End of 2015-16 SMSF tax considerations

6 June 2016

Tax planning and strategies can be important as we approach the end of the financial year. Here are just a few key tax considerations to be aware of as we approach year end to ensure the self-managed superannuation fund (SMSF) and its members make the most of available tax deductions and concessions.

Tax exemption on pension earnings

In order to be eligible to claim exempt current pension income (ECPI) for the 2015-16 financial year the SMSF must have a pension interest. The trustee must also make a required minimum pension payment in form and effect prior to 30 June 2016.

If the pension is a transition to retirement (TTR) pension, then generally no more than 10% of the balance at 1 July, or if later, the commencement date can be paid during the year.

If the minimum payment is not made, or the maximum payment is exceeded for a TTR pension, then the fund may lose its ability to claim ECPI in the annual return. This can also result in the pension ceasing and having to be recommenced the following year, with the trustee being required to recalculate the tax free and taxable components of the pension.

If a member falls short of meeting their pension payments consider whether the ATO Commissioner's General Powers of Administration concession can apply. This is applicable where a shortfall in the minimum payment occurred due to an honest mistake or due to matters outside the trustee's control, where there is only a small underpayment.

More information on what is a small underpayment can be found in our blog article 'What is a small underpayment of a pension?'.

Ensure segregated assets appropriately documented

For funds employing segregation strategies during the financial year it is important to ensure that:

- pension payments are paid from the segregated account if a pension is fully segregated
- expenses are appropriately apportioned between unsegregated and segregated accounts, or notional sub-accounts maintained
- segregation is appropriately documented in the fund's investment strategy to avoid Part IVA issues
- the value of any segregated assets do not exceed the value of the pension accounts

If segregation is not appropriately administrated, for example payment has been taken from the wrong bank account or segregation decisions have been made in arrears, this may result in the segregation strategy being invalid. This can have implications for the taxation of earnings, in particular, the capital gains on assets intended to be segregated to a pension.

Information on dealing with segregated bank accounts and notional sub-accounts can be found in our Technical Hub article 'Segregated pensions – meeting the pension standards when using notional sub-accounts'.

Notice of intent to claim a deduction for personal contributions

If a member has made contributions to the SMSF for which they intend to claim or vary a tax deduction ensure the trustee receives a valid notice of intent and has acknowledged the notice.

The ATO has expressed concern that members are incorrectly claiming deductions. Remember that a member must provide the trustee with their notice (or variation) by whichever of the following dates occurs first:

- the day they lodge their income tax return for the income year in which the contribution was made
- the end of the income year following the income year in which the contribution was made

The trustee is also required to acknowledge the member's valid notice (without delay), unless the value of the relevant superannuation interest on the day the trustee receives the notice is less than the tax that would be payable in respect of the contribution if they were to acknowledge the notice.

More information on the correct process for an SMSF where a member is claiming a deduction for personal contributions can be found on the ATO website – there is an SMSF technical article called 'Notice of intent to claim a deduction'.

Spouse contributions

Clients can contribute to a spouse's superannuation fund. These contributions are non-concessional contributions that a client can make on behalf of their spouse. By doing so, the client can help build their spouse's superannuation and may be eligible for a tax offset of 18% on contributions up to $3,000.

Spouse contribution tax offset 2015/16	
Maximum tax offset	$540

To be eligible:

- clients must make a non-concessional contribution into their spouse's complying superannuation fund in the financial year and not claim a tax deduction for the contribution
- the client's spouse must be under age 65, or if they have reached age 65 but are under age 70, then meet the work test
- both the client and their spouse must be Australian tax residents and not be living separately and apart on a permanent basis, and
- the client's spouse must have assessable income, total reportable fringe benefits amounts and reportable employer superannuation contributions of less than $13,800.

Remember that spouse contributions count towards the spouse's non-concessional contributions cap.

Tax file numbers

Help clients avoid an additional tax of 34% (including the temporary budget repair levy) on mandated employer contributions by ensuring their Tax File Number (TFN) has been provided to the SMSF trustee and the fund has registered for PAYG withholding where members are under 60-years-old and receiving a pension.

Additionally, where no TFN is provided trustees may not be able to accept any personal contributions. This impacts strategies such as those to obtain the Government co-contribution and the spouse contribution tax offset.

Deductible expenses

It may be worth discussing with clients the possibility of pre-paying or bringing forward tax deductible expenses to help reduce their taxable income. This can be particularly useful for superannuation clients who are close to or slightly above the $300,000 threshold (income for surcharge purposes plus low-tax contributions) for division 293 tax (an additional 15% tax on 'taxable contributions').

Deductible expenses include:

- donations to charity
- premiums for income protection insurance held outside of superannuation environment
- interest payments on investment loans
- the cost of maintenance and repairs to investment properties
- motor vehicle

In an SMSF expenses are generally deductible to the extent that they were incurred on assessable income. Some expenses like life insurance and the supervisory levy are fully deductible. Others must be apportioned. ATO ruling TR 93/17 provides guidance on what expenses can be claimed in an SMSF.

We still await an update on this ruling however you can read our Technical Hub article 'Are you under-claiming SMSF tax deductions?' on how apportionment works to ensure your clients' SMSF is making the most of their deductions.

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