



Retirement planning

Learn about retirement planning for private group owners, including SMSFs or small business CGT concessions.

Small business CGT concessions

Find out about the CGT concessions available to small business entities from the disposal of business assets.

Self-managed super funds

Learn how effective governance practices can help you manage your SMSF obligations as a trustee.

QC 49157

Small business CGT concessions

Find out about the CGT concessions available to small business entities from the disposal of business assets.

Last updated 27 November 2020

Small business entities are eligible for a range of tax concessions on capital gains that arise on the disposal of business assets. The concessions, which may be relevant to you, include:

- 15-year exemption
- 50% active asset reduction

- retirement exemption
- small business roll-over.

Analysis and documentation

If you apply any of these concessions in relation to your business assets, ensure you have understood and applied the concessions correctly and kept the required documentation. As always, where you're uncertain, it's good practice to get advice.

To manage risks around the small business CGT concessions, consider these suggestions:

- Retain documentation for each CGT asset for which the small business CGT concessions were claimed, documenting details such as
 - the asset you sold
 - the date on which you sold it
 - the sale price
 - the date on which you purchased it
 - the buyer.
- If there are any affiliates or connected entities, analyse how this has affected the application of the concessions.
- Get an independent third-party valuation of the relevant assets where they were sold to a related party or connected entity. If there was an earn-out clause or equivalent in the contract of sale, get a third-party valuation of the earn-out.
- Keep records that show how you satisfied the conditions for the small business CGT concessions. If the **small business entity** test was met, show how you determined your aggregated turnover. If the **maximum net asset value test** was met, record details of the net market value of assets connected with yourself and the business and those of any affiliates and connected entities just before the CGT event.
- Where the CGT asset disposed of was shares in a company or an interest in a trust, further details need to be kept, such as the full

name and date of birth of each CGT concession stakeholder and their participation percentage.

- If you're required to roll over an amount of capital gain to your superannuation fund in order to make use of the concession, ensure that the correct amount is calculated and contributed to your superannuation fund. You'll also need to make a capital gains tax election and provide it to the fund's trustee.

See also

- Small business CGT concessions

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Self-managed super funds

Learn how effective governance practices can help you manage your SMSF obligations as a trustee.

Last updated 31 May 2016

Setting up a self-managed super fund (SMSF) is one option when planning for your retirement.

SMSFs are an effective and flexible vehicle for individuals to manage their retirement savings and investments. However, SMSFs must be maintained for the sole purpose of providing retirement benefits to members or to their dependents if the member dies. As the trustee of a SMSF, you are responsible for ensuring that the fund complies with the requirements of the income tax laws and the *Superannuation Industry (Supervision) Act 1993* (SISA) and SIS Regulations.

Having effective governance practices in place can help you manage your obligations as a trustee and avoid exposure to compliance action and penalties for regulatory breaches.

See also

- What attracts our attention – Self-managed super funds
- How we deal with non-compliance

SMSF governance

An SMSF is a complex undertaking with unique regulatory obligations. When managing an SMSF you need to apply a high level of governance to meet the requirements of both the income tax and super laws.

You must ensure that your fund meets the definition of an SMSF at all times and remains complying. This includes meeting requirements around the fund's structure, members and trustees, and governing the fund's compliance with rules for contributions, investments and payment of benefits.

Where your SMSF auditor or other advisers identify issues with your fund's compliance you should take immediate steps to correct them. Where the issues are particularly complex or significant, engage with us for advice.

To help you understand your obligations refer to our [online information for SMSFs](#).

Effective tax governance for SMSFs includes:

- [working collaboratively with your auditor](#)
- [seeking advice when making decisions](#)
- [documenting decisions and keeping good records](#)
- [accurate and timely reporting](#)
- [managing risks to ensure your SMSF remains complying](#)

Work collaboratively with your auditor

SMSF trustees are required to appoint an approved SMSF auditor to audit the fund each year. The SMSF auditor must be independent and registered with ASIC.

The fund's financial statements and regulatory compliance need to be audited before the SMSF annual return is lodged. An audit is required even if no contributions or payments are made in the financial year. Ensure all documents are provided to the SMSF auditor with sufficient time for the audit to be completed within the legislated timeframe.

Trustees are encouraged to work closely with the SMSF's advisers and auditor. The auditor will give the trustee a report on the SMSF's

regulatory compliance including any contraventions. Any material contraventions must be reported by the auditor to the ATO.

Where breaches of superannuation law are brought to the attention of the trustee, whether required to be reported in the auditor's contravention report or not, a well-governed SMSF will act promptly to correct them.

