LYD Strategy Solution Series

Grant's Top Five SMSF Strategies

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The Problem – Super is a Sitting Duck

There is more than $400Bn sitting in pension and accumulation accounts of SMSF retirees. They have done very well with a run up in asset prices (even during Covid) and tax concessions. These not only can reduce taxation to zero BUT if the Trustee's investment strategy is focused on imputation credits then a tax refund may be had.

Get this: A SMSF pays no tax but gets a tax refund!

SMSFs are taking hold in the next generation and if the market falls by more than 20% expect to see a huge uptick in SMSFs – similar to what happened post tech wreck and also GFC where retail and industry fund members sought to get out of non-performing super funds to do their own thing. Plus borrowing to acquire property with super and the uptick in crypto currency investment has seen a move to SMSFs by Gen X and Millenials. Onward and upward!

Accountants can do SMSFs

1. A SMSF is not a general financial product as you are providing money to your Board of Trustees to invest BUT it is a deemed financial product
2. For licensed advisers, they need to provide members seeking to move to a SMSF a Statement of Advice – very time consuming on the merits of leaving an existing super fund and setting up a SMSF
3. Accountants were exempt up until 60 June 2016
4. From 1 July 2016 a limited license applied to accountants seeking to do SMSFs which also included a SoA
5. BUT in April 2018 ASIC released guidelines for accountants NOT covered by a limited or other licence

ASIC
Australian Securities & Investments Commission

AFS licensing requirements for accountants who provide SMSF services

Tax agent and BAS services

If you are registered with the TPB as a tax agent or BAS agent, you do not need a licence or to be a representative of a licensee to provide advice that is given in the ordinary course of your activities as a tax or BAS agent and which is reasonably regarded as a necessary part of those activities: see section 766B(5)(c) of the Corporations Act.

The advice you give about establishing, operating, structuring or valuing an SMSF must not amount to an explicit or implied recommendation to establish an SMSF, or to acquire or dispose of an interest in an SMSF (or another superannuation product). However, we recognise that advice given to a person about the establishment of an SMSF may also carry an implicit recommendation that the person acquire an interest in the SMSF. Therefore, you are more likely to be able to rely on the exemption when your client has already made a decision to establish the SMSF before seeking your assistance to take the next steps. For example, you may recommend the best structure for an SMSF to suit your client's situation, after they have made the decision to establish an SMSF.

Contributions into an SMSF

Under the exemption, a registered tax agent may provide advice on any tax implications of contributions into an SMSF (or other superannuation fund), such as a client's eligibility to make concessional and non-concessional contributions and the tax treatment of those contributions. For instance, a tax agent can use a client's total superannuation balance to advise the client on their eligibility for:

- the unused concessional contributions cap carry-forward
- the non-concessional contributions cap and the two-year or three- year bring-forward period.

However, they cannot recommend that a client make a particular level of contributions (although they can advise on the maximum level of contributions a client can make). This is because the decision to make a particular level of contributions involves considerations other than tax.

Accumulation versus pension phase

A registered tax agent may also advise a client on the tax implications of moving their superannuation benefits from accumulation to pension phase but may not make a recommendation to a client about when to do so. For instance, a tax agent may advise the client of the tax implications of retiring at different ages (such as a client being able to withdraw superannuation benefits tax-free after a certain age) but should make it clear to the client that tax is not the only consideration involved in making retirement decisions.

Asset allocation and investment strategy	You **may** provide a recommendation or statement of opinion on how your client should distribute their available funds among different categories of investments.	Regulation 7.1.33A

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Strategy One = Get your Deed Strategic

1. **Ensuring six members of a family can become members** of the SMSF making it a true family Family Super fund.
2. **Different SMSF investments for different generational members**:

- not limiting younger members to a general investment strategy enables the younger member or members to hold their own assets in the fund.
- likewise older members in pension phase can have the trustee set aside investible assets that more meet the cash flow requirements of a pension rather than the growth objective of younger members of the fund.

