YOUR KNOWLEDGE

Super Reform: What SMSFs Absolutely Need to Consider Before 30 June

The wide-ranging superannuation reforms come into effect on 1 July 2017. With the changes come a series of issues that Trustees need to be across, even if they don't immediately affect you or your fund:

Understand the value of assets at 30 June

At 30 June 2017, SMSF Trustees will need to know the total superannuation balance held by members. If you have assets such as real estate in your SMSF, and to an extent other assets such as collectables, and artwork, **you will need to have a current valuation of those assets**. Real estate property values in particular may have varied dramatically over the last few years and should be reviewed. The value of the asset needs to be arrived at using a fair and reasonable process. Because of the extent of the changes, it is worth considering the use of an independent and qualified valuer for some assets.

Your total superannuation balance is the total value of your accumulation and retirement phase interests and any rollover amounts not included in those interests. The balance is valued at 30 June each year and it is this value that may determine what you can and can't do during the following year. For example, if your total super balance is $1.6m or more at 30 June, you are restricted from making further non-concessional contributions in the next year as these contributions may create an excess contribution. And, if your balance is close to the $1.6m cap, then the fund can only accept limited non-concessional contributions.

Self funded retirees – avoiding adverse tax outcomes

If you are receiving a pension or annuity, a $1.6m "transfer balance cap" applies to amounts in your tax-free pension accounts. The cap is essentially a limit on how much money a member can transfer into or hold in a tax-free account. If you have $1.6m or more in a pension phase account, you will need to reduce the pension value level back below the cap before 30 June 2017. If the excess amount is not removed from the pension phase account the amount will be subject to a transfer balance tax. If you opt to sell fund assets to manage the cap, transitional capital gains tax relief may be available to manage any adverse tax outcomes.

How do you value SMSF assets?

One of the emerging problems for many superannuation fund members is understanding whether they are close to or are likely to exceed the $1.6m cap at 30 June 2017. For those with assets such as real estate, collectables or art, a current valuation that meets the ATO's guidelines will be essential. Real estate in particular has substantially risen in value in some areas creating uncertainty about the real value.

Fund assets need to be valued at market value. While these assets do not have to be valued every year by an independent valuer, it will be important to have documentation validating the value assigned to the asset. A qualified and independent valuer is recommended if the asset is a significant part of the value of the fund - if the asset is real property, this could be as simple as an online real estate agent.

Should you update your SMSF trust deed?

Over the years there have been continuous changes in superannuation legislation. While many of these changes do not require you to update your SMSF deed, where a deed has not been updated in at least the last 5 years, we suggest that the deed is updated to ensure it is compatible with current law. If we have not already contacted you about your fund's deed, we will be in contact shortly to discuss if an update is required. As always, before buying, selling, transferring assets, or making any payments, make sure your trust deed allows you to complete the transactions in the way you intended.

Salary sacrificing concessional super contributions

If you have entered into a salary sacrifice agreement to make concessional super contributions, you will need to review these agreements to ensure your concessional contributions do not exceed the new $25,000 from 1 July 2017.

Investment Property: Pre And Post 30 June

Anyone with investment property in Australia is probably feeling a little edgy with all the recent media attention on deductions, affordable housing, and negative gearing. We take a look at some of the key tax issues for investors pre and post 30 June:

No more deductions for travelling to and from your investment property

The days of writing-off the costs of travel to and from your residential investment property are about to end.

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From 1 July 2017, the Government intends to abolish deductions for travel expenses related to inspecting, maintaining, or collecting rent for a residential rental property.

Depreciation changes and how to maximise your deductions now

Investors who purchase residential rental property from Budget night (9 May 2017, 7:30pm) may not be able to claim the same tax deductions as investors who purchased property prior to this date. In the recent Federal Budget, the Government announced its intention to limit the depreciation deductions available.

Investors who directly purchase plant and equipment - such as ovens, air conditioning units, swimming pools, carpets etc., - for their residential investment property after 9 May 2017 will be able to claim depreciation deductions over the effective life of the asset. However, subsequent owners of a property will be unable to claim deductions for plant and equipment purchased by a previous owner of that property. If you are not the original purchaser of the item, you will not be able to use the depreciation rules to your advantage. This is very different to how the rules work now with successive owners being able to claim depreciation deductions.

Investors will still be able to claim capital works deductions including any additional capital works carried out by a previous owner. This is based on the original cost of the construction work rather than what a subsequent owner paid to purchase the property. There are very limited details about how this Budget announcement will work but we will bring you more as soon as we know.

Business as usual for pre 9 May investment property owners

If you bought an investment property recently, are about to renovate, or have not had a depreciation schedule completed previously, you should consider having one completed.

As a property gets older the building and items within it wear out. Property owners of income producing buildings are able to claim a deduction for this wear and tear. Depreciation schedules are completed by quantity surveyors and itemise the depreciation deductions you can claim.

Higher immediate deductions for co-owners

It's not uncommon to have multiple owners of an investment property. Co-ownership can, in some circumstances, quicken the rate depreciation deductions can be claimed for the same asset. This is because depreciation is claimed on each owner's interest. If an owner's interest in an asset is less than $300, they can claim an immediate deduction. In a situation where there are two owners split 50:50, both owners could potentially claim the immediate deduction, bringing the total immediate deduction available up to $600 for a single asset.

