

Keeping out of the ATO spotlight

Last month, Tax Commissioner Michael D'Ascenzo announced the ATO's audit program for the coming year. High on the list in the small business area is additional scrutiny on taxpayers who are involved in the sale, purchase, or restructure of their business. These succession events bring an increased likelihood of significant CGT transactions and ATO evidence is that there are plenty of instances where taxpayers are getting the tax treatment wrong. And, unfortunately in most cases this means understating the amount of tax involved or not reporting it at all.

The sale of a business, an interest in the business, the introduction of partners or succession to family members or employees all have tax consequences. The small business CGT concessions can significantly ease the pain but it all depends on if they apply and whether they have been applied correctly. These are not issues to be looking at after the event. Transactions of this type can be worth hundreds of thousands if not millions of dollars. A consequence is that where tax is payable it can be a significant amount. The range of concessions available, do allow much of this tax liability to be either removed or deferred – but it is not automatic. The way in which a transaction is structured can often change the tax effect. Once the transaction has occurred however much of the tax outcome is locked in.

Planning is the key. If you are contemplating any changes in your business, spend some time with us beforehand to review the tax effect. Not only will it save you any embarrassing questions from the Tax Commissioner but you could also save thousands of dollars in tax in the process. Be aware too, that changes of ownership within the family or moving your business from one structure to another can also trigger a tax consequence. You may see it as still under the same ownership but these related party transactions can all trigger tax. And, even where you transfer an asset for nominal value the Commissioner is given the power to substitute a market value to the transaction and tax it accordingly.

The ATO has put us all on notice that they will be looking closely at any succession events. Don't get caught with an unexpected tax problem. Talk to us in advance and we will work through the structuring and tax issues with you to achieve the best outcome.

Did you know?

The origin of the word Mortgage. Ever thought your bills were killing you? The mort part of mortgage is the same syllable that appears in mortify, rigor mortis, and mortician. Yup, it's all about death, French (and ultimately, Latin) style, but a mortgage (literally "dead pledge") was so called originally because it was absolute: the property was dead to the lender if the debt was paid, and dead to the borrower if it wasn't. visualthesaurus.com

Crackdown on perks from DIY super funds

Be wary of the investment decisions you make in your Self Managed Superannuation Fund (SMSF). If any members of the fund receive any perks from fund investments such as discount cards, cheap or upgraded holiday accommodation, or memberships, the Tax Office may look more closely at you.

A new draft ruling (SMSFR 2007/D1) released earlier this month by the Tax Office is compulsory reading for all Trustees of SMSFs. The ruling spells out how the Tax Office expects Trustees to act when making investment decisions for their funds. In particular, the Tax Office is looking closely to see whether members of the fund receive any perks or benefits from investment decisions made for the SMSF and whether those benefits were the real motivation for the investment decisions made.

The ruling is based on the application of the 'sole purpose' test in Section 62 of the *Superannuation Industry Supervision Act*. Broadly, the sole purpose test ensures that a SMSF uses concessional tax superannuation savings for the sole purpose of providing retirement or death benefits for or in relation to its members. The ruling sets out how the Tax Office will judge the investment decisions you make for your fund and whether or not the investments were in the best interests of the fund. In particular, if members received a benefit as a result of the investment decisions made for the fund was that benefit incidental or deliberate? Where the benefit was deliberate, under the Tax Office's interpretation in this ruling, the fund may breach the sole purpose test, be deemed non-compliant and lose its concessional tax status.

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Here's an example from the ruling:

The trustee of an SMSF invests in a block of holiday apartments at a popular tourist destination. The members of the SMSF holiday in this area every year and prior to making the investment owned a separate holiday house nearby.

The trustee, when undertaking the investment, additionally negotiated for members of the SMSF to be able to stay at the apartments for free. This is not a standard feature of the investment. The members of the SMSF sell their holiday house immediately after the SMSF makes the holiday apartment investment.

It's fairly clear that because of the separate negotiation for the free accommodation for members of the fund, the benefit provided by the SMSF's investment in the holiday apartments was an intentional part of the investment decision. Because of this benefit, the SMSF has made an investment that is not for the sole purpose of providing retirement or death benefits for or in relation to its members. As a result, the fund breaches the sole purpose test.

But what if as part of a portfolio of property investments and in line with the SMSF's investment strategy, the trustee invests in a number of holiday apartments through a property syndicate. All investors in the property syndicate pay normal market rates when staying at the apartments but, subject to availability on the day of arrival, may be able to upgrade their accommodation at no extra cost. The SMSF cannot dispose of this right to its financial advantage. Two members of the SMSF stay at the apartments and their accommodation is upgraded.

In this situation, the fund has not breached the sole purpose test as the benefit provided to the members is clearly incidental.

Now your superannuation fund may not be investing in holiday apartments but what about holiday homes or collectables. There are a number of investments where it could be seen that there was an additional benefit provided.

The potential problem with this ruling for Trustees of SMSFs is that where members have received a benefit as a result of the funds investments, regardless of the authenticity of the investment, they may still breach the sole purpose test under this definition.

What is clear is the importance of Trustees having a documented investment strategy for their fund and ensuring that they work within its boundaries. Trustees need to be able to prove that the investment decisions they make are in line with the strategy and that the investment was made for sound reasons.

This ruling is the first in a series that will define the Tax Office's interpretation of the rules governing SMSFs. It also enables the Tax

Office to spell out exactly how it will judge how Trustees use fund assets and the investment decisions made.

It is hardly surprising that the Tax Office is looking closely at SMSFs. In the June quarter alone, almost 20,000 new funds were established; mostly by those seeking to take maximum advantage of the new super rules. In total over the last financial year, approximately 42,000 funds were established.

With such a huge amount of money invested in SMSFs, it's easy to see why it is such a focus and no one should be surprised if the Tax Office makes an example of those who deliberately flaunt the rules.

If you need assistance understanding the rules governing your SMSF or assistance with your investment strategy, talk to us today. The Tax Office also has a range of materials available for Trustees on the ATO website including SMSF 2007/D1.

Increase your retirement income

If you are looking for ways to maximise your retirement income, upcoming retirement income stream changes provide a unique window of opportunity but you must act now as the window closes on the 20th September.

Only half of a complying income stream purchased prior to 20 September 2007 is included in the assets test for Centrelink benefits. Those purchased after that date will have 100% of the invested amount included as an asset.

Remember, you only need to qualify for \$1 of the Age Pension to receive a range of other concessions on things such as health, travel and utilities saving thousands for some each year.