See also

- [Appoint an SMSF auditor](#)
- [Auditor compliance - Issues of concern](#)
- [SMSF auditor – Help and resources](#)

Seek advice when making decisions

Consider appointing other professionals such as accountants, tax agents, fund administrators, lawyers and financial advisers to assist with governance of the fund. Make sure these professionals have sufficient SMSF knowledge and experience to assist you to correctly apply income tax and SIS laws.

Consult published ATO guidance and rulings to understand your obligations and how the laws apply to you. If you or your tax adviser are not able to find the ATO view on how the law applies to your circumstances, or are not certain how it applies, you can [get help from us](#).

See also

- [Consider appointing professionals to help you](#)

Document decisions and keep good records

Adopt practices that ensure key decisions are documented at the time they are made. Records of decisions can form crucial evidence to support your tax treatment of significant transactions and may prove valuable should we later review your SMSF.

Ensure that key documents are kept and are easily accessible, including:

- [fund establishment records](#)

- trust deed and amendments
- declaration by new trustee
- consent by trustee to act
- application for fund membership
- election to be regulated by the ATO
- investment strategy.

The trust deed should be reviewed annually to incorporate any changes in income tax and SIS law. The investment strategy should also be regularly reviewed to ensure it reflects the purpose and circumstances of the fund and its members.

Example: Maintaining SMSF records

You and your spouse are individual members and trustees of your SMSF. In the minutes of a previous SMSF meeting, you documented a decision to invite your daughter, Jade, to become a member and trustee of the fund.

Jade accepted, so you arranged for your solicitor to update the SMSF trust deed to include her as a trustee. Jade signs a consent form to act as trustee and a trustee declaration form stating she understands her duties and responsibilities as an SMSF trustee. Within 28 days of admitting Jade as a member and trustee, you complete a change of details form to notify the ATO.

The title to each of the fund's assets is updated to include Jade's name as trustee for the fund.

You hold another SMSF meeting to review the fund's investment strategy to ensure it reflects the circumstances of all three members. You ensure that the minutes of the meetings, the amended trust deed and the various signed forms are retained on file for the required time and are readily accessible to the SMSF auditor when they next audit the fund.

Accurate and timely reporting

Set timelines that allow sufficient time for the annual accounts and statements to be prepared and audited before lodgment is due. Ensure all documents are provided to the SMSF auditor with enough time for the audit to be completed within the legislated timeframe.

As part of the year-end compliance process with superannuation and tax advisers, ensure any compliance issues are considered. If you prepare early, you'll have more time to take appropriate action if a compliance issue is identified.

See also

- Administering and reporting

Manage risks to ensure your SMSF remains complying

Trustees should also periodically verify that the SMSF satisfies the requirements of a regulated superannuation fund, including requirements around contributions, investments and paying out benefits.

We suggest formulating an **exit strategy** so you're prepared for the time you no longer want an SMSF and need to wind it up. Consider matters such as disposal of assets, paying out or rolling over benefits, the final audit, lodging the final SMSF annual return, paying outstanding tax, closing bank accounts and cancelling ATO registrations.

Trustees should ensure there are governance procedures in place for accepting contributions, including *in-specie* (asset) contributions. This includes monitoring any contributions made during the financial year to ensure contribution caps, both concessional and non-concessional, are not inadvertently exceeded. Consider seeking advice on large contributions or asset contributions that may be unusual or involve an element of risk.

Example: Large contributions

You sold your business and received tax advice that the sale is eligible for the small business capital gains tax (CGT) concessions. You want to contribute the sale proceeds to your SMSF without breaching the contribution caps.

In line with your SMSF governance procedures that require you to get professional advice for large and unusual contributions, you're advised that key legislative requirements need to be met so that your contribution doesn't count towards the non-concessional contribution cap. This includes the need to ensure the contribution is below the CGT cap amount and that an election is to be made in the approved form before or at the time of making the contribution.

Applying specific governance procedures can help to manage risks around investments, especially those involving related-party transactions. Income derived from the investment may not qualify for concessional tax treatment where certain requirements are not met.

The procedures should require the trustee to first determine:

- whether the transaction complies with the investment strategy and is permitted under the SIS laws and the SMSF's trust deed
- whether the investment will cause the fund to fail the **sole purpose test**
- whether the transaction is on an **arm's length basis** (see **Valuation guidelines for SMSFs**)
- whether future income such as rent, dividends or trust distributions from the transaction will be characterised as **non-arm's length income**
- the application of the **in-house asset rules** and rules relating to loans, borrowings, unpaid present entitlements and acquisitions from related parties.

