EMERSON RANDELL YOUNG

SMSF NEWSLETTER

September 2014

SPECIAL POINTS OF INTEREST:

- Heading overseas to live could cost your SMSF a big tax bill
- ATO releases some guidance on Bitcoin
- Recent Government changes affect superannuation guarantee

INSIDE THIS ISSUE:

DANGERS FOR EX PATS WITH SMSFS

In today's connected world, it is not uncommon for people to move overseas for employment or other reasons. However, if you relocate or travel abroad for an extended period of time, this may lead to your SMSF being stung with a substantial tax bill.

Background – importance of your fund being Australian

One reason that contributing to superannuation (including an SMSF) is so popular is the tax concessions that apply.

However, your SMSF will only receive these tax benefits if it is an 'Australian' superannuation fund. This is to ensure that overseas-based superannuation funds can't take advantage of our superannuation concessions.

You may think that your SMSF remains Australian when you head overseas because it was established in Australia. However, strict tests must be satisfied for your SMSF to continue on as an 'Australian' superannuation fund.

When will your fund remain an Australian resident?

The superannuation laws state that your fund must meet **all of the following** conditions to qualify as an Australian SMSF and obtain the tax concessions:

First condition

Your fund was set up in Australia, or has at least one asset based in Australia. An SMSF is normally established in Australia, and so your SMSF will generally satisfy this first requirement.

Second condition

High-level SMSF management activities, such as reviewing your fund's investments, must be carried out in Australia.

TIP–A 'two year' safe harbour concession means that your SMSF will generally meet this condition if you intend to return home to Australia within two years of going overseas. Note, if you intend to permanently relocate overseas, this two year concession does not apply.

Third condition

The third requirement is as follows:

- the overseas member/s do not hold the majority of the fund's assets; or
- superannuation contributions cease being made to your SMSF for fund members who are no longer Australian residents (exceptions apply).

WARNING–If your SMSF does not satisfy the conditions outlined above, severe tax consequences apply. This includes tax of 47% on the value of your fund's assets less the value of any non-concessional contributions.

EXAMPLE–Francis and Martha are members of an SMSF, and they decide to go abroad for 12 months. No superannuation contributions will be made whilst they are overseas.

The SMSF should remain an Australian fund for the following reasons:

1. Assuming the fund was set up in Australia, this condition will be met;
2. The trustees only intend to move overseas for a temporary period of one year. Even though Francis and Martha may undertake high-level investment activities whilst they are overseas, their time abroad is within the two year 'safe harbour', meaning this condition is met.
3. No contributions are made for Francis and Martha whilst they are overseas.

If you plan to head abroad for an extended time for employment or other reasons, it is best to seek professional advice before you go to ensure your superannuation fund remains concessionally taxed.

"Media reports state that ASIC is warning SMSFs about investing in Bitcoin, but nothing official has been released as yet by ASIC."

"Now, the LISC will continue to be paid for concessional contributions made up to 30 June 2017."

'BITCOIN' AND SMSFS

One particular investment that has attracted a lot of media attention lately is 'Bitcoin'.

What is 'Bitcoin'?

Bitcoin is described as an online virtual currency that operates independently of a bank. Bitcoin is often referred to as 'crypto-currency' because special encryption techniques are used to manufacture the currency and verify the legitimacy of Bitcoin transfers.

The mathematical process used to create and regulate bitcoins means that they cannot easily be generated or copied. Hence, bitcoins can be exchanged for goods and services (similar to barter arrangements). Bitcoins fluctuate in value, and so they can also be purchased as an investment or for speculation.

What have the regulators said about Bitcoin and SMSFs?

Nothing official at this stage. However, the ATO has recently published information dealing with the tax side of Bitcoin investments.

Media reports state that ASIC is warning SMSFs about investing in Bitcoin, but nothing official has been released as yet by ASIC.

WARNING–Asset transfers from a related party to an SMSF are generally prohibited (except for limited exceptions such as money and listed securities). The ATO states that Bitcoin is not money, meaning that you (or any related parties) cannot transfer bitcoins to your SMSF without contravening the superannuation rules.

RECENT SUPERANNUATION CHANGES MADE

Parliament has recently voted to scrap the mining tax. As part of the deal to pass this law, a number of changes were made to the superannuation rules. These are outlined below.

Superannuation guarantee

Currently, the superannuation guarantee rate is legislated to rise from 9.5% to 12% from 1 July 2019. However, parliament has now agreed to leave the rate fixed at 9.5% until 1 July 2021. It will then rise by 0.5% each year until it reaches 12% from 1 July 2025.

Low income superannuation contribution (LISC)

The (LISC) is designed to refund the contributions tax up to $500 paid by superannuation funds on concessional contributions (e.g., superannuation guarantee) made for low income earners. Originally, the LISC was to be scrapped for concessional contributions made from 1 July 2013. Now, the LISC will continue to be paid for concessional contributions made up to 30 June 2017.

ASIC WARNING TO REAL ESTATE AGENTS

ASIC has warned real estate agents about recommending the use of SMSFs to buy property when they are not licensed to do so.

Typically, real estate agents and other property advisors do not hold appropriate financial services licenses to recommend or give their opinion on using an SMSF to buy property.

This means that they can only provide consumers with factual information about SMSFs (not give an opinion or recommendation about using an SMSF to buy property).

Also, with the increased popularity of investing in property through SMSFs, ASIC has seen a sharp increase in the number of property spruikers illegally recommending investors to set up or use an SMSF to buy property.

Like real estate agents, these spruikers often do not hold the necessary licenses and, therefore, are prohibited from providing this advice.

ASIC is working with the relevant state or territory bodies to make sure that real estate agents understand how the rules work.

EMERSON RANDELL YOUNG

Accountants & Business Advisors
ABN 88 065 325 953

Sydney
Level 9, 117 York Street
Sydney NSW 2000

GPO Box 3707
Sydney NSW 2000

Melbourne
13 Dudley Street
Melbourne VIC 3003

www.ery.com.au

admin@ery.com.au

© Insyt Pty Ltd. This information is general in nature and intended to be a guide only. You should not act on any of this information but instead you should seek professional advice specific to your circumstances.

Liability limited by a scheme approved under Professional Standards Legislation