SUPERMATTERS

superannuation strategies for you and your business

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Maximising your current superannuation benefits

Pre-budget speculation around changes to Australia's current superannuation rules and tax concessions may be a cause for concern among some taxpayers.

However, there are ways to best position yourself now for any potential changes to the superannuation system. Here are three options for individuals wanting to prepare for upcoming changes:

Maximise contributions

Since there have been calls to change the taxation of contributions, now may be the ideal time to make the most of the current benefits by making additional contributions. The proposed changes would most likely affect high income earners who take advantage of the low tax rate on concessional contributions.

Concessional (before-tax) contributions are capped at $30,000 per financial year for those aged under 50 or $35,000 for those aged over 50. For those earning less than $300,000 a year, concessional contributions are taxed at 15 per cent. Those who earn over $300,000 a year are taxed at 30 per cent. The taxation of these contributions provides most people with a discount as the rates are lower than their top marginal income tax rate.

For non-concessional (after-tax) contributions, individuals under 65 can bring forward three year's worth of non-concessional contributions, which are capped at $180,000 per financial year. This allows an additional $540,000 to be added to your superannuation balance before any potential changes are made to the caps.

Review pension arrangements

Individuals who are eligible to start a pension, that is, anyone aged 56 and over, may want to consider setting one up before budget night (May 3), as some changes can become immediately effective.

The current transition to retirement (TTR) scheme allows individuals to access an income stream from their superannuation once they reach preservation age. This arrangement allows individuals to continue working full-time while accessing super funds and gaining from tax-free earnings on super.

Changes to the transition to retirement rules could see stricter limits on the amount of hours per week a person is allowed to be working if they would like to start a TTR or an introduction of tax on earnings. If you are considering starting a pension, it is worth seeking professional advice to take advantages of existing incentives.

Time asset sales accordingly

There has been discussion around whether changes to the capital gains tax (CGT) will influence the timing of asset sales, which is particularly important for individuals with a self-managed super fund. It may be beneficial to bring forward the planned sale of assets held outside of a super fund, if you are planning to contribute those profits into your super without incurring CGT.

Australia's superannuation rules are incredibly complicated and everybody's circumstances are different, so whenever possible, seek professional advice before making any decisions.

When an SMSF member becomes bankrupt

Australia's SMSF sector has experienced tremendous growth over the past decade, with a vast majority of funds now being set up with two members, usually a husband and wife or de facto couple.

While sharing an SMSF has become a popular option amongst couples, SMSF members need to be aware of the rules that govern their fund, including what to do when one member becomes bankrupt.

A requirement of an SMSF is that each individual trustee of the SMSF must be a member of the SMSF. In the case of corporate trustees, every member must be a director. Ultimately, this has ramifications further down the line since all members are connected and held accountable for one another. Consequently, if one member enters bankruptcy, that will also mean one of the trustees has entered bankruptcy

In addition, the laws governing SMSFs also state a "disqualified person" cannot act as trustee of an SMSF.

Where a disqualified person continues to act as an SMSF trustee or director, the fund may lose concessional tax status as it will be considered to be non-compliant.

In addition, this may trigger a significant tax liability where the previous tax concessions are "clawed" back.

The ATO provides a six-month 'grace period' to

allow a restructure of the SMSF so that it either meets the basic conditions required or can be rolled over into another fund.

During the six-month grace period, the ATO requires:

- the bankrupt to remove themselves as trustee
- the bankrupt to inform the ATO in writing
- to be notified within 28 days if there is a change in trustee
- the bankrupt to notify ASIC of the resignation as a director (if the SMSF is run by a corporate trustee)

If one member of an SMSF enters bankruptcy, they must resign as trustee as soon as possible. The other member will need to remove the bankrupt's balance from the SMSF before the grace period is over, this may involve:

- selling any real estate or shares
- transfer the bankrupt's balance to a managed fund

and continue as a single member SMSF, or roll over their own entitlements to a managed fund.

For members who enter bankruptcy, they must sell all assets for the market value available at the time, and then transfer all of the liquid assets to a managed fund.

Borrowing for property investment

Purchasing property through SMSF lending is becoming increasingly popular, however the requirements and restrictions around the borrowing strategy can be quite stringent.

SMSF lending for property investment can be complex due to the strict borrowing conditions known as a limited recourse borrowing arrangement (LRBA). Borrowing in your superannuation fund can allow for greater SMSF portfolio diversification but consequently does carry some risks that should be considered when deciding between financing options.

Some risks involved with LRBAs include:

Costs

Set-up upfront and ongoing costs tend to be higher using your SMSF, and applicable interest rates may be higher.

Liquidity

Frequent loan repayments require sufficient cash flow. If you experience a drop in cash flow due to a drop in rental income or not being able to rent out the property, inadequate income from other sources, higher than anticipated expenses, such as legal costs, or the need to pay pension payments you can risk losing the property.

Hard to cancel

Incorrect property contract and loan documentation may not allow for unwinding, which may require you to sell the property, causing substantial losses.

Restrictions on property alterations

Entering into a LRBA restricts any property alterations that change the character of a property, until the loan has been paid off.

Potential tax losses

Losses incurred from the property cannot be offset against your taxable income outside of the SMSF.

The Sole Purpose Test

Individual trustees and directors of self-managed super funds (SMSF) take on a number of significant responsibilities and obligations when running their fund.

Adhering to the sole purpose test is one of the most fundamental superannuation rules all trustees must follow to avoid facing serious penalties and to ensure their SMSF remains eligible for the tax concessions normally available to super funds.

The sole purpose test requires superannuation funds to be maintained for the sole and single purpose of providing its members with retirement benefits or, in the circumstances of the death of a member, provide benefits to beneficiaries, such as a dependant spouse or child.

An individual's SMSF will not meet the sole purpose test if the individual or anyone else, directly or indirectly, obtains a financial benefit when making investment decisions and arrangements (other than increasing the return to the fund).

Contraventions of the sole purpose test may arise where the fund provides a pre-retirement benefit to someone, for example, personal use of a fund asset.

In addition, collectables, such as art and wine, must not be used or accessed by SMSF members.

Failure to comply with the sole purpose test can also result in funds losing their concessional tax treatment and the disqualification of trustees.

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