

Self Managed Super Fund (SMSF) Update

The “*must knows*” in respect of recent changes.

Pension Drawdown Relief

The Federal Government has extended the 50% pension drawdown relief for the 2010/2011 financial year in response to slow market recovery after the global financial crisis.

Revised Borrowing Rules

On 24 June 2010 new legislation was passed to simplify the borrowing rules. Refer to our recent Super Shot for more information or view the latest Q & A Information Sheet on the ATO website -“Limited recourse borrowing arrangements by SMSF” (11 August 2010).

Carrying on a Business in your SMSF

The ATO has issued an information statement confirming their view on running a business in your SMSF. Whilst the ATO have never stated a SMSF can't run a business, several issues are raised pertaining to both income tax and SIS. Therefore, careful consideration must be given to the following provisions before an activity of this nature is undertaken:

- ▶ Sole purpose test
- ▶ Incorporating the activities into the SMSF investment strategy
- ▶ SMSF is prohibited to lend or provide financial assistance
- ▶ The SMSF cannot give charge over an asset
- ▶ Restrictions on acquiring related party assets
- ▶ Restrictions on borrowing money
- ▶ Ensuring all transactions are at arm's length and;
- ▶ Payments to trustees are prohibited

Each situation would require a detailed review to ensure it is in line with the above conditions.

Property development is a common interest for an SMSF and all of the above must be considered before this type of transaction is undertaken. In addition, some other considerations are:

- ▶ Whether the development is a “one off” or whether the SMSF will develop multiple properties
- ▶ Whether the members or any associates carry on development activities in other entities

Contribution Ruling TR 2010/1

This ruling provides confirmation on “when a contribution is received” from a SMSF perspective. Some issues covered included:

- ▶ Where a member pays expenses on behalf of the fund, the contribution is the date of payment where the SMSF does not reimburse the fund
- ▶ Where commercial property is transferred into the fund, the effective date is when the trustees take possession of the title deed and transfer forms. Not the date that the title is registered. Care must be taken when property transfers take place around the end of the financial year
- ▶ Where listed shares are transferred via an off market share transfer form into the fund, the effective dates is deemed to be when the forms are completed and lodged with CHESS, not the date that CHESS states the registration is (Which could be a few days delay)

NSW Stamp Duty Relief

The NSW Duties Act has been amended to provide nominal duty in respect of the transfer of dutiable property (for example, commercial property) from a member(s) to a trustee of a SMSF. The transfer will attract concessional duty of \$50, as opposed to duty at ad valorem rates. The conditions are:

- ▶ That the property must be owned by the member(s)
- ▶ That the property must be segregated in the SMSF for the benefit of the member(s) who were the transferor(s) and;
- ▶ The property is used solely for providing retirement benefits for the transferor(s) i.e. it must be used in accordance with the sole purpose test.

Whilst the wording of the legislation would lead to a conclusion that the transferor is the only member of the SMSF the NSW Office of State Revenue accept that the concession will apply where the property is transferred by more than one member. Approval for each transfer should be sought for confirmation.

Employee Share Scheme Alert – TA 2010/3

The ATO have found that many employees have been redirecting their employee share scheme acquisitions to their SMSF's and not paying adequate consideration for the acquisition. In response, the ATO have issued Taxpayer Alert TA 2010/3 which outlines their concerns with this practice. Their issues include:

- ▶ The transaction may not have been undertaken at arm's length
- ▶ The transfer represents a contribution and could breach the contribution caps
- ▶ The shares may not be an excluded related party acquisition under s66(1) if they are not listed and;
- ▶ The shares may not be an excluded related party acquisition under s66(1) if they are not listed and;
- ▶ The individual did not correctly include the amount in their tax return

Should you require assistance additional information, please contact:

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TPD Tax Deductions

Due to legislation passing on 24 June 2010, SMSF's now have transitional relief to claim 100% tax deduction of all total and permanent disability premiums for the years ending 2004/2005 to 2010/2011. Be mindful that the disability definition in the policy must meet the definition in the regulations.

Excess Contribution Update

ATO ID 2010/104 confirms that the ATO will not refund any excess member non concessional contribution as in their view, they are considered to be voluntary in nature and could not have been made in error. The ATO were not satisfied that the submission to the ATO provided special circumstances for the contribution to be allowed as there was nothing unfair, unintended or unjust.

ATO Specific Advice

The ATO have issued a form which can be used to request specific advice on the following topics:

- ▶ An investment by a fund in a company or unit trust
- ▶ The acquisition of assets from related parties
- ▶ Borrowing and charges
- ▶ In-house assets
- ▶ Business real property
- ▶ In-specie contributions or payments
- ▶ The payment of benefits under a condition of release

Specific advice can give you certainty about the application of the relevant super laws and regulations to your SMSF's circumstances.

To obtain advice from us about SMSF specific transactions, complete and submit a **Request for self-managed superannuation fund specific advice** (NAT 72441). All supporting documentation must be provided on application.