The Super Sleuth

Cutcher's Clues to Superannuation

DETECTION • ANALYSIS • SOLUTIONS

IN THIS ISSUE

MAY 2004

$4,000,000 Tax Free Retirement Benefit!

Since the introduction of the Small Business Capital Gains Tax (CGT) concessions in 1999, it has been increasingly more important that your business structure, including business premises ownership, are held within the correct entities.

With appropriate planning, a $4,000,000 capital gain can be shared between a person and their spouse …tax free!

EXAMPLE ONLY	PERSON A	SPOUSE
Capital Gain $4,000,000	2,000,000	2,000,000
50% Active Asset Discount	(1,000,000)	(1,000,000)
Sub Total	1,000,000	1,000,000
50% Individual Discount	(500,000)	(500,000)
Sub Total	500,000	500,000
Small Business Retirement Exemption *	(500,000)	(500,000)
Taxable Capital Gain	**NIL**	**NIL**

* Lifetime Limit $500,000 per person, if < 55 years old Eligible Termination Payment to Super

Whilst the example above is oversimplified, the potential for tax free capital gains are enormous, provided 2 individuals can meet 3 basic tests^:

- Net Assets < $5,000,000
- The gain can be attributed to a Controlling Individual(s)
- The asset being sold is an Active Asset (an asset used for business)

^ These 3 tests have been over simplified and will differ depending on your personal circumstances

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The Super Sleuth Seminar

Join us to find out **"How to sell your business and avoid Capital Gains Tax"** and **"What happens to your Super benefits upon Death"**. Our qualified advisors will be on hand to answer your questions.

WHEN **Thursday 13 May 2004** 6pm-8pm

WHERE **Bimet Executive Lodge** 121 Union Street, The Junction
Canapes and Refreshments provided

RSVP **Thursday 6 May 2004** Call (02) 4928 8500

COST **FREE OF CHARGE**

Book early as numbers are limited!

$4,000,000 Tax Free Retirement Benefit!

...continued from front page

Planning to access these concessions may take some significant changes in the way your business is structured, however the upside is substantially worthwhile.

Many business owners have purchased their business premises and have large unrealised capital gains with the strong growth in recent property values. This capital gain can be effectively **'unlocked'** by selling the premises to a Self Managed Superannuation Fund with the Super Fund paying cash for the property and then leasing the property to the business.

The cash received can then be used to:

- retire debt related to the property
- fund a contribution to Super for the Small Business Retirement Exemption
- retire other personal debts (eg: home mortgage)

Selling your business premises to your own Self Managed Super Fund requires very specific and detailed structuring advice to meet both Superannuation and Income Tax Legislation, however, the resultant debt reduction and potential tax free capital gain make it a strategy that cannot be ignored.

Superannuation Surcharge Lowered

For the past 7 years, the maximum rate of superannuation surcharge has been set at 15%. For the 2003/04 Financial Year onwards, this rate is being reduced to the following levels:

2002/03	2003/04	2004/05	2005/06
15%	14.5%	13.5%	12.5%

The surcharge rate is based on the Adjusted Taxable Income (ATI) of the taxpayer. (ATI is your taxable income plus superannuation contributions plus reportable fringe benefits).

For the 2003/04 Financial Year, the maximum rate of the Superannuation Contributions Surcharge is 14.5%, where a person's ATI exceeds the upper threshold.

The surcharge is phased in from 0% to 14.5% as shown:

	Adjusted Taxable Income			
Year	Lower Threshold	Upper Threshold (i.e. 14.50% surcharge applies)	Denominator	Maximum rate of Superannuation Contributions Surcharge
2003/04	$94,691	$114,981	$1,399	14.50%

For example if in 2003/04 a person's ATI = $97,000 then the surcharge rate would be 1.65047%. (Surcharge rate (%) = ($97,000 - $94,691)/$1,399 = 1.65047%)

SMSF Assets ...What Are They Worth?

The ATO expects all Self Managed Super Funds to value their assets at their current market value. But how is that determined?

Market value is defined as being the amount a willing buyer of the asset could reasonably be expected to pay a willing seller where:

- the transaction was at arm's length
- the sale occurred after proper marketing
- both buyer and seller acted prudently in relation to the transaction

Costs incurred in the notional selling of the asset should also be taken into account.

The ATO has outlined that assets do not always need to be valued by a qualified valuer. Some assets may be quite simple and easy to value, that anyone, including the trustee, can value the asset.

A qualified valuer would be required to value an asset where the asset is unique, complicated and difficult to calculate, or where the asset represents a significant proportion of the fund's value.

