Xpress Super Information

5 rookie errors when running an SMSF

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While an SMSF offers a number of benefits, and can be a great way to grow your retirement savings, it is important to ensure your fund remains compliant at all times. With the superannuation laws constantly changing it can be easy to make a mistake when managing your fund.

In 2015 the Australian Taxation Office reported 22,000 breaches of superannuation rules by trustees of SMSFs. These breaches ranged from minor administrative contraventions, to more serious contraventions such as breaches to the in-house asset rules.

The ATO has recently been provided with a wider range of enforcement powers, meaning that they are able to impose significant penalties should you knowingly do the wrong thing in your SMSF (this can include a payment to the ATO equivalent of 45% of the SMSFs assets). Therefore it is more important than ever, that as trustee, you keep yourself up-to-date with your responsibilities to ensure your fund remains compliant.

Here are 5 rookie errors to avoid when running your SMSF:

(1) Personal use of fund's assets, including early access to superannuation benefits

One of the biggest 'rookie' errors made by trustees is accessing their superannuation benefits early. Early access and personal use of fund's assets are consistently at the top of the ATO's top 10 compliance mistakes every year.

All SMSFs that are established need to comply with the sole purpose test, meaning the sole purpose of the SMSF is to provide benefits to members when they retire. This test applies to all assets, including collectibles (such as cars, jewellery, artwork etc.,). You are only allowed to access the funds in your SMSF once a Condition of Release is met.

Prior to purchasing an investment, it is important to ask yourself, "What is the purpose of this investment?" If it is to provide immediate benefit to a member of the fund or related party, then don't do it, as it does not meet the sole purpose test.

Other errors that are commonly made by trustees include; providing loans to relatives or members of the fund, and paying expenses out of the fund that are not fund expenses. Both of these actions are not allowed as they breach the sole purpose test, and put the SMSF at risk of having penalties applied or being made non-compliant.

(2) Breach of the in-house asset rules

The in-house asset rules are another area where trustees commonly make mistakes. The in-house asset rules state that the amount invested in in-house assets (ie. investments involving related parties) must not exceed 5% of the market value of the fund's total assets.

As the market value of the fund's assets constantly change it is important to regularly monitor your fund to ensure that, as the values of your investments change, your in-house assets do not creep over the 5% limit. Breaches of the in-house asset rules may result in the ATO issuing you with a penalty of up to $10,200.

In times when markets are volatile it may be easy for your in-house assets to exceed the 5% limit. Should this occur, you are required to dispose of the excess within the next financial year in accordance with a written plan. It is important to note that no disposals may be necessary if market movements in the following year assist in bringing your in-house assets under 5%. However, a written plan is still required.

(3) Assets recorded in the wrong name

Recording assets in the wrong name is another 'rookie' mistake that is often made by trustees that can easily be avoided. As trustee of an SMSF you are required by law to ensure that you keep the money and assets of the fund separate from other money and assets (eg. your personal assets).

Assets in your SMSF should be recorded in a way that clearly shows legal ownership by the fund and distinguishes them from your personal assets. This not only will ensure you aren't breaching the superannuation laws, but it will also keep them protected in the event that you, as trustee, are involved in financial trouble.

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In the event of a change of trustee/membership of the fund it is much easier if the SMSF is set up with a corporate trustee as opposed to individual trustees. This is because all asset registers, managed funds, investment and broking accounts, must be changed to reflect the change in individual trustees. Whereas, if a corporate trustee was in place, no change would be necessary as the company would still be the owner of the assets and only the directorship of the company requires updating.

(4) Investing outside the investment strategy

Another common error in which trustees are typically penalised for, is investing in assets outside of their investment strategy. Under superannuation law, all trustees are required to prepare an investment strategy that outlines the fund's objectives and specifies the type of assets the fund can invest in.

Your investment strategy can be changed as often as you like, either to take advantage of a new investment opportunity or to suit your changing circumstances. It is important to note that should your investments stray from your investment strategy you may be fined by the ATO.

To avoid any penalties or fines, it is important to review and potentially amend your investment strategy every 12 months. In addition, you should also review your investment strategy when there is a significant change to a member's circumstances (eg. a new pension is commenced, or a member dies etc.).

(5) Failure to plan for death or loss of capacity of a member

By not considering a succession plan for your SMSF you are making a 'rookie' mistake. Although often overlooked, succession planning is an essential part of running a successful SMSF.

Should a trustee die or lose legal capacity, there is a possibility that the money in your SMSF may be tied up and inaccessible if appropriate steps have not been taken beforehand. Worse still, if you have not prepared a succession plan, your superannuation benefits may be left in the control of someone who is not willing to act in accordance with your wishes.

It is important, that whilst you have control, you consider and plan for potential events that will have a major impact on your SMSF. This will help limit the uncertainty and risk around who may potentially end up controlling your retirement savings.

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Postal
GPO Box 11031
Adelaide SA 5001

Telephone
1300 216 890

Facsimile
08 8221 6552

Email
service@xpresssuper.com.au

Adelaide
65 Gilbert Street
Adelaide SA 5000

Melbourne
Level 4
152 Elizabeth Street
Melbourne VIC 3000

Sydney
Level 13
333 George Street
Sydney NSW 2000

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