SUPERMATTERS

SUPERANNUATION STRATEGIES FOR YOU AND YOUR BUSINESS

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What is a superannuation contribution?

Since superannuation contributions come in several forms; SMSF members would be wise to understand what contributions are available and how they might impact them in regards to the contribution limits.

The ATO considers a 'contribution' as anything of value that increases the capital of a superannuation fund provided by a person whose purpose is to benefit one or more particular members of the fund or all of the members in general.

SMSF members are required to keep track of contributions their employer, themselves or others make on their behalf into their self-managed super fund.

When deciding whether an event is a contribution, a person's objective purpose will be taken into account. For example, an increase in an SMSF's capital due to income, profits and gains arising from the use of the SMSF's assets is not derived from someone whose purpose is to benefit the members. However, it may still be viewed as a contribution.

Other situations where a SMSF member may not be aware that they have made a contribution include:

Cash and EFT transfers

A cash contribution or EFT transfer is made when an amount is received by the SMSF trustee or credited to the relevant SMSF bank account.

How the transfer occurs is relevant to whether the fund's capital is increased and when a particular contribution is made. An amount set aside but not actually paid is not a contribution. However, an actual payment or reimbursement for certain expenses incurred by the fund may constitute as a contribution.

Property transfers

Members can transfer assets in the form of business real property to their SMSF. These contributions will be subject to contribution cap limits.

Share transfers

Members can transfer shares (in a publicly listed company) to their SMSF. The value of the shares is regarded as a contribution and subject to the contribution cap limits.

Improvements to an asset

Where the capital of the SMSF is increased due to the improvements of the SMSF's assets e.g. when a fixture is added to an SMSF's property.

Payment of a liability

Where a member pays the SMSF's expenses, which results in an increase in capital. In instances where a member satisfies an SMSF's loan obligations as a guarantor to a loan this may constitute as a contribution as the guarantor's payment removes the fund's liability and therefore increases capital.

SMSF COMPLIANCE EXPERTS

PO BOX 260
CAMPBELLTOWN
NSW 2560
TEL 0419 283 241

EMAIL
kevin@doyletax.com.au

WEBSITE
www.smsfcomplianceexperts.com.au

DIRECTOR
Kevin Doyle CPA

SMSF
Tax
Accounting
Audit

SMSF alternative to borrowing

A deferred purchase instalment strategy is one way SMSF's can add a direct business property to their portfolios.

Following changes announced in this year's Federal Budget, self-managed super fund (SMSF) trustees may need to consider alternative strategies when adding a direct business property to their portfolios.

A deferred purchase instalment strategy is also known as a vendor finance arrangement or a terms contract. It involves an SMSF paying a deposit based on a commercially determined value for a property, followed by regular instalments with a financing charge until the purchase price is paid in total.

Traditional finance is available to and SMSF subject to financial restrictions. Lenders often require a far higher deposit which can place property acquisition beyond the reach of many SMSF's. Vendor finance does not have the same restrictions, therefore, provides greater flexibility.

Because the ATO does not view the strategy as borrowing the legal restrictions are less onerous. This makes it an attractive option for those who want greater flexibility to pay for the property over a period of time.

It also allows members to improve a property, which is not possible under other financing arrangements.

However, the complexity of the arrangement often lies in managing the cash flow of the fund within a commercial timeframe. This strategy is not for the unsophisticated investor, as certain rules need to be followed. Members need to be aware of the capital gains tax implications involved as the property is technically sold by the member or an entity they control to the SMSF - incurring a capital gain.

SMSF auditors generally will examine the purchase contract closely - in particular, the term period in which payments will be made. Members need to ensure there is a copy of the current title and a copy of change of ownership when the final payment is made.

Trustees need to ensure the property meets the definition of a business property, transactions are performed at arm's length and an independent valuation of the property is conducted. The investment of a business property must be consistent with the SMSF's investment strategy and the trust deed must allow the strategy.

Super contribution rules for 2016/17

The government announced significant amendments to Australia's superannuation rules in this year's Federal Budget, but the majority of proposed changes will not apply for the 2016/2017 year.

Superannuation contributions are divided into two categories; concessional (before-tax) and non-concessional (after-tax). Both types of super contributions are subject to a contributions cap.

A contributions cap is a limit on the amount of contributions an individual makes in one financial year (1 July to 30 June).

The cap for concessional contributions for the 2016/2017 financial year was not affected by the 2016 Federal Budget. However, it will be reduced from 1 July 2017.

For the 2016/2017 year, the two annual concessional contributions caps individuals need to be aware of when considering before-tax contribution strategies are:

- $30,000 cap for those aged 48 or younger as of 30 June 2016
- $35,000 cap for those aged 49 years or older as of 30 June 2016

The current legislated rules for non-concessional superannuation contributions, popularly known as after-tax contributions, include an annual cap of $180,000 for one year, or a cap of $540,000 over a three-year period (under the bring-forward rule).

However, the federal government announced an immediate cut to the non-concessional contributions cap, including a cessation of the bring-forward rule. It introduced a lifetime cap of $500,000, which backdated to 1 July 2007. Although this change has immediate effect from 3 May 2016, it is still subject to yet-to-be-created legislation.

Contribution rules for over-65s

Confusion often exists surrounding the rules that apply to those wishing to make super contributions when they reach the age of 65.

Here are five tips to help meet the super contribution rules for those who are 65 years of age or older.

1. Those aged 65 or older must satisfy a work test and be 'gainfully employed' before they can contribute to super. To do so, individuals must work for at least 40 hours during a period of no more than 30 consecutive days in the year in which they plan to make a super contribution.
2. Gainfully employed means a person is employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.
3. People aged 75 or older cannot contribute to a super fund. However, since July 2013, an employer must pay Superannuation Guarantee contributions to employees beyond the age of 70 and over (if the employee is eligible).
4. Those intending to claim a tax deduction for concessional super contributions need assessable income, such as employment or business income, to justify the tax deduction.
5. Individuals can satisfy the work test when their employment involves receiving remuneration for their efforts, including work such as cleaning, babysitting, gardening, lawn mowing and paid employment. Volunteer work does not count towards the 40-hour work test.

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