Webinar

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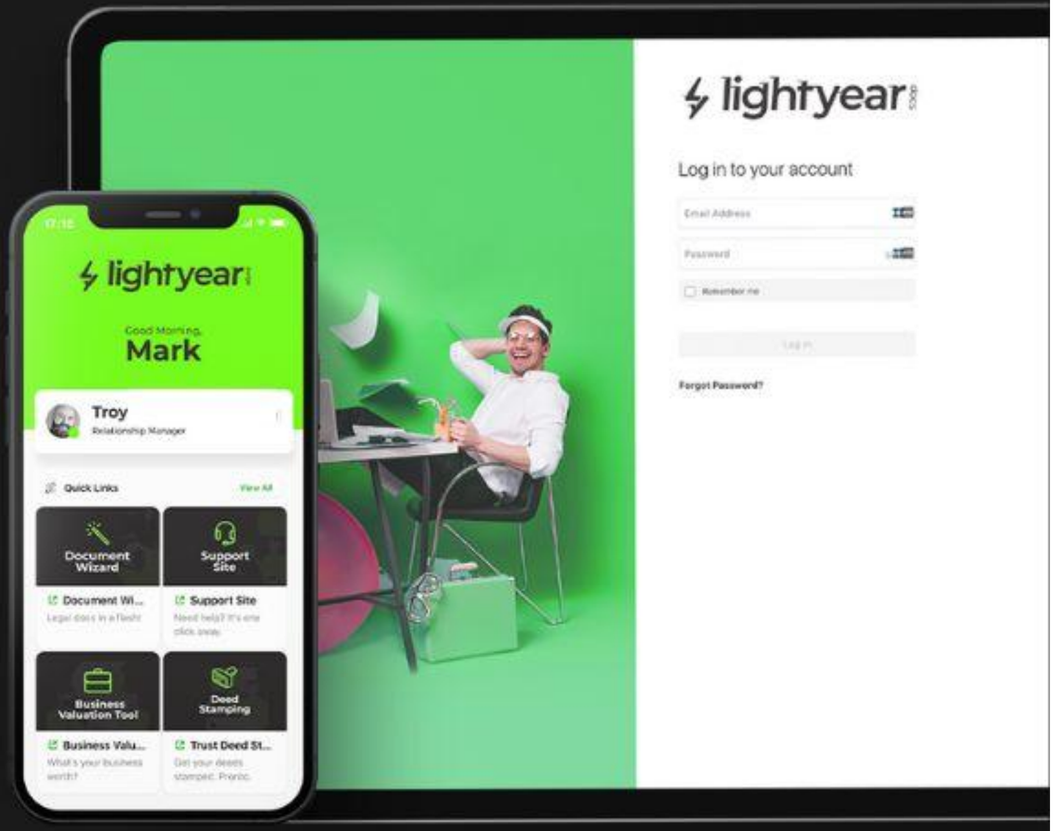
Document Masterclass

Family SMSF Strategies



Let's test your SMSF Strategy Knowledge?

1. An accountant can act as the director of a client's SMSF provided that have a Director Identification Number?

2. A testamentary trust can be directly created by the Trustee of a SMSF on the death of a member rather than going through the Will?

3. A one member SMSF with a sole director can be frozen in a family provisions claim for years if the deceased's Will is contested?

4. A Family Trust employs the 66 year old father of the director of the corporate trustee and pays a $70,000 concessional contribution. The father is currently living off tax free pension income. What personal income tax and penalties doe the father have to pay?

5. A SMSF has a corporate trustee with the successor director solution in place – there is only one person who can be the successor director – who?

6. In making a BDBN for a client that directs death benefits to the estate without elaborating on the risk of a family provisions claims, what litigation exposure is there for the adviser?

