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SMSF auditors: what you need to know

Are you the trustee of an SMSF? Then you should know all about the obligation to appoint a registered auditor to audit your SMSF every year. If you've been with the same auditor for some years, it may be wise to make some additional checks in relation to registration and auditor independence to ensure that you and your fund are covered.

If you have an SMSF or are a trustee of an SMSF then you should be well versed on the requirement to appoint an SMSF auditor no later than 45 days before the annual return is due to be lodged, but have you had the same auditor for years? Whilst familiarity with you and your fund may be a good thing, there are also some additional issues which should be considered.

Registration with ASIC

This is perhaps the most basic of requirements and when you retained your auditor you probably checked with ASIC to ensure that they were registered and had an SMSF audit number. If you've had the same auditor for your fund for a number of years, when is the last time you checked whether their registration is still current? Continued registration with ASIC is dependent upon many things including the auditor completing relevant continuing professional development (CPD).

Every year the ATO refers a number of SMSF auditors to ASIC for things such as CPD gaps, independence issues, and issues with the audits they have conducted. In serious cases, these SMSF auditors can be disqualified or suspended by ASIC. Therefore, it may be wise to check every year to ensure that your auditor's registration is still current.

Auditor independence

An SMSF auditor should not be auditing funds where they have a role or responsibility for preparing the account and financial statements. This is particularly

pertinent where the auditor is a sole practitioner with other staff, and the staff typically prepare the accounts or financial statements, with the auditor or another senior staff member signing off on the accounts. In such cases, there would be an independence issue as the staff who compile the accounts report directly to the sole practitioner who is also the auditor.

Another threat to auditor independence is the relationship you have with the auditor. If you have a relative who is a qualified SMSF auditor and you ask him or her to audit your fund, this could raise significant concerns with the ATO about whether the independence requirements are met. Where this is the case, the ATO may conduct an audit of the auditor and their work. Serious cases may be referred to the corporate regulator, ASIC. Therefore, as a trustee, you should retain the services of an auditor who is completely independent to ensure you are meeting your trustee obligations.

Low-cost auditors

You may think that all SMSF auditors are the same and if you can save a few dollars on the audit and put that towards your retirement then why not? Well, the ATO has found evidence that some low-cost auditors had gaps in audit evidence, didn't report identified contraventions, didn't have a written audit plan, had limited or no use of checklists, and lacked key documentation such as trustee representation letters.

According to the ATO, it is in trustees' best interests to have auditors who conduct the audit in a detailed and complete manner, so that if anything happens, another auditor should be able to just pick up the file and see how the work was done, including documentation that supports significant judgements.

What's next?

If you think there may be issues with your SMSF auditor including registration or auditor independence, we can help you decide whether these could potentially contravene rules. If you've been with a low-cost auditor and you're not sure if they have followed all procedures and provided all the documentation for your recent audit, we can help you check.

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Beware of the SMSF death trap

The death of a family member is often a difficult time, but if the deceased was a member of an SMSF, complications from trustee arrangements and payment of the death benefit can make a difficult time even worse for the family members.

It is said there are only two things certain in life, death and taxes, but what happens when they occur at the same time? Death of a loved one is not only a tumultuous time for the deceased family and friends but when the deceased is a member of an SMSF complications from trustee arrangements and payment of the death benefit come into play.

As a part of the basic conditions of an SMSF, each member is required to be a trustee or a director of the corporate trustee, and each trustee must generally be a member of the fund (except in cases of single-member funds). So, who will be the trustee of an SMSF following the death of a trustee/member is all-important, particularly when trustees have the discretion in determining the payment of a death benefit.

In most cases, if a member/trustee of an SMSF dies, his or her legal personal representative may act as the trustee of the fund, or as a director of the corporate trustee, until payment of the death benefit commences.

This ensures that the fund does not fail to satisfy the basic conditions of an SMSF. However, it should be noted that the legal personal representative of the

deceased does not automatically become a trustee of the fund, or a director of the corporate trustee in place of the member. Rather, the legal personal representative must be appointed as a trustee/director of the SMSF in accordance with the trust deed and they can only be a trustee/director in place of the deceased until the time that death benefits are paid from the fund.

In a situation where the SMSF is a two-member fund consisting of two spouses, the fund does not immediately migrate to being a single-member SMSF upon the death of one of the spouses. The fund is allowed six months to appoint either a corporate trustee or another individual trustee who is a relative but not an employee of the single member. The surviving spouse can act alone as the sole individual trustee during the six-month period and they are not obligated to appoint the executor of the deceased member as a trustee of the SMSF.

A recent dispute between the adult children of a deceased member/trustee of an SMSF and his domestic partner over the discretionary power of the trustee to control the fund and determine the payment of a death benefit reached all the way to the Victorian Supreme Court. Therefore, who will be a trustee of a SMSF following the death of a member/trustee will be a crucial consideration that requires careful planning, as the will of the deceased does not override the discretionary power of the trustee.

Succession planning

If you or your spouse are members and trustees of a SMSF and you do not have a succession plan in place, talk to us today. We can help you and your family avoid an expensive trip to the Supreme Court to resolve any potential future disputes.

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