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SMSF NEWSLETTER

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SPECIAL POINTS OF INTEREST:

1. Rules allow you to 'split' your superannuation with your spouse
2. Tips and traps when using your SMSF to invest in property

INSIDE THIS ISSUE:

SPLITTING SUPER WITH YOUR SPOUSE

One of the lesser known strategies in the superannuation rules is splitting concessional contributions with your spouse. In this article, we discuss some key points about how splitting operates in practice.

Why split contributions with my spouse?

There are a range of reasons why you may wish to split superannuation contributions with your spouse. For example, your spouse may be closer to age 60 than you (being the age at which any permitted superannuation drawn downs are generally tax free in their hands).

WARNING–The superannuation rules do not allow your SMSF to simply reallocate part of your superannuation savings across to your spouse. However, as discussed below, you can split certain superannuation contributions with your spouse.

What type of superannuation contributions can be split?

Broadly, the superannuation rules only permit you to split **concessional** contributions, such as superannuation guarantee or salary sacrificed contributions made by your employer (note, special rules apply for members of a public sector superannuation scheme). Likewise, you can also split any personal superannuation contributions for which you have claimed a tax deduction (e.g. if you qualified to claim a deduction because you were self-employed).

Conversely, the superannuation rules generally **prohibit** you from splitting superannuation contributions that are not taxed in the hands of your SMSF, such as after-tax superannuation contributions made by you personally.

WARNING–You cannot split your superannuation balance with your spouse if they are aged 65+ or they have reached age 55 and retired.

Mechanics of the splitting rules

The maximum superannuation contributions that can be split with your spouse during the 2015 income year are the **lower** of:

- 85% of your concessional contributions made during the 2014 financial year. The remaining 15% equates to the expected tax payable by your SMSF on the contributions; and
- the concessional contributions cap for the 2014 financial year ($35,000 if you were 59+ on 30 June 2013, or $25,000 for everyone else).

INFO–You generally lodge an application to split your superannuation contributions in the financial year following the one in which they were made. For example, if you wanted to split concessional contributions made for you in the 2014 income year, a completed application form must be submitted to the fund by 30 June 2015.

Superannuation splitting and the contributions cap

It is important to note that any superannuation contributions split with your spouse count against **your** concessional contributions cap (i.e. as the contributions were originally made for you).

EXAMPLE–Graeme's employer contributed $15,000 to his SMSF during the 2014 income year. Graeme wishes to split $12,750 (being 85% of the contributions made) with his wife, Anje. Generally speaking, the contributions can be split with Anje, provided that:

- Graeme's SMSF trust deed does not prohibit superannuation splitting; and
- the application is made during the 2015 income year.

However, the contributions **still count** towards Graeme's concessional contributions cap.

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"If your SMSF is paying a pension, it generally needs to have sufficient cash reserves to fund the annual pension payment."

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PROPERTY INVESTMENT AND SMSFS

This article discusses a number of important issues recently identified by the ATO regarding property ownership by SMSFs.

Investment strategy

A key responsibility of being an SMSF trustee is deciding on, and implementing, investment decisions that protect your retirement savings.

When considering the investment strategy, the superannuation laws require you to consider the 'liquidity' and cash flow position of your fund.

This means you need to figure out:

- your fund's cash outgoings (i.e. expenses, tax and paying superannuation benefits); and
- how readily your fund's assets can be converted into cash to pay these outgoings without incurring significant losses on selling the assets.

If your SMSF is paying a pension, it generally needs to have sufficient cash reserves to fund the annual pension payment. Hence, if a large proportion of your SMSF's assets cannot easily be converted into cash, and are generating very little cash flow, your fund might run into difficulties meeting the minimum pension payment obligation.

EXAMPLE–Kate, aged 56, is an SMSF trustee. Recently, her fund bought a residential property using both a permitted borrowing arrangement and most of her superannuation savings.

In these circumstances, Kate's fund could experience cash flow difficulties if the investment does not generate enough rental return to pay the fund's expenses and any benefit payments (e.g. if Kate were to draw down a transition to retirement pension, minimum pension payments need to be made every year).

Consideration of insurance

Past bushfires and flooding highlight the significant damage that can be inflicted on property investments. With the potential for unforeseen events to negatively impact on an SMSF's property investment, the ATO indicated that trustees holding property need to consider appropriate insurance. For example, the ATO states that the trustees should ensure that the fund has sufficient insurance to cover against any property damage (general insurance).

Without adequate insurance, you could jeopardise your SMSF's assets – potentially placing your retirement savings at risk.

Use of property in retirement

The ATO also highlighted that retiring or starting a pension does not give you the green light to live in or lease a residential rental property from your SMSF.

More specifically, even though you are 'retired', the superannuation rules state your fund is only permitted to pay superannuation benefits as a pension or lump sum, where the relevant rules are met. As living in a property (even if you pay rent) is a form of benefit being provided to you, this breaches the superannuation rules, and could result in penalties arising.

WARNING–It is not the ATO's role to check that your SMSF investments are sensible–as trustee, you are ultimately responsible for managing the fund.

EXAMPLE–Serina has retired, and her SMSF owns a house on the coast in NSW. Serina's business has wound down, and she would like to live in the beachside property to be closer to her parents.

Even though Serina has retired, the superannuation rules do not permit her to live in or otherwise occupy the property whilst it is owned by her fund.

Offshore investing

Some SMSFs have been considering the purchase of property overseas. The ATO has reminded trustees that the risks and issues of investing in offshore property are higher as compared to investing in Australian property.

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