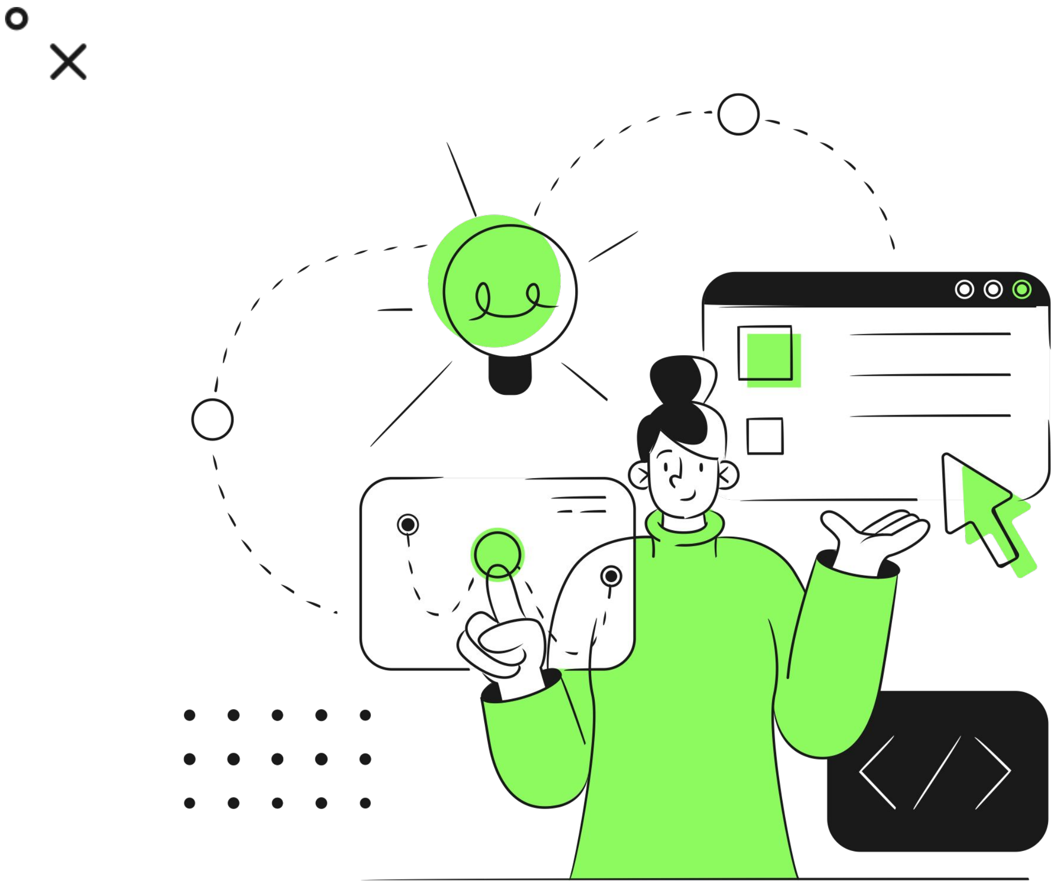
8. What is the difference between a standard TT, a super proceeds TT, a super death benefits TT and an insurance benefits TT?

Do you want your SMSF knowledge and strategies to be 8 out of 10? Contact Talitha@lightyeardocs.com.au for our great offer

- Specialist SMSF Adviser Course on 9 – 11 May 2022 covers:
    - Contribution strategies
    - Pension strategies
    - The accountant's exemption
    - SMSF Wills v BDBNs
    - Establishing SMSFs for bloodline
    - Property investment and development
    - Limited recourse borrowing

What types of SMSF are there?

