

# Year End Commitments for SMSFs

**Graeme Colley**  
Executive Manager,  
SMSF Technical & Private Wealth

# But first...what you need to know



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# Session overview

- SMSF Trust Deed and amendments
- Investment strategy considerations
- Actuarial Certificates – does the SMSF need one?
- Separation of assets requirements
- Valuation of investments post COVID-19
- Property and the audit
- Record keeping and documenting decisions.
- Contributions – elections etc.

# Trust Deed issues

- Trust deed must be properly executed and copy of current version provided to audit
- Generally must be trustee/member alignment
- New trustees must sign ATO Declarations within 21 days
- Beware of impact of changed member and trustee circumstances.
  
- Review of binding death benefit nominations
- Include summary in accounts of BDBNs

# Investment strategy

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## Investment strategy Requirements

## Common findings

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Trustee must formulate, review regularly and give effect to an Investment Strategy

Not executed by current trustees  
No evidence of regular review  
Actual investments not in line with IS

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Consider risks and likely return from investments having regard to objectives and cash flow

Not adequately considered

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Consider composition of investments and diversification

Not adequately considered

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Consider liquidity with regard to cash flow

Not adequately considered

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Consider insurance

Not documented

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# Actuarial certificates

- Greater complexity since 2017/18
- The SMSF needs an actuarial certificate if:
  - If it uses the proportionate method to determine ECPI including:
    - Wholly in pension mode for all of the financial year
    - For disregarded small fund assets.
- Disregarded small fund assets is where:
  - Any member of the SMSF has retirement-phase assets of at least \$1.6m
  - Does not need to be in the SMSF
  - Measured as at 30 June 2020.

# Valuations – unlisted companies and trusts

Trustees should focus on whether the recorded market valuation of assets is correct, as there is no active market to support the valuation

Appropriate evidence will depend on the circumstances and may include:

- Formal valuations
- Recent arm's-length share transfers / share placements
- Audited financial statements
- Insolvency events
- Other publicly available information.

# Valuations of loans

Whether the loan will be repaid in full, considerations will be:

- Who the borrower is
- If the borrower is a related party
- Loan agreement (substance, likely to be enforceable)
- Security (if any)
- Repayment history
- Financial status of the borrower (particularly if unsecured)
- Evidence to support year end balance.

# Limited Recourse Borrowing Arrangements



- LRBA is a permitted borrowing
- Must be utilised to acquire a single asset
- Important to set up correctly and all documents properly executed
- Property must be held by “bare/holding” trustee
- Be careful that no substantial development made to the asset which changes its character
- Related party borrowings must be on an arm's length basis and satisfy Safe Harbour provisions.
- Winding up due to loan paid off or property sold

# Related party transactions

- An SMSF cannot acquire an asset from a related party (known as In Specie Transfers) unless it is acquired at market value and is:
  - ASX Listed Securities
  - Widely Held Managed Funds
  - Business or Commercial Property
  - Cash Based investments.
- There are some other very limited circumstances, such as related trusts and companies.

# Related party transactions

- Where related party investments and transactions are involved, then additional audit review is required
- Requires adequate planning to demonstrate compliance
- All dealings with a related party must be on arm's length terms
- Failure to do so could lead to Non Arm's Length Income (NALI) issues
  - Tax on income at capital gains at top marginal tax rate inside the fund.
- Expenses must also be on arm's length basis.
- *Coronica and Commissioner of Taxation (Taxation) [2021]*  
AATA 745 with arm's length transactions

## What is an in-house asset?

- A loan to, or an investment in, a related party of the fund
- An investment in a related trust of the fund
- An asset of the fund subject to a lease or lease arrangement between the trustee of the fund and a related party of the fund
- A 'lease' means a formal lease
- A 'lease arrangement' is the same as a lease but not formal
- Subject to a 5% limit.

# In house assets

- The downturn in markets may result in the fund's in-house assets being more than 5% of the fund's total assets
- If the level of in-house assets exceeds the 5% limit at 30 June 2020, Trustees must prepare a written plan to reduce the fund's in-house assets to 5% or below
- This plan must be prepared and implemented before the end of the next financial year (2022)
- However, the ATO will not take any action if the rectification plan was unable to be executed because the market has not recovered
- Must still document plan as it will be required for audit purposes.

# Contributions

- The types of contributions can be restricted by a number of factors:
  - The age and employment status of the member
  - The amount contributed under the Contributions Cap
  - The member's Total Superannuation Balance on 30 June of the previous financial year (affecting the member's eligibility to Non-Concessional Contributions, Spouse Contributions and Government Co-contributions).
- Where member is claiming a tax deduction for a contribution:
  - Notice of Intent should be provided to the fund Trustee.

# Expenses

- Expenses can only be paid for by the SMSF where they relate to running the SMSF and the tax invoice for the expense is in the name of the SMSF
- In addition, the expense cannot have an element of personal use
- The SMSF related expenses should be paid from your SMSF Transaction Bank Account directly
- Where it is not possible to pay from your SMSF, you can pay an expense on behalf of the SMSF
- In this case, you must ensure that the tax invoice for the expense is in the name of the SMSF
- You reimburse yourself from the Fund for the expense as soon as possible (preferably limited to only several days).

# Benefit payments

- Must satisfy either a condition of release or be commencing a TRIS (Transition to Retirement Income Stream)
- Documentation must be in place (benefit request, resolution to pay, PAYG if under 60)
- Pension limits must be met and paid in cash
- Can make catch-up payments the next year in limited circumstances
- Lump sums - if paid in-specie - then market value considerations
- Assets put into or returned to the fund are treated as contributions.

# Documenting decisions – reduced pension

- Minimum pension payments have been reduced by 50%
- Where the member has reduced their payments decision needs to be documented
- Trustee records this decision
- Could be via a Trustee Minute or other '*contemporaneous document*'
- Pension cessation also needs to be documented
- Reversionary pension – is it time to revisit this strategy?

# Documenting decisions – rent relief

- SMSF owns a property with a related, or unrelated tenant
- They are unable to pay their rent due to COVID-19
- ATO will not take any action where an SMSF gives a related party tenant temporary rent reduction during 2019/20 and 2020/21
  - Must be on arm's-length terms and decision documented
- Rent relief to unrelated party:
  - Document relief arrangements (change to lease, waiver, etc)
  - Provide a commercial justification with clear reasoning as to why such an arrangement is in the best interest of the SMSF.

# Documenting decisions – LRBA loans

- NALI will not apply if loan relief is provided by the related party lender to the SMSF borrower
- Must reflect similar terms to what commercial banks are currently offering for real estate investment loans as a result of COVID-19
  - E.g. 6 month repayment deferral + unpaid interest capitalised
- Evidence that:
  - Interest continues to accrue
  - SMSF will catch up deferred repayments asap
    - LRBA Safe Harbour provisions apply re extending loan term.

# Documenting decisions – early access

- Members self-assess to determine eligibility
- The amendments do not specify any minimum documentation or evidentiary conditions for meeting these requirements
- The Auditor will want documentary evidence for eligibility:
  - Keep documentation to show conditions satisfied
  - Provide approval from the myGov website
  - A declaration signed by the SMSF Trustee may also be sufficient.



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Thankyou