The same method can be used when applying low-value pooling. Where an owner's interest in an asset is less than $1,000, these items will qualify to be placed in a low-value pool. This means they can be claimed at an increased rate of 18.75% in the first year regardless of the number of days owned and 37.5% from the second year onwards. In a situation where ownership is split 50:50, by calculating an owner's interest in each asset first, the owners will qualify to pool assets which cost less than $2,000 in total to the low-value pool.

The value of renovations

It's best to get a depreciation schedule completed before you start renovations so the scrap value of any items you remove can be recognised and written-off as a 100% tax deduction in the year of removal. This is available for both plant and equipment depreciation and capital works deductions. When new work is completed as part of the renovations (i.e., a new roof, walls, or ceiling), this can also be depreciated going forward. In some circumstances, there may be depreciation deductions available for renovations completed by a previous owner.

Deductions for older properties

Investors in older properties may still be able to claim depreciation costs. This is because a lot of the items in the house will not be the same age as the house or apartment. Hot water systems, ovens, carpets, curtains etc., have probably all been replaced over time. Additional works, extensions or internal refurbishments may also be deductible.

Further restrictions on foreign property investors

We have seen a number of measures over the years restricting access to tax concessions for foreign investors, particularly for residential property investments.

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The recent Federal Budget goes one step further, restricting access to tax concessions, increasing taxes, and penalising investors who leave property vacant. Measures include:

- **Charge for leaving properties vacant** - Foreign owners of residential Australian property will incur a charge if their property is not occupied or genuinely available on the rental market for at least 6 months each year. The charge, which is expected to be at least $5,000, does not appear to apply to existing investments but those made on or after Budget night, 7:30pm on 9 May 2017.
- **Excluded from main residence exemption** - Foreign and temporary residents will be excluded from the main residence exemption. The main residence exemption excludes private homes from capital gains tax (CGT). Existing properties held prior to 9 May will be grandfathered until 30 June 2019. However, it remains to be seen whether partial relief will be available to those who have been residents of Australia for part of the period they owned the property and whether this change will apply to Australian residents who were classified as a foreign resident for part of the ownership period.
- **Increase in CGT withholding tax** - When someone buys Australian real property (i.e., land and buildings) they are currently required to remit 10% of the purchase price directly to the ATO as part of the settlement process unless the vendor provides a certificate from the ATO indicating that they are an Australian resident. These rules do not currently apply if the property is worth less than $2 million. From 1 July 2017, the CGT withholding rate under these rules will increase by 2.5% to 12.5%. Also, the CGT withholding threshold for foreign tax residents will reduce from $2 million to $750,000, capturing a much wider pool of taxpayers and property transactions.
- **Rules tighten for property purchased through companies or trusts** - Australian property held through companies or trusts by non-residents or temporary residents is also being targeted by expanding the principal assets test to include associates. The move is to prevent foreign residents avoiding Australian CGT liability by splitting indirect interests in Australian real property.
- **Level of foreign investment in developments capped** - a 50% cap is being placed on foreign ownership in new developments.

The push for affordable housing

The Government is very keen to ensure that investment is directed into 'affordable housing.' The 2017-18 Budget announced an increase in the CGT discount for individuals who choose to invest in affordable housing. The current 50% discount will increase by 10% to 60% for Australian resident individuals who elect to invest in qualifying affordable housing. In addition, the Government is creating investment opportunities for Managed Investment Trusts (MIT) to set up to acquire, construct or redevelop property to hold as affordable housing. In order for investors to receive concessional taxation treatment through an MIT, the affordable housing must be available for rent for at least 10 years. For foreign investors, MITs are one area where the Government is actively encouraging participation rather than restricting it.

ATO Issues Notice to Outlaw Motor Cycle Gang

Two hundred Outlaw Motor Cycle Gang members have been served notices by the Australian Taxation Office (ATO) for failing to comply with their tax obligations. We hope for the sake of the ATO staff the notices were delivered by mail! There are not a lot of details about exactly what type of income the ATO is targeting but tax law does not differentiate between legally and illegally earned income: If you earn income, you pay tax. Simple. An English tax law case back in 1886 set the precedent with Justice Denman stating, *"In my opinion if a man were to make a systematic business of receiving stolen goods, and to do nothing else, and he thereby systematically carried on a business and made a profit of 2000 per year, the Income Tax Commissioners would be quite right in assessing him if it were in fact his vocation."*

The difference between legally and illegally derived income is that you can't claim losses or expenses if you have been convicted of an indictable offence related to that business activity. The operation targeting the bikers is part of a joint taskforce with the Australian Federal Police. Data matching technology in recent years has helped identify movements of cash and income from undeclared and often illegal activities. The 'follow the cash' philosophy works well and often results in frozen bank accounts, disrupted cash flows and supply chains, which impacts on the overall viability of illegal activities.

Quote of the Month

"Who wishes to fight must first count the cost."

Sun Tzu, *The Art of War*

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