

David Busoli

SMSF: One size does not fit all



Advantages & Disadvantages

- Costs
- Control & Security but no investment fraud protection
- Diverse investment Choice
- In specie contributions & withdrawals
- Processing & benefit flexibility – super interests
- Tax strategies, future service benefit, anti detriment
- Insurance issues
- Borrowing
- Overseas residency
- Administration & compliance – penalty regime
- Estate Planning – customised BDBNs, no super complaints tribunal



Costs

- Rice Warner – May 2013 – Costs of Operating SMSFs
- Range of SMSF Annual Administration Costs

Fee	Low	Mid	High
Annual ASIC fee (special purpose company)	\$43	\$43	\$43
ATO supervisory levy	\$200	\$200	\$200
Audit fee	\$300	\$440	\$500
Financial Statements and Tax Return	\$620	\$855	\$1,624
Total accumulation	\$1,163	\$1,538	\$2,367
Fee if the fund pays pension	\$250	\$264	\$330
Actuarial certificate	\$180	\$210	\$260
Total Pension (no certificate)	\$1,413	\$1,802	\$2,697
Total Pension (with certificate)	\$1,593	\$2,012	\$2,957



Costs

- Rice Warner – May 2013 – Costs of Operating SMSFs
- Range of SMSF Full Administration Costs

Fee	Low	Mid	High
Full administration Fee	\$2,225	\$3,990	\$7,200
ASIC fee and ATO levy	\$243	\$243	\$243
Total accumulation	\$2,468	\$4,233	\$7,443
Fee if fund pays pension	\$250	\$264	\$330
Actuarial certificate	\$180	\$210	\$260
Total Pension (no certificate)	\$2,718	\$4,497	\$7,773
Total Pension (with certificate)	\$2,898	\$4,707	\$8,033



Costs

- Rice Warner – May 2013 – Costs of Operating SMSFs
- Range of Industry Fund Full Administration Costs – Accumulation Account

Balance	One member			Two members		
	Low	Mid	High	Low	Mid	High
\$50,000	\$337	\$468	\$668	\$389	\$536	\$746
\$100,000	\$622	\$868	\$1,258	\$674	\$936	\$1,336
\$150,000	\$907	\$1,268	\$1,848	\$959	\$1,336	\$1,926
\$200,000	\$1,192	\$1,668	\$2,438	\$1,244	\$1,736	\$2,516
\$250,000	\$1,477	\$2,068	\$3,028	\$1,529	\$2,136	\$3,106
\$300,000	\$1,762	\$2,468	\$3,618	\$1,814	\$2,536	\$3,696
\$400,000	\$2,332	\$3,268	\$4,798	\$2,384	\$3,336	\$4,876
\$500,000	\$2,902	\$4,068	\$5,978	\$2,954	\$4,136	\$6,056



Costs

- Rice Warner – May 2013 – Costs of Operating SMSFs
- Range of Retail Fund Full Administration Costs – Accumulation Account

Balance	One member			Two members		
	Low	Mid	High	Low	Mid	High
\$50,000	\$634	\$950	\$1,205	\$663	\$1,020	\$1,445
\$100,000	\$1,239	\$1,830	\$2,170	\$1,268	\$1,900	\$2,410
\$150,000	\$1,844	\$2,710	\$3,135	\$1,873	\$2,780	\$3,375
\$200,000	\$2,449	\$3,590	\$4,100	\$2,478	\$3,660	\$4,340
\$250,000	\$3,054	\$4,470	\$5,065	\$3,083	\$4,540	\$5,305
\$300,000	\$3,659	\$5,350	\$6,030	\$3,688	\$5,420	\$6,270
\$400,000	\$4,869	\$7,110	\$7,960	\$4,898	\$7,180	\$8,200
\$500,000	\$6,079	\$8,870	\$9,890	\$6,108	\$8,940	\$10,130



Costs

- Rice Warner – May 2013 – Costs of Operating SMSFs
- SMSF Cost Comparisons

Balance	SMSF compliance admin			SMSF full admin		
	Low	Mid	High	Low	Mid	High
\$50,000	\$1,171	\$1,555	\$2,393	\$2,476	\$4,250	\$7,469
\$100,000	\$1,188	\$1,594	\$2,454	\$2,493	\$4,289	\$7,530
\$150,000	\$1,212	\$1,647	\$2,536	\$2,517	\$4,342	\$7,612
\$200,000	\$1,237	\$1,702	\$2,620	\$2,542	\$4,397	\$7,696
\$250,000	\$1,258	\$1,748	\$2,692	\$2,563	\$4,443	\$7,768
\$300,000	\$1,279	\$1,795	\$2,764	\$2,584	\$4,490	\$7,840
\$400,000	\$1,324	\$1,893	\$2,917	\$2,629	\$4,588	\$7,993
\$500,000	\$1,371	\$1,999	\$3,081	\$2,676	\$4,694	\$8,157



SMSF Fee below range for Retail and Industry funds

SMSF Fee above range for Retail and Industry funds



Control & Security

- Members = trustees
- Trustees = members
- Emotional issue

- SMSFs have no fraud protection against dodgy managed funds

- Fraud is a member to member consideration as well



Diverse Investment Choice

- Shares
- Managed funds
- Real estate including via syndicated unit trusts
- Term deposits
- SMSF trustees can choose almost anything reasonable not acquired from a member, relative or associate and in the Investment Strategy
- Beware of collectables and prohibited acquisitions

- Subject to the deed it is generally more important to focus on who the investment is acquired from than what it is.



