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Super News

It is the company you keep

Self managed superannuation funds (SMSF) require all members to be trustees, or directors where a trustee company is used. When choosing the type of trustee for your SMSF, what are some of the things you need to consider?

For a variety of reasons, over time we have seen an increasing number of new funds established with a corporate trustee. According to ATO statistics, around 80% of new funds established will have a corporate trustee. Despite this, across the SMSF population, around 40% still have individual trustees.

A common reason cited for using individual trustees is cost. Yes, it will reduce the establishment costs for your fund. However, this can potentially be a false economy.

When setting up a SMSF, the plan is that it will be with you for a long while. Perhaps 20 or 30 years? If we take a long-term view and consider that cost over the life of the fund, the annual cost is very low indeed.

To maintain a company's registration, you also need to pay an annual fee to ASIC. A standard company currently pays $273 a year. The fee for a special purpose superannuation trustee company is discounted to $55 a year. Further savings can be achieved by paying the fees for ten years in advance at a further discounted rate of $383.

There are a few good reasons to have a company as trustee for your SMSF. It can ease some administrative burdens and importantly, help to protect fund assets.

Any time an individual trustee is added or removed, a deed of variation is required. New bank accounts are needed, and the title of all the fund's investments and insurance policies will need to be changed.

This can be a costly and time-consuming process.

Changing individual trustees when a loved one is seriously ill is the last thing you or your family want to be worried about. However, if you are unable to act as a trustee and your enduring power of attorney needs to be appointed, you will need to be removed as a trustee and your attorney appointed as a new trustee.

If you switch over to a company, similar administration will be required. However, this is a once off exercise. Going forward, if you are adding or removing people, the changes occur at the director level of the company only. It removes the issues that arise with changing individual trustees.

SMSF trustees are required to hold the super fund assets separate from their own. A company provides a clear separation of ownership.

A super fund is a type of trust. This is important as the name of a trust will not always appear on the title of the assets it owns. Property is a prime example. In Western Australia, only the name of the trustees will appear on the property title. The use of a special purpose superannuation trustee company clearly identifies an asset as belonging to a superannuation fund.

A superannuation trustee company will need to have a special purpose constitution. It needs to include rules that it can only be a trustee of the superannuation fund. It cannot trade, invest or operate in its own right or act as trustee of a trust.

While there can be cost savings using the same company as your business or other interests, there can be risks in doing so. You need to ensure that the SMSF assets are clearly identifiable as belonging to the SMSF. The last thing you want to be doing is incurring legal fees in defending superannuation assets from creditors or disputes that may arise from the company's other activities.

It also removes the risk of inadvertently adding non-SMSF members (or removing SMSF members) as directors. Over time your trading entity may wish to add or remove people associated with the business. If we have the wrong people as directors of the company, your SMSF will fail to meet the definition of an SMSF and risks becoming non-complying.

If something goes wrong and ATO trustee penalties are imposed, these are applied fully to each trustee. This is a personal liability of each trustee and results in a multiplying effect. For funds with individual trustees there will be at least two and up to a maximum of four trustees, with each separately charged the full penalty.

A company is a single trustee, regardless of how many directors there are. Only one trustee penalty amount would apply. Instead, each of the directors are jointly and severally liable to pay that penalty.

If you are looking to change to a corporate trustee, it is also a good time to have your SMSF deeds reviewed and updated. Often there can be a saving when undertaking these together, rather than attending to them separately at different times.

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