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3. **Bloodline Limitations on benefit payments**: the Trustee under an Abbott & Mourly SMSF trust deed, like our discretionary trusts, has the ability, if the member has chosen to limit the payment of superannuation benefits on the death of a member to the deceased member's lineage or bloodline. This includes via a payment through the deceased member's estate.
4. **Saving tax on Death Benefits:** where a death benefit is paid to an adult child on the passing of the senior members of the fund, it may be subject to a 17% tax and in some cases, if paid with insurance monies, a 32% tax unless the adult child is a financial dependant of the deceased member.

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5. **Wide range of Contributions: t**he deed enables the Trustee of the Fund to accept a broader category of contributions for fund members, particularly retired fund members.
6. **Special Strategy Options for Incapacity:** the ability to implement a SMSF Living Will. This specialist document which provides directions to the Trustee of what is to happen in the event the member is incapacitated with a sickness, quarantined, or has dementia.
7. No dangerous BDBN but a SMSF Will: A special purpose SMSF Will. This document provides directions to the Trustee on what is to happen in the event of the member's death. It is far stronger, more secure and better optioned than a BDBN as it provides bloodline limitation, asset transfers and the possibility of a SMSF Death Benefits Trust – a testamentary trust to protect dependants.

Strategy Two

Family Contributions

- **Spread the Contributions Love**

- Employ deductible contributions from family trust distributions to children into a SMSF to acquire first home: $16,500 per annum (net $15,000) and with earnings a withdrawal of up to $50,000 can be made to put into first home. This is per child, so three children it adds up to $150,000.

- Up to age 67 there is no work test and personal and employer contributions are allowed. For those over age 67 the work test drops from 1 July 2022 for non-concessional and employer deductible contributions.

- Contributions from a trading trust or company can be made for family members provided they are employed in the business. There is no link to work provided and superannuation limits – see *Ryan v FCT [2004] AATA 753*

Strategy Three

Above the Caps

- The current cap is $27,500 for concessional contributions and $110,000 for non-concessional contributions
- If my family trust makes a distribution of $100,000 to my 66 year old father this year on 20 June 2022 and he contributes to super as a deductible contribution, what should happen if he has no other assessable income?
- The $100,000 distribution is assessable and deductible to Dad
- The Trustee of the Fund will include the $100,000 in its assessable income so start looking for deductions such as the prepayment of interest, ESIC investments and franking credits – even create self financed instalment warrants

Strategy Three

Above the Caps

- For Dad, take $75,000 this year and then allocate $25,000 to a contributions suspense account

- The tax liability on $47,500 excess, which is added back to Dad's zero taxable income is $5,940 without any offsets such as LMITO of up to $1,080

- Plus there is a 15% tax offset of $7,125 meaning we need to tip more in as it provides a lot more shelter

- For example if we contribute $100,000 with $72,500 excess to be added back to assessable income – our tax is $14,029 plus some LMITO. The 15% tax offset is $10,875.

- NOTE: There is no Excess Concessional Contributions Tax Surcharge anymore as a penalty – thanks Pauline.

Strategy Four

Auto-reversionary pensions

- Created with an accounts based pension and ensure the deed provides as such
- Can carry on to anyone who was a dependant at the time of the death of the member, excluding children post age 18 or 25 if financially dependant or disabled.
- Can go beyond typical Mum and Dad and carry on to three or more reversions
- The tax profile of the first holder – if over 60 is tax exempt carries through to future holders – 50 years later!
- Best of all protected from ALL family provisions claims so better than SMSF Will and BDBN

Strategy Five
Crypto and NFT friendly

- Web 3.0 and blockchain is creating a whole new world of investments
- From cryptocurrencies to Non-Fungible Tokens to the metaverse the next generation is diving in
- The Trustee can invest provided:
- The deed allows – AM has built a specific Crypto SMSF and Crypto Trust for launch in May at our Roadshow
- The Fund's investment strategy provides detail on where stored and the criteria around the investment
- Definitely need to look at separate investment strategies for younger members

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