Super Concepts

6 Members & Succession Planning for your SMSF

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What you need to know

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This session will cover

- Understand the provisions of the legislation
- Issues with State and Territory laws
- Are 6 members a good idea?
    - Establishment and administration
    - Fund investments
    - Benefit payments

Treasury Laws Amendment (2019 Measures No.1) Bill 2019

- Original announcement 27th April 2018:
  - Government announces increase in SMSF and SAF membership (small funds) from 4 to 6 members
- Measure originally proposed to take effect from 1 July 2019
- Original announcement gave the Government at least 8 months to draft the legislation and release it for comment if necessary

Taxation Laws Amendment (self-managed superannuation fund) Bill 2020

- Introduced on 2 September 2020 to House of Representatives
- Referred to Senate Economic Legislation Committee on 3 September 2020 – report handed down on 4 November 2020
- Recommendation that the bill pass the house – helps simplification and reduce costs
- If passed the legislation will take commence on 1st day of the quarter (1 January, 1 April, 1 July or 1 September) after it receives Royal Assent. Small funds can have 6 members from that date.

Taxation Laws Amendment (self-managed superannuation fund) Bill 2020

- Increases number of small fund members to ‘no more than 6’
- Changes signature requirements for document signing
- Amends the superannuation standards to allow the increase in small fund members
- Impact of change on State and Territory laws

Taxation Laws Amendment (self-managed superannuation fund) Bill 2020

- (s35B(3)(a) and (b) of the Superannuation Industry (Supervision) Act 1993:
  - One or 2 directors of corporate trustee – all directors to sign
  - More than 2 directors then at least half to sign
  - 2 individual trustees – all trustees to sign
  - Otherwise – at least half of the trustees to sign

Taxation Laws Amendment (self-managed superannuation fund) Bill 2020

- Amendments to superannuation standards in SIS Act and ITAA ’97
- SIS Act – carve outs for:
  - Registration as RSE, MySuper products, direction of trustee, promoting financial interests of beneficiaries, increase in fund members and appointment of member representatives
  - Related party acquisitions
  - Insurance exclusion does not apply
  - Part 8 associates, in-house assets

Taxation Laws Amendment (self-managed superannuation fund) Bill 2020

- ITAA '97
  - disregarded fund assets (Division 295)
  - outstanding balance of limited recourse borrowing in total super balance

Issues with the increase in members – State and Territory laws

- Some State and Territory laws restrict the number of trustees a trust can have to less than six.
- For example:

  - Trustee Act (NSW) 1925 – section 6, Part 2 Division 1
  - Trustee Act (Vic) 1958 – sections 40 and 42

- Can be avoided by appointment of a corporate trustee.

Increase from 4 to 6 members

- How many members is a good idea?
- impact of the increase in SMSF members on decision making and fund administration
- difficulties from increase in SMSF members on investments and benefit payments
- benefits of increasing SMSF members from a wealth transfer angle

Establishment & Administration

POSITIVES

- Caters for larger families
- Corporate Trustees
- Reduces costs
- Australian Super Fund definition

NEGATIVES

- Trust Deed provisions – number of members
- Individual Trustees
- Reduced efficiencies
- Control – incl appoint and remove

Fund Investments

POSITIVES

- Pooling of assets – greater purchasing power
- Taxation strategies – i.e. franking credits

NEGATIVES

- Indecisive decision making
- Illiquid investments v cash flow
- Naming conventions
- Names on investment documents
- Issues with significant ‘lumpy assets’

Benefit Payment

POSITIVES

- Generational wealth transfer
- Streamlined estate planning

NEGATIVES

- Relationship breakdown
- Elder abuse

Considerations

If you were to increase the number of members in an SMSF who would you target to add?

- siblings and their family
- children of fund members
- business associates
- immediate family

Considerations

Which of the following would influence you to add more members to an SMSF?

- cost reduction
- better investment opportunities
- estate planning
- shared responsibility

Questions

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