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CLIENT NEWSLETTER

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SELF MANAGED SUPERANNUATION FUNDS – Roles and responsibilities of trustees

As there is predicted to be increasing Australian Taxation Office audit activity in the self managed superannuation funds area, we thought that it might be useful to provide some background information from their webpage on duties and responsibilities of superannuation fund trustees -- because that is one of their focus areas.

The following contains excerpts from the Australian Taxation Office publication "Roles and responsibilities of trustees":

SIS ACT REQUIREMENTS

The SIS Act contains rules that impose minimum requirements on trustees and are deemed to be included in the trust deed of every regulated fund. These reflect the duties imposed on all trustees under trust law in general.

The rules bind you to:

- act honestly in all matters concerning the fund.
- exercise the same degree of care, skill and diligence as an ordinary prudent person in managing the fund.
- act in the best interest of all fund beneficiaries.
- keep the money and assets of the fund separate from other money and assets (for example, your personal assets).
- retain control over the fund.
- develop and implement an investment strategy.
- not enter into contracts or behave in a way that hinders trustees from performing or exercising their functions or powers, and
- allow members access to certain information.

While you can engage other people to do things on your behalf as a trustee (for example, engage the services of an accountant, superannuation fund administrator, tax agent or financial planner), the ultimate responsibility and accountability for running a fund in a prudent manner lies with the trustees.

You must keep money and other assets of the fund separate from your personal assets and any business assets. A self managed superannuation fund must be treated as if it is a separate body from the trustees,

members and any employer-sponsor of the fund. Money belonging to the fund must not be used for personal or business purposes under any circumstances. You should not view the fund's assets as a form of credit or contingency fund when faced with a sudden need.

COMPLY WITH THE SOLE PURPOSE TEST

CORE PURPOSE

A self managed superannuation fund must be maintained for at least one of the following:

To provide benefits for each member of the fund on or after the:

- member's retirement from gainful employment.
- member's attainment of a prescribed age.
- either the member's retirement from gainful employment or attainment of a prescribed age, whichever comes first, or
- member's death, if the death occurred before they retired from gainful employment or before they attained a prescribed age, where the benefits are provided to their dependants or legal personal representative.

ANCILLARY PURPOSE

Ancillary purposes for maintaining a fund are to provide benefits for members in the following circumstances:

- termination of a member's employment with an employer who made contributions to the fund for that member.
- cessation of employment due to physical or mental ill health.
- death of a member after retirement, or after attaining a prescribed age where the benefits are paid to their dependants or legal representative, or
- other ancillary purposes approved in writing by the regulator.

This purpose allows a fund to provide benefits in situations of financial hardship and/or on compassionate grounds, subject to the SIS Act, the governing rules of the fund and the approval of the appropriate regulator.

MANAGE THE FUND'S INVESTMENTS

As a trustee of a self managed superannuation fund, one of your key areas of responsibility is to manage the fund's investments. The SIS Act places certain duties and responsibilities on trustees when making investment decisions. They are designed to protect and increase member benefits for retirement.

INVESTMENT STRATEGY

As a trustee, you are required to prepare and implement an **investment strategy** for your fund, and regularly review it.

The strategy must reflect the purpose and circumstances of the fund and consider:

- investing in such a way as to maximise member returns, taking into account the risk associated with the investment
- appropriate diversification and the benefits of investing across a number of asset classes (for example, shares, property, fixed deposit) in a long-term investment strategy
- the ability of the fund to pay benefits as members retire and pay other costs incurred by the fund, and
- the needs of members (for example, age, income level, employment pattern and retirement needs).

An appropriate investment strategy should set out the investment objectives of the fund and detail the investment methods the fund will adopt to achieve these objectives. An investment strategy should be unique to the requirements of the fund and its members, and should be reviewed regularly and updated as

required. You must make sure all investment decisions are made in accordance with the investment strategy of the fund. If in any doubt, you should seek investment advice or appoint an investment manager in writing.

To view the full publication put out by the Australian Taxation Office click on the following link:

<http://www.ato.gov.au/content/downloads/n11032.pdf>

What is "OBM"? Open Book Management

The logic of OBM is simple:

Businesses in which all team members think and act like owners will outperform businesses in which only a few people at the top see that as their job.

This Newsletter, of necessity, has dealt with matters of a technical nature in general terms only. Clients should contact us for detailed information on any of the items in the Newsletter. No responsibility for loss occasioned to any person acting or refraining from acting in reliance upon any material in this Newsletter can be accepted by any member of the firm.