Thinking of Retiring?
– Think Re-Contribution!

If you are approaching retirement age and have been contributing to superannuation for many years, changes to the treatment of lump sums taken from a superannuation fund in 1983 may still benefit you.

Superannuation benefits that accrued prior to 30 June 1983 are only taxed at a maximum of approximately 2.5% when taken as a lump sum from a superannuation fund, making it an extremely cheap way of getting cash out of the fund pre retirement for personal or investment related activities.

Should all of this money not be required, it can be re-contributed to super as an undeducted contribution prior to commencement of a pension.

The calculation of the amount that relates to prior to 30 June 1983 is based on days of service. Further, $117,576 (2003/04) can be withdrawn tax free from superannuation provided there have been no previous amounts withdrawn, thus resulting in a significant amount that can be withdrawn tax effectively.

Employer Expenses Are Not Contributions

It has long been a practice of employers to pay expenses on behalf of SMSF trustees in lieu of making a contribution to the fund.

The employer would claim a deduction for the expense paid and not physically pay a contribution. In other words, the employer was taking a short cut!!

This should not happen. The ATO has expressed its view that there is no contribution as there is no payment to the fund, therefore a deduction can not be claimed.

It also raises a failure to comply with one of the covenants of the Superannuation Industry Supervision (SIS) Act, that is, failure to keep money and assets of the fund separate from money and assets of the employer sponsor.

For Example: JANE

Age:	64	**Lump Sum Taken:**	30 June 2004
Eligible Service Period:	1 July 1973	**Superannuation Benefits:**	$800,000 (all taxed)

1/7/1973	$55,975 (3,652 days)	**30/6/1983**	$117,576 (7,671 days)	**30/6/2004**

Assuming Jane was on the highest marginal tax rate the following tax liability would arise.

	Lump Sum Amount	Assessable	Tax
Pre 1 July 1983 Component	55,975	5%	$1,315
Post 30 June 1983 Component	117,576	NIL	NIL
Total Tax			**$1,315 ***

*Not including Medicare Levy.

Therefore, a lump sum withdrawal of $173,551 from superannuation can be made, only incurring a $1,315 tax liability.

The $117,576 post 30 June 1983 tax free amount is indexed each year. As illustrated above, should this lump sum, or part of it, be re-contributed back in to the SMSF, a tax free element is created within future allocated pension payments.

Also, the amount re-contributed does not pay any contribution tax when received by the fund.

Can SMSFs Borrow Money?

Generally the answer is NO, a SMSF cannot borrow money from an external source.

However, there are a few exceptions. The SMSF can borrow, so long as the borrowing is used:

- to pay a beneficiary a legally binding payment, that the trustee would not be able to make unless the borrowing was in place. Such borrowings must not exceed a period of 90 days.
- on an irregular basis to cover settlement transactions. Such borrowings should not exceed seven days.
- to pay superannuation surcharge that the trustee would not be able to make unless the borrowing was in place. Such borrowings should not exceed 90 days.

An overriding limit of 10% applies to all borrowings. That is, the total of all borrowings must never exceed 10% of the market value of the assets of the fund.

Contravention of the borrowing rules can result in a civil penalty order or criminal prosecution. In addition the fund may be refused complying status.

Significant Tax Savings With Transitional RBLs

...A Reminder!!

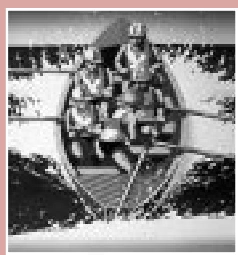
If you were aged over 45 at 30 June 1994, you may be entitled to apply for a Transitional Reasonable Benefits Limit (RBL) and receive significant tax savings.

Instead of having your superannuation benefits assessed against the standard flat dollar limits, you may be entitled to apply for a Transitional RBL, which entitles you to accumulate benefits far in excess of the standard amounts.

This can translate into massive tax savings, because your superannuation benefits may in fact fall under the Transitional RBL limits, thereby avoiding excessive benefits tax.

This not only has an implication when you are alive and drawing down an allocated pension, but also on death when excessive benefits are taxed at 48.50%.

Find Out More...



The rules surrounding purchasing artwork as part of your SMSF are very complex and precise. If you would like to find out more, we are holding an informal seminar at Cooks Hill Gallery on **Wednesday 26 May**.

We will take this opportunity to further explain the regulations surrounding “Artworks as in-house Assets” while enjoying the works of Australian artist James Willebrant.

Doors will open at 6pm with the information session taking place at 6.30pm. The evening is **FREE** and offers a wonderful opportunity to look at the unique style of James Willebrant’s artwork. To attend please see the enclosed flyer or alternatively **call us on 4928 8500** to reserve your place.

