

# SMSFs

## Should I have corporate or individual trustees?

Self-managed super fund trustees have certain duties. There are both advantages and disadvantages that come with having individual or corporate trustees.

One of the main reasons that Self-Managed Superannuation Funds (SMSFs) are so popular is due to the level of control they offer.

SMSFs enable members to have full control over investment decisions, fees, and most importantly, their retirement savings.

However, with this control comes added responsibility. SMSFs operate in the same way as other super funds except that members of SMSFs are also trustees. This means they assume responsibility for decisions regarding the investment of savings, and paying benefits to members. Trustees are required to fully comply with superannuation, tax and corporations legislation.

Failure to perform these duties can result in the trustees facing significant fines and the fund hit with financial penalties.



The Australian Tax Office has the power to make a fund non-compliant, disqualify trustees, or instigate civil and/or criminal charges for more severe breaches. Should a fund be deemed non-complying, it will be subject to tax at the highest marginal tax rate.

So, choosing the appropriate structure for the role of trustee is a crucial decision.

### Individual or corporate trustee?

When deciding on trustees for a fund, there are two options available: individual trustees, or a corporate trustee. To date, about 70% of SMSFs in Australia have individual trustees, but is it the best option? When making a trustee nomination, due regard should be given to the following:

### Individual trustee

#### Advantages

- Reduced reporting requirements – having an individual trustee can avoid



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additional paperwork and ASIC reporting requirements required of corporate entities.

- Less onerous procedural requirements – trustee meetings are relatively flexible and not subject to the same requirements as meetings of a corporate entity which must satisfy constitutional requirements.

## Disadvantages

- Costly to amend – individual trustee arrangements are cheap and easy to establish, however, they can have unforeseen costs with any changes to trustee arrangements being costly and time-consuming to undertake.
- Record keeping/clarity of ownership – with individual administration, there is a risk that personal assets can become intermingled with fund assets, and the threat of significant penalties.

## Corporate trustee

### Advantages

- Liability management – having a corporate trustee can limit the liability of fund members, with potential litigants having claim on corporate assets as opposed to the members' personal assets.
- Succession and estate planning – corporate trustees enable smoother succession and estate planning as it is easier and more cost-effective to replace a director of the corporate trustee than change an individual trustee.

### Disadvantages

- Set-up costs – the process of establishing a corporate trustee at the outset can be significant.
- Structure – a new proprietary limited company is required to be registered to act as the SMSF trustee. Company returns must be lodged with ASIC every year and an annual fee paid.

Whilst establishing individual trustees may be the most cost-effective option at the outset, the opposite may be true over time. For more information on SMSFs and assistance in choosing the right trustee structure for your circumstances, speak with your licensed Fiducian financial planner.