Diverse Investment Choice

SMSF considerations

- Sole purpose test
- Loans to members
- In house asset breaches
- Weird investments
- Dodgy dealings



In Specie Contributions & Withdrawals

Only available to SMSFs

Contributions

- Beware related party acquisitions
 - Prohibitions
 - CGT
- Can include multiple types such as a combination of concessional and non-concessional
- Be careful if the investments are not held in the name of the member who is receiving the contribution – concessional caps



In Specie Contributions & Withdrawals

Only available to SMSFs

Withdrawals

- Any asset can be withdrawn from the Fund in-specie instead of cash
- CGT in the Fund
- An in-specie withdrawal is a lump sum withdrawal not a pension payment so be careful of preservation and tax implications



Processing & Benefit Flexibility

Some retail & industry Funds have difficulty with

- Counting lump sum withdrawals against the pension minimum
- Partial pension commutations
- Processing super interests of different, non reversionary pensions as separated on the member's death
 - Alex has 2 non reversionary pensions – Pension 1 is 100% taxable, Pension 2 is 100% tax exempt.
 - On death both cease and revert to accumulation
 - The tax components do not mix
 - Lump sum from pension 1 to spouse, lump sum from pension 2 to adult kids – no tax



Tax Strategies

Future service benefit

- Unique to SMSFs

Anti detriment benefit

- Difficult for SMSFs

Other SMSF features

- Fortuitously, large CGT assets may be held in the pension account
- Actual cost bases are known allowing selective adjustments at year end
- Income ratio method may be applied to expenses
- Lump sum drawdowns counted against pension minimums



Insurance

Compared with APRA funds

- No free underwriting limits for SMSFs
- Premiums can be more expensive for SMSFs – take care with rollovers
- Insurance/reversionary pension combination is an advantage for SMSFs
 - Proceeds received by a reversionary pension take on the pro rata tax components of the pension.
 - Jason has two transition to retirement pensions in his SMSF
 - One has a balance of only \$50k but is 100% tax exempt component
 - The premium for the \$1m life cover in his fund is paid from this account
 - On his death the \$1m is added to the tax exempt component



Insurance

Other SMSF Insurance Issues

- Don't use the Fund as a cash cow
 - Salary continuance is more tax effective out of the Fund
- No cross insurance
- No buy/sell insurance
- If Fund proceeds are to be paid to non tax dependants keep the life cover out of the fund
- Have a flexible deed re insurance payments anyhow



Borrowing

- SMSF limited recourse borrowing
 - Can develop but not with borrowings
 - Cannot alter the fundamental nature of the asset
 - Be careful with related party loans
- SMSF borrowing via unrelated trusts
- Multiplies profits and losses
- Enhances the SMSF's ability to hold business real property rented to the member's business



Overseas Residency

- APRA Funds are not affected
- SMSFs must remain resident or become non-complying
 - Taxed at top marginal rate (47% currently) on income & taxable component
- Generally requires
 - 50% trustees in Australia – can use enduring powers of attorney
 - No contributions



Administration & Compliance

- SMSF ongoing administration is onerous
 - Usually outsourced at a cost but still responsible
- SMSF compliance can be onerous
 - Conflicts of interest
 - Trustees need education and/or guidance
 - SIS penalties can be mandatory
 - Individual pays, not the Fund



Estate Planning

- SMSFs are more powerful and more dangerous than APRA Funds
- BDBNs
 - Must be in the deed
 - Can be non lapsing (not always available in APRA Funds)
 - Can be customised (unique to SMSFs)



Estate Planning

- SMSFs are more powerful and more dangerous than APRA Funds
- No Superannuation Complaints Tribunal so Supreme Court is necessary to settle disputes
- This is becoming an increasingly serious problem but it doesn't need to be!



Estate Planning

SMSF deeds generally maximise trustee discretion including for death benefit claims if there are no valid reversionary pensioners or valid BDBNs.

Karger v Paul

- Generally court will not review a trustee's decision unless
 - the trustee failed to act honestly and in good faith;
 - the trustee failed to act upon a genuine consideration;
 - the trustee failed to exercise the power with due consideration for its proper purpose; or
 - the trustee gave reasons and those reasons are not sound.



Estate Planning

What can go wrong?

- Ioppolo and Hesford v Conti
 - No BDBN, No LPR involvement, paid to trustee
- Katz v Grossman
 - No BDBN, No LPR involvement, paid to trustee
- Donovan v Donovan
 - Invalid BDBN, paid to trustee
- Munro v Munro
 - Invalid BDBN, paid to trustee
- Wooster v Morris
 - Disputed Valid BDBN, eventually paid as planned after years of expensive legal action.



Estate Planning

With the right deed wording the deceased's wishes would have been achieved in all of these cases and with the minimum of fuss & expense.

- Ioppolo and Hesford v Conti
 - No BDBN, No LPR involvement
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 - No BDBN, No LPR involvement
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 - Invalid BDBN
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 - Disputed Valid BDBN





David Busoli
0422 282 161

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