RSVP Tuesday 18 May.

Get Your Money Out Of Super Before Retirement??

Did you know a SMSF can purchase any shares held by the members?

Most people were given shares when companies demutualised and listed their shares on the sharemarket, for example Telstra, NRMA, AMP etc.

By your SMSF purchasing the shares, cash is paid out of the fund and into your own hands, which can be used for personal reasons such as debt repayment.

This way the shares are not sold outright and at the same time cash, which would normally be preserved till retirement, is accessed from the SMSF.

But be careful, such a transaction is treated as a 'disposal in the members hands' and as such will create either a Capital Gains Tax profit or loss.

Allocated Pension Rule Change

Legislation previously enabled you to commence an allocated pension on or after 1 April of a year, but not physically draw a pension payment out of the fund until 30 June the following year.

This effectively gave you 15 months tax free investing.

This rule has been amended, to now effect pensions that commence on or after 1 June of a particular year, rather than 1 April. That is, if you commence an allocated pension on or after 1 June 2004, you don't need to physically make a payment till 30 June 2005.

Compared to the previous arrangements, if you commenced your allocated pension say 1 April 2004, you must physically make the appropriate pro rata allocated pension payment for the period 1 April 2004 to 30 June 2004.

Whilst the window of tax free investing has been closed somewhat, there still exists a major tax planning tool to delay the commencement of an allocated pension to 1 June of a year.

Thereby providing 13 months tax free investing!!

Manage Your SMSF Like A Business...

Many people are attracted to the concept of having the control and flexibility of running their own SMSF, but are not sure about managing the investment process.

Given the amount of money people have invested in superannuation may well be their largest financial asset after the family home, places even greater significance on successful investment.

Your SMSF portfolio should be viewed as a separate business entity and managed on a professional basis, with dedicated resources.

Managing an investment portfolio requires human resources, advanced technology and professional expertise to ensure that the returns are not only in line with expectations and risk profile, but the often onerous and cumbersome administrative requirements are attended to in a timely and efficient manner.

Most self-employed persons invest significant amounts of capital into their own business and devote their working life to earning an income from that business. An investment portfolio can often have more capital invested than the average business, but is not given the time or effort required to manage it professionally.

Cutcher & Neale Investment Services is dedicated to managing your SMSF like a business. We believe this is the cornerstone of successful SMSF investing.

Government Matches Your Contributions Up To $1,000!!!

A government initiative known as Co Contribution for Low Income Earners is aimed at encouraging low income earners to save for their retirement. It provides certain people the opportunity to receive up to **an additional $1,000** superannuation contribution from the government.

Where a taxpayer has assessable income of less than $27,500 in a year, the government will match their personal contributions, dollar for dollar up to an additional $1,000.

The $1,000 contribution is reduced by $8 for every $1 the assessable income is over $27,500, eventually cutting out to nil where assessable income is over $40,000.

In addition to the above assessable income test, the co contribution will only be provided if the taxpayer:

- has received employer contributions during the year
- is less than 71 years old at the end of the year and
- is not eligible to make a tax deduction for any of their superannuation contributions. For example, Self employed contributions.

Therefore, if you satisfy the above requirements, and make contributions to superannuation, the government will match that contribution up to $1,000.

Those who may be eligible include:

- Spouses working part time
- Students who are working
- Taxpayers who retire during the year
- Higher income level taxpayers that make large salary sacrifice contributions.

This co contribution will be treated as an Undeducted Contribution and will not be subject to contributions tax or assessment for RBL purposes.

So if you earn say $20,000 for the 2004 financial year, and your employer has contributed 9% of your wages to superannuation, you should consider contributing $1,000 of your personal money to your superannuation fund, and get $1,000 from the government.

That's a 100% return on your investment!

100%

Did You Know...?

A SMSF paying an allocated pension to a member cannot continue to pay a life insurance premium for the life of that member.

This is because the member's balance must be used to fund the payment of the allocated pension to that member and no other purpose.

To continue to maintain life cover, it would be necessary for the SMSF to also have an accumulation account open for that member. But this is not possible if the member has reached a compulsory cashing event, for example, retired and over 65.

Cutcher & Neale
CHARTERED ACCOUNTANTS

Phone: (02) 4928 8500
Fax: (02) 4926 1971
Email: supersleuth@cutcher.com.au
Internet: http://www.cutcher.com.au

Cutcher & Neale
The Bolton Building
25 Bolton Street, PO Box 694
Newcastle NSW 2300