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THE SOLE PURPOSE

A GUIDE FOR SMSF TRUSTEES

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AGENDA



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- Housekeeping
- SMSF Snapshot
- Trustee Responsibilities
- Contributions
- Investments
- Taxation & Benefit Payments
- Government Reviews
- Afternoon Tea

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CURRENT STATUS



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Continually growing market – largest superannuation segment by assets & number of funds

- December 1999 – 200,000 funds
- June 2007 – 359,370 funds
- June 2008 – 387,936 funds
- June 2009 – 411,688 funds
- June 2010 – 428,198 funds - 815,399 Members

Currently growing at a rate of over 2000 funds per month

Average fund size - \$914,739 @ June'10

One and two member funds represent 91% of all SMSF's

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CONTRAVENTIONS



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Contravention	Number %	Value %
Member Loans	19.7	14.5
Administrative	17.1	2.7
In-House Assets	16.3	26.1
Separation of Assets	13.4	26.2
Operating	8.4	7.2
Sole Purpose	8.1	8.3
Borrowing	7.4	4.9
Arms Length Rule	6.6	7.4
Other	1.6	0.4
Related Party Acquisition	1.4	2.3
Related Party Linked Activity	59.5%	63.5%

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TRUSTEE RESPONSIBILITIES



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- ❖ SMSF Trustees are ultimately responsible for all actions of the Fund, so all activity must be undertaken in accordance with:
 - Fund Trust Deed
 - Superannuation Industry (Supervision) Act & Regulations
 - Income Tax Assessment Act & Regulations
 - Corporations Act
 - Other relative Acts and Trust Laws
- ❖ Trustees should consider appointing professionals to help run Fund
 - Use the resources provided by the ATO

FUND COMPLIANCE



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- ❖ Fund must be audited annually – must appoint an approved audit
 - Financial Audit
 - Compliance Audit
- ❖ Auditor required to report Compliance breaches to ATO
 - Funds under 15 months old – all breaches
 - Funds over 15 months – lesser of \$30,000 or 5% of Asset
- ❖ Timely rectification less likely to create problems
 - ATO Penalties more likely to apply if breaches unrectified



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CONTRIBUTION RULES

CONTRIBUTIONS



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- ❖ Member's ability to contribute - 'Work Test'
 - Under 65 – no test anyone can contribute
 - Over 65 – gainfully employed for 40 hour in 30 consecutive days
- ❖ Financial year test not per contribution
- ❖ Best practice – Satisfy work test prior to making contribution
 - Contributions made without satisfying the work test must be returned
 - Regulations state Trustees to be satisfied member has met the work requirements prior to accepting contribution

CONTRIBUTIONS



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- ❖ Most contributions are cash or in-specie asset transfers
 - Rules for in-specie transfers
- ❖ The following are also considered contributions:
 - Paying Fund expenses personally without seeking re-imbursement – be wary over 65
 - Forgiveness of debt by a lender
 - Guarantor satisfies a loan obligation of the trustee
 - Increasing the value of an asset already owned by the Fund – e.g. externally funded property improvements

CONTRIBUTIONS



- Fund Trustees can't accept non-concessional contributions that singularly exceed the cap
 - \$450,000 under 65
 - \$150,000 over 65
- Be aware of previous contributions made during the year
- Excess concessional contributions count towards the non-concessional cap
- 3 year bring forward provision is triggered the first year a member exceeds \$150,000

CAP EXAMPLES



Monitoring Contributions (Under 65)

Member	07/08	08/09	09/10	10/11	11/12
1	\$150,000				
2	\$165,000				

CAP EXAMPLES



Monitoring Contributions (Under 65)

Member	07/08	08/09	09/10	10/11	11/12
1	\$150,000	\$150,000			
2	\$165,000	\$150,000			

CAP EXAMPLES



Monitoring Contributions (Under 65)

Member	07/08	08/09	09/10	10/11	11/12
1	\$150,000	\$150,000	\$450,000		
2	\$165,000	\$150,000	\$135,000		

CAP EXAMPLES



Monitoring Contributions (Under 65)