- **A DIY SMSF** – this is a SMSF where the trustee handles the preparation of accounts and also the fund's compliance
- **A standard SMSF** – this is the run of the mill, standard SMSF with two or less members where the trustee invests, has the accounts prepared by an accountant and an auditor signing off on compliance. Strategy is limited as the fund is in retirement phase
- **A Family SMSF** – this consists of multi-generations of family members. It may run separate investment strategies between generational members and has all members being directors of the Trustee company
- **A Leading Member SMSF** – has limited directors with the Leading Member effectively controlling the Fund like a retail fund and a strong line of succession plus investment, contribution and estate planning options



SMSFR 2010/2 - Self Managed Superannuation Funds: the scope and operation of subparagraph 17A(3)(b)(ii) of the Superannuation Industry (Supervision) Act 1993

Example 1

20. Andrew works for a large international group of companies. He and his wife, Jane, are trustees and members of their SMSF.

From 1 February 2009 Andrew is transferred to an overseas company for an indefinite period of time. In accordance with the relevant State legislation, Andrew and his wife each execute an enduring power of attorney in favour of their friend and retired accountant, Trevor. In addition, Andrew and Jane both resign as trustees of their SMSF and appoint Trevor as the trustee. The appointment of Trevor as trustee is in accordance with the terms of the trust deed. Other than the fact that Andrew and Jane are not trustees of the SMSF, the superannuation fund satisfies the other requirements of the definition of an SMSF in subsection 17A(1).

21. Trevor is a legal personal representative of both of the members, Andrew and Jane, by virtue of holding an enduring power
of attorney in respect of each of them. In addition, Trevor is now the trustee of the SMSF in place of both Andrew and Jane. Once appointed as trustee, Trevor is subject to civil and criminal penalties in the event that he breaches his duties. Provided that the enduring power of attorney remains valid during the period Trevor is the trustee and given that the other requirements of subparagraph 17A(3)(b)(ii) are satisfied, the superannuation fund continues to satisfy the definition of an SMSF in subsection 17A(1), notwithstanding that Andrew and Jane are no longer trustees.

SMSF Accreditation Course Case Study

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John Smith is 83 years old and has just had a mild stroke and is now out of the hospital. His wife Sally, aged 78 is in early-stage dementia (2 years) and no longer has mental capacity. John has been looking after Sally full time. They live in Glen Iris in Melbourne and their home is paid off and valued at $2,250,000. John also has an investment property in the Gold Coast which is valued at $650,000 with no mortgage.

John and Sally's son Bruce who is aged 55 lives nearby – he has had an up and down life, a battle with drugs, alcohol, and sex addiction plus going bankrupt twice, divorced twice and in a two-year marital relationship with Shirley, aged 28 who helps John out around the house and cooks dinner for both of them. Shirley studied law in Melbourne, worked as an associate for three years, holds her practising certificate but is taking time off after being laid off during Covid lockdowns. Bruce is retired and living in a rented house – has $250,000 in Westpac Super and gets $2,000 per month support from John for doing odd jobs around the house.

Bill is their eldest son – aged 59 who lives in Perth and works as a director of a mid-tier mining company and is wealthy. He has been married to his wife Judy for 33 years and has two children Little Bill Jnr - aged 28 and Bobby - aged 24. John and Sally love their grandchildren and have looked after them through school and university, plus help with mortgage payments as their pension money is way too much. Bill has John and Sally's enduring power of attorney and is the executor of his Will - which was completed in 2008.

SMSF Accreditation Course Case Study continued

The main source of income for John and Sally apart from the rent on the investment property is the Smith Family Super Fund which has John and Sally as the only members and directors of the Fund's corporate trustee - Smith Nominees Pty Ltd. Their accountant is not aware of Sally's problem as John has been keeping it secret. They have both been signing off accounts and tax returns since she was first diagnosed two years ago. The fund has $2.5M in assets - $1.8M in John's account-based pension (20% tax-free component) and $700,000 in Sally's account-based pension (30% tax-free component) both established in 2007 by their accountant at the time. Neither has a reversion on their pensions.

