the following records for at least 10 years:

- minutes of all meetings
- records of changes of trustees
- records of changes of directors, if corporate trustees
- written consents by members to be appointed as trustees

Penalties apply if trustees fail to keep the records listed above for the required period.

Paying a benefit

The trustees:

- will pay benefits only in accordance with the SIS Act, SIS regulations and the trust deed of the fund
- are aware that the SIS Act sets payment standards based on events such as reaching a certain age and termination of employment, and can place restrictions on how a benefit can be paid.

All paperwork in relation to the following will be completed:

- eligible termination payments (ETPs)
- withholding tax from ETPs and superannuation pensions and annuities and remitting the tax to the Tax Office
- reasonable benefit limits.

Benefits should be checked for accuracy before payment. The payment standards of the SIS Act work with the sole purpose test and the preservation rules to ensure monies are paid to members only in appropriate circumstances.

Annual requirements

The trustees will:

- appoint an approved auditor to examine the records at the end of the financial year
- lodge the combined income tax and regulatory return (Form F) with the Tax Office by the due date
- pay the supervisory levy and the fund's tax liability when due
- comply with surcharge requirements.

There are penalties for failing to meet the annual requirements listed above.

Tax matters

The trustees will keep records of:

- deductions claimed for administrative and operating expenses of the fund
- sales/purchases of assets for capital gains tax purposes
- tax file numbers of members
- deductions claimed for the provision of death and disability benefits for members.