Member	07/08	08/09	09/10	10/11	11/12
1	\$150,000	\$150,000	\$450,000	\$0	\$0
2	\$165,000	\$150,000	\$135,000	\$150,000+	

CAP EXAMPLES



Monitoring Contributions (Under 65)

Member	07/08	08/09	09/10	10/11	11/12
2	\$165,000	\$150,000	\$135,000	\$150,000+	

Not This

Member	07/08	08/09	09/10	10/11	11/12
2	\$165,000	\$150,000	\$450,000	\$0	\$0

Non-Concessional Cap Breach of \$315,000

CAP EXAMPLES



Monitoring Contributions (Under 65)

- Make sure you go back far enough
- Bring forward is triggered in first year of 3 yr cycle

07/08	08/09	09/10	10/11	11/12
\$151,000				

CAP EXAMPLES



Monitoring Contributions (Under 65)

- Make sure you go back far enough
- Bring forward is triggered in first year of 3 yr cycle

07/08	08/09	09/10	10/11	11/12
\$151,000	\$0			

CAP EXAMPLES



Monitoring Contributions (Under 65)

- Make sure you go back far enough
- Bring forward is triggered in first year of 3 yr cycle

07/08	08/09	09/10	10/11	11/12
\$151,000	\$0	\$200,000	?	

CAP EXAMPLES



Monitoring Contributions (Under 65)

- Make sure you go back far enough
- Bring forward is triggered in first year of 3 yr cycle

07/08	08/09	09/10	10/11	11/12
\$151,000	\$0	\$200,000	\$250,000	\$0

CAP EXAMPLES



Monitoring Contributions (Under 65)

- Make sure you go back far enough
- Bring forward is triggered in first year of 3 yr cycle

07/08	08/09	09/10	10/11	11/12
\$151,000	\$0	\$200,000	\$250,000	\$0

Not wrong but:

07/08	08/09	09/10	10/11	11/12
\$151,000	\$0	\$200,000	\$450,000	\$0



INVESTMENTS

INVESTMENTS



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ALLOWABLE RELATED PARTY ACQUISITIONS

- ❖ Listed Securities
- ❖ Business Real Property (not residential property)
- ❖ Investment in widely held unit trusts (Managed Funds)
- ❖ In-house assets under 5% limit
 - ❖ Excludes personal use assets – assets leased to a related party
 - ❖ Consider Cooper Review
- ❖ Other assets approved by the ATO

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INVESTMENTS



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INVESTMENT RESTRICTIONS

- ❖ Providing financial assistance to members/relatives
 - ❖ Largest compliance issue identified by ATO
 - ❖ Fund prohibited from lending money or providing financial assistance to members or relatives
- ❖ Borrowing restrictions for Super Funds
 - ❖ Limited circumstances to pay benefits & settle investments
 - ❖ Limited recourse borrowing arrangements



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TAXATION AND BENEFIT PAYMENTS



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TAXATION

Within a SMSF

- No tax payable on the income supporting a pension account
- This continues to apply on death of a member if pension continues (reversionary)
- If pension stops due to death of member then 15% tax applies to income & 10% capital gains tax on assets sold if held longer than 12 months – otherwise 15% tax on gains

Benefit Payments

- No tax to a member if aged 60+
- No tax on death payments to Tax Dependents
- Tax of 16.5% on taxable component to other beneficiaries

TAXATION



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- ❖ Effective management of capital gains/losses
- ❖ Use of imputation credits
- ❖ Effective income stream strategies
 - ❖ Multiple pensions + accumulation interests

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BENEFIT PAYMENTS



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- ❖ Lump Sum withdrawals
 - ❖ All benefits are preserved until satisfy 'Condition of Release'
 - ❖ Condition of release must have NIL cashing restriction
- ❖ Understand preservation rules vs. taxation of benefits rules
 - ❖ Member over 60 benefits tax free
 - ❖ Benefits may not be accessible
 - ❖ E.g. Transition to Retirement Pension