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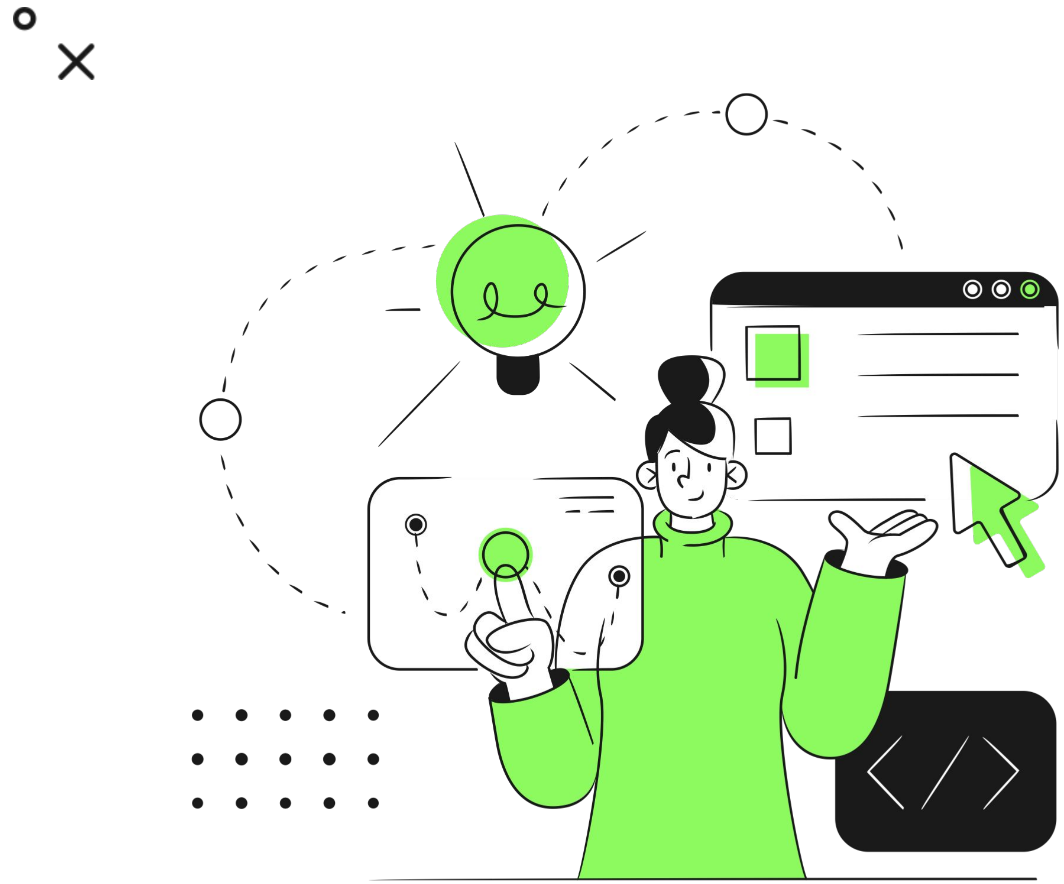
John wants to make sure that if something happens to him Sally is looked after for the rest of her life – maybe even home care. His current Will gives all of his estate to Sally and then to Bill, except for $100,000 to Bruce as John and Sally had saved Bruce's bacon so many times. Sally's Will is the same. This includes his super where he has a binding death benefit nomination that directs his super to his estate - Sally has the same.

ASIC Accountants and Tax Agents Exempt SMSF Services Guidelines

- **Borrowing -** *If you are discussing options for borrowing for investment in residential property through an SMSF with your clients, you might need to be covered by an Australian credit licence. For example, if you suggest an individual SMSF trustee apply for a particular loan from a particular credit provider to invest in residential property, or assist them to do so, you will need to hold a credit licence (or be a representative of a credit licensee). Alternatively, you may refer clients to a credit licensee.*
- **Establishing a Fund** - *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** - *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 and the non-concessional contributions cap and the two-year or three- year bring-forward period.*
- **Pensions** - *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.*

