



finance wise

SMSF STRATEGIES SPECIALIST SMSF ADVISER TRAINING

Module 5 – SMSFs and Australian Super Funds





MODULE 5 OVERVIEW

- Structures
- Australian Super Fund Defined
- Typical SMSF Structure
- Review the fwgs SoA template
- Employee definition



PREVIEW OF MODULE 5

QUIZ QUESTIONS (MULTIPLE CHOICE ANSWERS)

- ❖ For a single member SMSF a sole director corporate trustee is allowed under the SIS Act 1993 ...
- ❖ An enduring power of attorney of a member ...
- ❖ The Commissioners Enduring Power of Attorney ruling can be found at ...
- ❖ An Australian super fund is ...
- ❖ Section 45(1) of the SIS Act 1993 ...

DEFINE AN AUSTRALIAN SUPER FUND

A SMSF is:



- Regulated (s.295-95 ITAA)
- Fewer than 5 members
- Individual trustees must also be members of the fund
- Individual trustees/directors of corporate trustees must also be members of the fund
- No member is an employee of another member (unless related)
- No trustee or director receives remuneration in their role as trustee or director



What isn't a SMSF fund?




- A fund not regulated
- A fund that has 5 or more members
- A fund that has no trustee (death)



TYPICAL SMSF

- Members: James & Kathryn Barger-Bos
- Name of the Superannuation Fund: James & Kathryn Super Fund
- Trustee: J and K Pty Ltd
- Directors: James Barger-Bos
Kathryn Barger-Bos

✓ **Complying** because all the members of the fund are directors of the trustee company and there are no other directors of the fund.

TRUSTEE STRUCTURES

- Individual trustees
- Corporate trustees
- Single member – a sole director corporate trustee is allowed (s17A(2)) 
- What happens in a typical “mum and dad” SMSF when one dies?
- What if they are both directors of a corporate trustee?

- A legal personal representative (LPR) is a person who is:
 - an executor of another person's will
 - the administrator of deceased person's estate
 - the trustee of a legally disabled person's estate or affairs
 - a person who has been granted an enduring power of attorney over the affairs of another person
- If the Trust Deed allows it (!) the LPR is automatically appointed as the second director 
- The Commissioner agrees (SMSFR 2010/2) 



WHO CANNOT BE A TRUSTEE?

- Have been convicted of an offence involving dishonest conduct
- Have been subject to a civil penalty imposed under SIS
- Are insolvent under administration (an undischarged bankrupt)
- Have been disqualified by the regulator

EXTRACT FROM FWGS SOA TEMPLATE

4.1.2 **Trustee Structure**

Analysis

I have considered the most appropriate structure (i.e., corporate/individual trustee structure) when establishing your SMSF. This can have important tax and succession planning implications.

Recommendation

I recommend that you have a corporate/individual trustee.



THE GENERAL RULE: NO EMPLOYER-EMPLOYEE RELATIONSHIPS

- A person cannot be a member of an SMSF if they are an employee of another member of the fund unless ... they are related.
- So James and Kat are members – OK.
- James employs Kat – not OK.
- But Kat is James' wife – OK.

EXTENDED DEFINITION OF EMPLOYEE

SISA uses an extended definition of employee (SISA s. 17A(6)):

A member of a fund, who is an employee of an employer-sponsor of the fund, is also taken to be an employee of another person (the **other person**), if the employer-sponsor is:

- a relative
- a body corporate of which the other person, or a relative of the other person, is a director
- a related body corporate
- a trustee of a trust of which the other person, or a relative of the other person, is a beneficiary
- a partnership involving a relative, related body corporate, trustee, or beneficiary



EXTENDED DEFINITION OF RELATIVE

SISA also uses an extended definition of relative (SISA s. 17A(9)):

- everybody through to great-aunts and second cousins
- spouses or former spouses of relatives

GROUP CASE STUDY

1. James and Alice are good friends and set up an SMSF together: the "James and Alice SMSF" – are they allowed to do that?
2. James' brother, Luke, is a director of Luke Accounting Pty Ltd
3. Luke Accounting Pty Ltd hires Alice to be its Office Manager
4. Luke Accounting Pty Ltd pays Alice's SGC to James and Alice SMSF (making the company an employer sponsor of the fund) – is that OK?



finance wise



NOT OK!

Problem:

- Ceases to meet the definition of an SMSF – why?
- Luke, a relative of James, is a director of the employer sponsor company
- Alice is an employee of Luke
- Alice is therefore considered to be an employee of James
- Alice is thus an employee of an employer sponsor of the fund

Solution:

- Pay SGC into a retail fund for Alice and all is well

Other possibilities:

- What about if James and Alice are second cousins?

S45(1) SISA

- SMSF Trustees are bound by the SISA 1993 and from 8 October 1999 have been regulated by the Tax Office.
- APRA regulates most other super funds ... and banks!

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 - SECT 45

Complying superannuation fund

(1) A fund is a complying superannuation fund for the purposes of the Income Tax Assessment Act in relation to a year of income (the ***current year of income***) if, and only if . . .

Links ITAA and SIS.



TRUSTEE GROUP ACTIVITY – SEMI AUTOBIOGRAPHICAL

- James and Kathryn are both individual trustees of their SMSF
- James has been declared bankrupt due to his wife's insatiable spending appetite
 1. What action must be taken?
 2. What options are available?



PREVIEW OF MODULE 5

QUIZ QUESTIONS (MULTIPLE CHOICE ANSWERS)

- ❖ For a single member SMSF a sole director corporate trustee is allowed under the SIS Act 1993 ...
- ❖ An enduring power of attorney of a member ...
- ❖ The Commissioners Enduring Power of Attorney ruling can be found at ...
- ❖ An Australian super fund is ...
- ❖ Section 45(1) of the SIS Act 1993 ...



QUIZ TIME

- Go online
- Take the Module 5 Assessment
- Ask us if you have any queries
- You will have TWO opportunities to take the quiz

finance wise