BENEFIT PAYMENTS



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- ❖ Insufficient Pension withdrawals/Excessive Pension withdrawals
 - ❖ Minimum pension withdrawal required to meet pension standards
 - ❖ Maximum pension limit on certain types of pensions (transition to retirement, market linked pensions)
- ❖ Fund drawing insufficient pension may lose Exempt Pension Income deduction

BENEFIT PAYMENTS



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- ❖ Members can't contribute to an existing pension
- ❖ Additional contributions (subject to work test etc) must be made into a new or existing accumulation interest
 - ❖ No requirement at age 65 to start a pension
- ❖ Once a pension has been commuted (stopped) additional benefits can be added and a new pension commenced

ESTATE PLANNING



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- ❖ Flexible nominations options
- ❖ Binding nominations
 - ❖ Lapsing
 - ❖ Non-lapsing
- ❖ Pensions & Lump Sums
- ❖ Multigenerational

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NON-RESIDENCY



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- ❖ Central Management and Control must be in Australia
 - ❖ 2 year safety net can apply
- ❖ Contributing Members must be Resident Members or have less than 50% of total assets of all contributing members
- ❖ Can appoint alternative Trustee



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SUPERANNUATION REVIEWS



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COOPER REVIEW

*The SMSF sector is **largely successful and well-functioning**. While significant changes are not required, there are still a number of noticeable issues, which, for the most part, do not directly relate to trustees and members, but instead to service providers and the wider regulatory framework. Trustees are often dependent on service providers whose current minimum standards of SMSF knowledge are inadequate. The level and quality of information available on SMSFs and the SMSF sector is inadequate given its significance.*

The SMSF regulatory framework is heavily dependent on approved auditors. However, the approved auditor population has no minimum, consistently policed, competency and independence standards, which undermines the ATO's ability to regulate the sector.

Cooper Review June 2010

COOPER REVIEW



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- 4 member limit to remain
- No mandatory minimum balance
- Corporate trustees not mandatory
- Sliding scale of Penalties for the ATO (inclusive of penalties on trustees not payable from the Fund)
- ATO Rectification powers
- Mandatory education for trustees only as a result of breaching SIS
- Binding Rulings for SMSFs

COOPER REVIEW



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- SMSF specialist knowledge component for Advisers strengthened
- Australian Financial Services Licence required to establish an SMSF
- ASIC to control auditors
- Existing borrowing to remain but reviewed in two years
- Remove unnecessary trustee administrative burdens
- Automatically deem anything permitted by SIS or Tax Act to be permitted by trust deeds

COOPER REVIEW



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- In-house Asset (IHA) investment limit be zero
 - SMSFs with existing IHA investments have five years to convert to a Small APRA Fund or dispose
 - No new acquisitions of IHA investments to be permissible
- Acquisition of collectables/personal use assets be prohibited
 - Five years to convert to SAF or dispose of those assets
 - No new acquisitions would be allowed

Government rejected the collectable proposal however tighter regulatory expected to apply

COOPER REVIEW



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- Where underlying market exists, all acquisitions and disposal of assets between SMSFs & related parties must be conducted through that market
- Where an underlying market does not exist, acquisitions or disposals of assets between related parties be at market value (as now)
- 29 recommendations relating to SMSFs
- Full list of recommendations can be found at www.cavendishsuper.com.au

HENRY REVIEW



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What the Government announced post the Henry Tax review:

- Superannuation Guarantee to increase from 9% - 12%
 - Henry review did not recommend increasing Super Guarantee
- Members over age 50 with an account balance less than \$500,000 will retain an increased concessional contribution cap of \$50,000 beyond 1 July 2012
 - Henry Review recommended retaining \$50,000 limit for all members over age 50

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HENRY REVIEW



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What the Government announced post the Henry Tax review:

- Concessional Contributions to receive a full tax rebate up to Income of \$37,000
- Government Co-contribution to be abolished
 - Henry Review recommended retaining the co-contribution
 - Taxing all contributions at Marginal rate with a 20% rebate
- Henry Review recommended a flat 7.5% tax rate to apply to all Super Fund income including Pension Funds

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QUESTIONS



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