



Monthly Information Newsletter – Tax & Super

December 2022

Single member SMSFs

From 1 July 2021, the law was changed to allow for six-member SMSFs (up from five members). At the time of writing, the uptake has been slow so far with just 228 funds with six members. At the other end of the spectrum, it is permissible to have single member funds. The main advantage of doing so is that you have total control over your retirement savings, and the investment decisions in respect of those savings. However, there are some issues to be mindful of.

Number of trustees

An SMSF trustee is a person responsible for ensuring an SMSF is maintained for the purpose of providing retirement benefits, and complies with the investment and regulatory rules. The trustee can be a company or an individual. You can set up your SMSF with only one member; however the superannuation legislation requires you to have two individual trustees or a corporate trustee for the fund.

If you have a corporate trustee for a single member SMSF:

- The corporate trustee company can have one or two directors, but no more.
- The fund member must be the sole director or one of the two directors.
- If there are two directors and the fund member is an employee of the other director, the fund member and the other director must be relatives.

If you choose to have a corporate trustee:

- The corporate trustee company can have one or two directors, but no more.
- The fund member must be the sole director or one of the two directors.
- If there are two directors and the fund member is an employee of the other director, the fund member and the other director must be relatives.

Loss of capacity

If the sole member loses legal capacity, then the person who holds an enduring power of attorney for the member may act

as trustee of the fund in their place. This is an important matter to attend to before setting up your SMSF.

If the sole member was also the sole director of a trustee company, then the shareholder of the company will need to appoint a replacement director. If the member was the only shareholder, then the probate of the member's will needs to be granted before a new shareholder is appointed.

Death

In the event that the sole member passes away, then the other trustee will be left with total control of the fund. If the sole member was also the sole director of a trustee company then the same consequences from the loss of legal capacity will apply (see earlier).

Retaining residency

The SMSF must remain an Australian superannuation fund in order to retain its complying status. Whether the super fund does so depends on meeting the following tests:

1. Be established in Australia.
2. Have its central management and control ordinarily in Australia.
3. The fund must have either at least 50% of the fund's assets linked to active members who are residents in Australia or not have any active members.

Thus, having a single member SMSF may limit your ability to travel overseas for extended periods.

All told, there is no ideal number of members to have in your SMSF, and it will depend on your circumstances.

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