

A self managed superannuation fund will have either individuals acting as trustees or a company acting as trustee (corporate trustee).

Where the fund has individuals acting as trustees – the trustees are subject to regulation through the pension powers under the Commonwealth Constitution. The fund must be established for the sole or primary purpose of providing old-age pensions.

If the trustee is a corporate trustee – the corporate trustee is subject to regulation through the *Corporations Act 2001*. A fund with a corporate trustee may pay benefits in the form of a lump sum or a pension.

In the past, it was uncertain whether a fund with individuals acting as trustees can pay a lump sum instead of a pension because its sole or primary purpose was the payment of pensions, not lump sums. The current position has been clarified by the Australian Tax Office (ATO). The ATO has confirmed that provided the trust deed allows, the fund can pay members their benefits as lump sum instead of a pension.

## INDIVIDUAL TRUSTEE

The easiest and cost-effective way to set-up a self managed superannuation fund is with individual trustees. There is no additional establishment cost.

## SINGLE MEMBER FUND

A single member fund cannot have the member as the only individual trustee. If a choice is made not to use a company, the member must appoint a second trustee. It may be difficult to find a second trustee who is willing to take on this responsibility leaving a company the only option.

If a company is used as trustee, the member can be the sole director of the company. This gives the member complete control over the fund.

## CORPORATE TRUSTEE

Where a company is the trustee of a fund, a proprietary limited (Pty Ltd) company is used with the members being the directors of the company.

Most self managed superannuation fund avoid using a company as a trustee because of the cost associated with this structure. The cost to establish a company is

approximately \$800. Annually, the company is required to lodge an Annual Review with ASIC and pay a fee of \$212 (the annual fee is reduced to \$40 for companies that act solely as a trustee for a self managed superannuation fund).

Besides the costs, there are advantages of having a company as trustee:

## MEMBERSHIP CHANGE

Over time, membership to the fund may change – new member may find their way into the fund and existing member out of the fund. It is necessary for a member to also be a trustee, except a minor (see further below).

Superannuation law requires the assets of the fund be held in the name of the trustee. A change in trustee would require the legal title of the assets to be changed as the assets must be held in the names of all the trustees on behalf of the fund. The trustees must notify all relevant registers and offices of the change, such as bank, share registry, etc.

In comparison to a corporate trustee – where there is a change in membership, the corporate trustee will not change and only the directorship will change.

## CLEAR SEPARATION OF ASSETS

Trustees are required to keep the assets of the fund separate from their own assets. With a sole purpose corporate trustee, it is much simpler and easier to manage this requirement as it provides clear separation of assets.

## CAN CHILDREN BE A MEMBER?

A minor (under the age of 18) cannot be a trustee of a superannuation fund. A parent or guardian can be a trustee for a member who is under 18 and does not have a legal personal representative. The member who is under 18 is considered a member when determining the number of members. Keep in mind a self managed superannuation fund can have a maximum of 4 members.

For more information about this article, please contact our office on 1300 735 254.

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