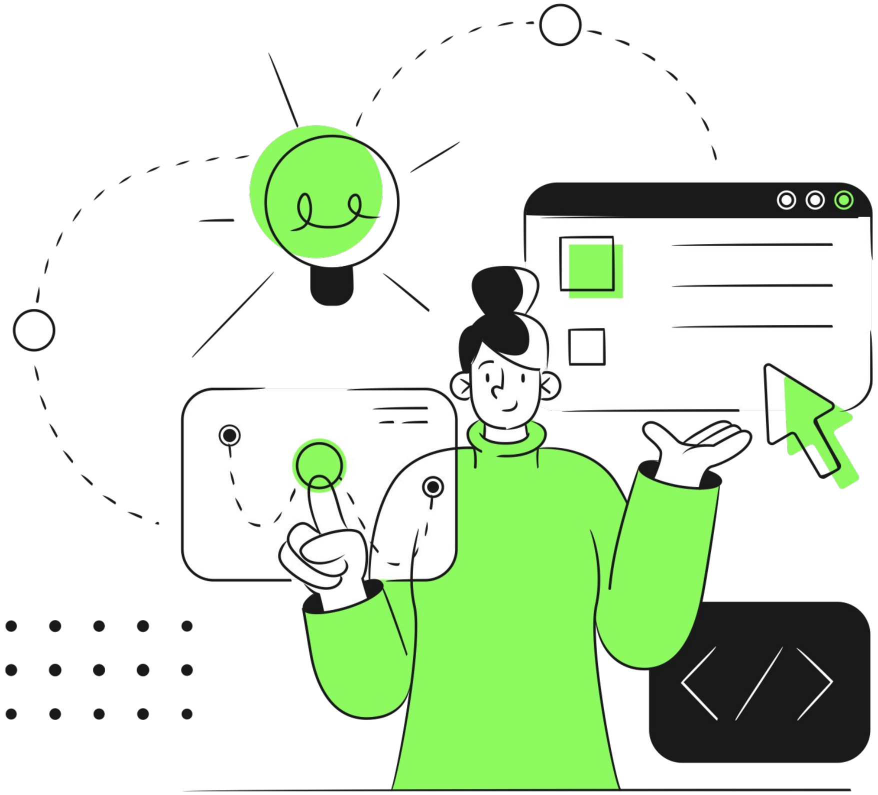
Building the Leading Member SMSF

- **Bill** to become sole director of Smith Nominees using his parents EPOA. Bill has a DIN and both John and Sally are removed as Directors.
- **Building reversionary pensions** – this is a must do with John to provide for Sally BUT then back to Bill – why? Sally to John then to Bill?
- **Grandchildren**– Can Little Bill Jnr and Bob receive the pension instead of Bill and what are the taxation consequences? Do they have to be members of the Fund at the time of death?
- **Membership** – should Bruce, Little Bill Jnr and Bob join the Fund? What about Bill?
- **Leading Member** – who is the next Leading Member?
- **John and Sally contribution** – if John and Sally end up in aged care what are the downsizer contributions rules?
- **Insurances** – what insurances should the fund have?



Advanced Family SMSF Strategies

- Passing of rural family property between generations and keeping it within the bloodline
- Ensuring that any limited recourse borrowing arrangement for the younger members of the family and not a pooled investment strategy due to transfer balance caps which include liabilities
- Contribute for older members of the Fund up to age 75, both employer and non-concessional without work test. Work test for 67 – 74 for personal concessional contributions to the fund.
- No more Excess Concessional Contributions Cap
- Split concessional contributions to the older member who is closer to age 65
- Ensure retirement at age 60 – even while working full time
- Multi-generational reversionary pensions and SMSF Wills



If you need legal help

- The provision of SMSF advice is our specialty – for something more detailed or complex come to Abbott & Mourly Lawyers
- Abbott & Mourly can provide sign off on any LightYear documents with a legal letter of advice if you are concerned
- Download the Abbott & Mourly app and send your query or document in or you can do inside the document