BWA
ACCOUNTANTS +
BUSINESS ADVISORS

SMSF NEWSLETTER
July 2015

SPECIAL POINTS OF INTEREST:

1. **Recent case demonstrates high standards expected of trustees**
2. **Making the most of superannuation contributions for children**

INSIDE THIS ISSUE:

SPEEDING DRIVER BOOTED FROM HIS SMSF

The superannuation law requires SMSF trustees to maintain high standards, even outside of their superannuation dealings. This is because the system is entrusting you to be of good character and stick within the rules when managing your superannuation. Failing to meet these standards could result in you being barred from being a trustee of an SMSF.

This happened recently, whereby a speeding driver (Mr Shaw) falsely nominated relatives on multiple occasions, leading to a court conviction. After being disqualified as trustee, he was unable to convince the Tribunal to reinstate him as a trustee of his SMSF.

So, what happened to the speeding driver?

After accumulating excessive demerit points from six speeding offences over a two-year period, Mr Shaw elected to be on a good behaviour bond for 12 months instead of losing his license.

He was then caught speeding another six times in six months and made false statutory declarations that other relatives (including his wife) were driving the car at the time of the speeding offence. He did this to avoid his license being suspended.

After being caught making false declarations, a Court convicted Mr Shaw on five counts of conspiracy. As the offence involved dishonest conduct, it resulted in him becoming a disqualified person and being unable to act as trustee of his SMSF.

He then asked the ATO if they could waive his disqualification status, and allow him to remain a trustee of his SMSF.

The ATO refused to allow Mr Shaw to remain a trustee of his SMSF because it considered that Mr Shaw 'knowingly and systematically' made false declarations, which is contrary to the standards expected of a trustee.

On appeal, the Tribunal member was not convinced Mr Shaw had mended his ways, and accordingly agreed with the ATO that he should not be allowed to be trustee of his SMSF.

As can be seen from Mr Shaw's example, being an SMSF trustee carries a fair degree of responsibility. Accordingly, individuals who are convicted of an offence involving dishonesty cannot be trustee of an SMSF (exceptions apply). The law also excludes other individuals from being trustee, such as undischarged bankrupts.

In addition, the ATO can also disqualify you from being an SMSF trustee if it believes you have a poor attitude to complying with the superannuation laws.

Implications of being disqualified

Being disqualified from acting as an SMSF trustee generally means you need to restructure your superannuation savings, as follows:

- **cease acting as trustee**–you must immediately discontinue acting as trustee. As all members must be trustees, your benefits must be transferred out of the fund, or an approved trustee appointed to the fund. Note, if you satisfy an appropriate condition of release you can cash out your superannuation benefits from your SMSF.
- **Notify the ATO**–the remaining trustees must notify the ATO of the trustee change within 28 days.

TIP–Although the disqualified member must cease acting as trustee immediately, the superannuation laws allow six months for the fund to restructure as outlined in the bullet points above (e.g. by rolling over the disqualified member's balance to a new fund).

CONTRIBUTING SUPERANNUATION FOR CHILDREN

Although we pay more attention to superannuation as we get older, some parents and other relatives are keen for a child to start building their superannuation savings from an early age. This article discusses the different alternatives available to contribute for children under 18 years of age.

Children who are employed

Employers are generally compelled to make superannuation guarantee contributions for their employees (exceptions apply e.g. no support is required for **adult employees** who earn less than $450 of salary and wages in a calendar month).

However, different rules apply to employers who hire children under 18. More specifically, employers are not required to make superannuation guarantee contributions for children under 18 who only work part-time (less than 30 hours per week).

Therefore, in most instances, employees under 18 working part-time will not receive superannuation guarantee support from their employer.

EXAMPLE–Madison, aged 17, is currently in Year 11. On the weekends, she works for 6 hours for a local retailer. Madison's employer is not obliged to make superannuation guarantee contributions for her, because she is under 18 and working less than 30 hours per week.

Working in the family business

Instead of working for an independent business (such as McDonalds), the child may genuinely be employed in the family business as a normal, arm's length employee.

In addition to wages the child receives for performing bona fide work duties for the business, the business is entitled to voluntarily contribute, and claim a deduction for, superannuation contributions made for the child (conditions apply). Note, the concessional contributions cap of $30,000 (2016 income year) applies to the child.

WARNING–Claiming deductions for family members is restricted if the underlying business is a contractor who essentially operates in a similar fashion to an employee.

Children claiming a deduction for personal contributions

The superannuation rules allow an individual to personally claim a tax deduction for superannuation contributions, provided specific conditions are met.

Generally speaking, a deduction for a personal superannuation contribution can only be claimed by individuals who receive little or no superannuation support.

In ***addition to*** satisfying the conditions that apply to adults seeking to claim a personal deduction for superannuation contributions, a child aged under 18 at the end of the income year must have derived income from either:

- carrying on a genuine business; or
- being an employee.

WARNING–This means that children under 18 who are not in business or employed cannot claim a personal deduction for superannuation contributions they make.

Making non-concessional contributions for children

A contribution generally has to be made by you personally to count against your non-concessional contributions cap. This means that if, for example, you contribute superannuation for your brother or sister, the contribution will be a concessional contribution because they have not made it personally.

However, as an exception to this rule, a contribution made for a person under 18 will be a non-concessional contribution (provided it is not made by the child's employer). This rule applies to contributions made for any child under 18, not just your own children.

EXAMPLE–Sam makes an after-tax superannuation contribution of $100,000 for his grandchild, Karen. In these circumstances, the contribution is a non-concessional contribution. This means that it will count against Karen's non-concessional contributions cap of $540,000 (2016 income year).

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