The following examples outline some income tax and regulatory issues that might arise when a SMSF enters into a transaction with a related party.

Trustees should consider having governance procedures in place to avoid any income tax and regulatory breaches when dealing with related parties.

Trustees need to be aware that fund assets can't be used to benefit members or their relatives either directly or indirectly.

Example: Indirect financial assistance to related party

Your relative has requested a loan from your SMSF. While you know that your SMSF can't lend the amount directly to your relative, you wonder whether you could lend the money to an unrelated entity on commercial terms, who might then facilitate a loan to your relative on commercial terms.

In line with your SMSF governance procedures that require you to get advice on any related-party transactions, you're advised that the transaction could breach the financial assistance rules as the loan to your relative has relied on the resources of your SMSF.

When acquiring property from a related party, trustees need to be aware of the contribution caps and business real property rules.

Example: Acquisition of real property from a related party

You want to transfer a factory you own into your SMSF and then lease it back to your business. In line with your SMSF governance procedures that require you to get advice on any related-party transactions, you're advised that your fund may acquire this property if, at the time of acquisition, it's being used wholly and exclusively for business purposes and is acquired at market value.

Your SMSF can pay consideration for the property or it can be transferred as an *in-specie* contribution providing your fund-capped contributions limit is not exceeded. You also discover that the rental charged by the fund on the lease back to the business must be at market value. Any rental income received by the fund in excess of the market value could be considered non-arm's length income, and if the rental income is below market value there may be a breach of the arm's length dealing rules under the super laws.

Trustees seeking to take advantage before retirement of arrangements for the purpose of obtaining further taxation concessions need to be

aware of the potential application of the general anti-avoidance rules.

Example: Acquisition of shares from a related party

Before retirement you're contemplating transferring shares in your private company (through which your family business operates) into your SMSF so the fund can receive franked dividends and take advantage of franking credit tax offsets.

While you're confident that the proposed acquisition will not amount to a regulatory breach, as the shares will be acquired at market value by the fund from a company exempt from the in-house asset provisions, your SMSF governance procedures require you to seek advice for any related-party transactions.

Because the circumstances are similar to the arrangement outlined in **Taxpayer Alert 2015/1**, as part of effective governance you decide to apply to the ATO for a private binding ruling. This will give you certainty as to whether the proposed acquisition is allowed under super laws and if it could cause any adverse income taxation consequences involving the dividend stripping operation provisions or general anti-avoidance rules.

Borrowings create special risks for SMSFs. Borrowings must be on arm's length terms, including interest rates, repayment schedules and security. Good practice is to seek specialist advice and assistance with SMSF borrowings.

Example: Limited recourse borrowing arrangements

Your SMSF has insufficient money to acquire some listed shares so you as trustee decide to borrow money from yourself personally via a limited recourse borrowing arrangement (LRBA).

In line with your SMSF governance procedures that require you to get advice on related-party transactions and LRBAs, you're advised that the shares are not a prohibited asset and that the fund can borrow money from you so long as the shares are held on trust for the fund and registered in the name of the holding trust.

The fund has a right to acquire legal title to the shares on completion of the repayments, and the right of recovery on the loan is limited to the shares. The terms of the loan must also be commercial to avoid any non-arm's length income generated from the shares or breach of the arm's length dealing rules.

Payment of benefits is a major compliance risk for trustees.

Concessional tax treatment can be lost if the release of benefits fails to comply with the preservation rules and conditions of release.

Pensions can also be complex to administer as there are both regulatory and income tax requirements to be met. It's good practice for trustees to have documented policies that ensure payments are planned, funded, correctly accounted for and meet SIS requirements.

Example: Exempt current pension income

You've just reached preservation age and are thinking of commencing a **transition to retirement income stream (TRIS)**, a type of pension you can receive while still working, once you've reached your preservation age.

In line with your SMSF governance procedures that require the trustee to get advice on starting a pension, you're advised that before the pension starts the trustee must set aside an amount to pay the pension, and calculate the taxable and tax-free components.

To ensure any earnings from the amount set aside to pay your pension remain exempt from income tax in the fund, your annual pension payments must be within the minimum and maximum amounts allowed for a TRIS based on a percentage of your account balance. You must also ensure that either separate assets are set aside to support the pension (segregated method) or that an actuary's certificate is obtained to verify the portion of the fund's income that is supporting the pension (unsegregated method).

See also

- [Winding Up](#)

- Contributions and rollovers
- Investing
- Paying benefits

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