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ACCOUNTANTS +
BUSINESS ADVISORS

SMSF NEWSLETTER

August 2015

SPECIAL POINTS OF INTEREST:

1. What type of property can be acquired by an SMSF from a related party?
2. ATO on the war path about trustees 'shopping around' for auditors
3. More time granted for medium and large employers to comply with SuperStream
4. Q & A - taxpayer aged 57 wants to know about whether her SMSF needs to withhold tax

INSIDE THIS ISSUE:

SMSFS BUYING BUSINESS PROPERTY

Generally speaking, your SMSF is prohibited from acquiring real estate from a related party unless it qualifies as 'business real property' (and is acquired at market value). In this article, we discuss different types of real estate and whether they qualify as business real property.

Background – acquisitions from related parties

As a general rule, your SMSF cannot acquire assets from you (or a related party), except for:

- listed securities; or
- business real property acquired at market value (other limited exceptions apply).

Broadly, 'business real property' is real estate that is used **solely** in a business (exceptions apply).

Commercial property

'Business real property' includes business premises such as a factory, shop premises or a warehouse. Interestingly, 'business real property' not only includes commercial properties your family group may operate a business from, but it also extends to commercial properties that are rented to unrelated businesses. The key is that the property must be used 'wholly and exclusively' for business purposes.

EXAMPLE–Sam owns a retail shop in a local shopping strip from which he carries on a hair dressing business. The shop is 'business real property'. His SMSF can acquire the property from Sam at market value.

Residential property

Generally, a stock-standard residential rental property leased to a tenant to live in will not usually qualify as 'business real property' because it is not used in a 'business'.

House rented to a business

In contrast to a property leased to tenants to live in, a residential property leased exclusively to a business would generally qualify as 'business real property'. The test is not the appearance of the property, but whether it is used solely in a business.

WARNING–Your home will generally not qualify as business real property, even if you carry on business from home or have a home office. This is because your house is not exclusively being used for business purposes (exceptions apply for farms).

EXAMPLE–Dr Mary owns a house that is exclusively used by her medical business. She wants her SMSF to acquire the property at market value and rent it back to her. The property qualifies as 'business real property' as it is exclusively used in a business. Her fund is permitted to buy the property.

Holiday accommodation

Residential property used for holiday accommodation (e.g. Gold Coast properties) generally will not qualify as business real property and, therefore, cannot be acquired by your SMSF from a member or other related party.

However, if you own a residential property leased directly to the accommodation provider (such as a hotel chain), the property **may qualify** as business real property. This is because the hotel chain uses the property to carry on its business.

EXAMPLE–Pam owns a property on the Gold Coast that she lets on Stayz, and a local real estate agency based on the Gold Coast. The property is not business real property. Pam's SMSF is not permitted to acquire the property from her.

WARNING–Capital gains tax and any applicable stamp duty costs also need to be considered. Additionally, other superannuation law considerations apply (e.g. investment strategy).

"In other words, the ATO is concerned that some trustees are 'shopping around' for a clean bill of health from an SMSF auditor to avoid being reported to the ATO."

"As you are under 60 years, of age, it is likely that part of your pension is taxable - requiring tax to be withheld from the pension payment."

ATO WARNS AGAINST AUDITOR SHOPPING

The ATO has recently clarified its views about trustees who seek to change auditors before the audit is complete.

By way of background, the ATO considers that the annual independent audit of your SMSF plays a crucial role in maintaining the integrity of the SMSF sector.

This audit provides the Government and the public with assurances that SMSFs are complying with the superannuation laws. This is important because of the significant taxation concessions granted to SMSFs.

Hence, SMSF auditors must report certain breaches of the superannuation laws to the ATO to keep it informed of trustee behaviour.

Recently, the ATO highlighted its concerns about some SMSF trustees seeking to change auditors mid-stream if concerns or issues are raised by the original auditor.

In other words, the ATO is concerned that some trustees are 'shopping around' for a clean bill of health from an SMSF auditor to avoid being reported to the ATO.

The ATO has clarified that trustees are free to change SMSF auditors. However, there is a catch – the original auditor is still compelled to report the contravention/s to the ATO, whether or not they complete the audit.

Furthermore, the ATO also stated that it expects the SMSF auditor to report to it that the trustees removed them from the audit engagement before completion.

SUPERSTREAM - ATO EXTENSION

The ATO has announced that it has extended the time for SuperStream implementation to 31 October 2015 for medium to large employers (i.e. those employers with 20 or more employees).

SuperStream is a Government initiative that standardises how employers both contribute and report superannuation contributions made for employees (exceptions apply).

The ATO stated that the following options are available to assist employers comply with SuperStream:

- upgrading your payroll software;
- using your default superannuation fund's portal; or
- using a clearing house service.

The ATO also provides a free online service to help small businesses meet their superannuation guarantee obligations. From 1 July 2015, the following businesses can use the ATO's clearing house service:

- small businesses with fewer than 19 employees; and
- businesses with turnover of less than $2m (even if the business has more than 19 employees).

Q & A – DEDUCTING TAX FROM BENEFIT PAYMENTS

Question - I am 57, and have started a transition to retirement pension from my SMSF. Does my fund need to withhold tax from the pension payments?

Answer

Generally, yes. As you are under 60 years, of age, it is likely that part of your pension is taxable - requiring tax to be withheld from the pension payment.

More specifically, a pension payment normally consists of the 'taxable' and the 'tax free component'. Tax should be withheld from the 'taxable component' of your pension payment due to your age.

Your SMSF will need to register for 'Pay As You Go' withholding with the ATO, and remit the tax by the due date. Also, ensure that you provide your SMSF with a TFN declaration.

A PAYG payment summary must also be provided to you by your SMSF after year-end. Finally, a PAYG withholding payment summary statement should also be lodged with the ATO after 30 June. Once you reach 60, your fund no longer needs to withhold PAYG (exceptions apply).

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