BRIEFINGS

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Deadline Looms for SMSFs and Collectibles

Does your self-managed superannuation fund (SMSF) own a motor vehicle, artwork, wine, coins, jewellery or other collectibles?

More stringent rules for how these collectible and personal use assets are managed come into effect for all funds from 30 June 2016. While it is important for all SMSFs to ensure that they are compliant with the rules, funds with collectibles purchased before 1 July 2011 have had a grace period to get their house in order. This grace period ends on 30 June 2016.

There is around $407 million worth of these collectible and personal use assets sitting in SMSFs in Australia. The Tax Office's main concern is that it is really easy for fund members to forget that these assets – like artwork and cars - are owned by the fund and must be held for retirement purposes. That means members of the fund (or anyone related to them) cannot use or enjoy those asset.

If you have these assets in your fund (or are looking to acquire them), here is what you need to ensure:

1. The asset must not be leased to a related party - a related party includes a member of the fund, their relatives, business partners, the spouse or child of these business partners, or any company or trust that the fund members control or influence.
2. The asset must not be stored in the private residence of the related party - this includes sheds and garages, etc.
3. The trustees must keep a written record of where, how, and why the asset is to be stored.
4. The asset must be insured in the fund's (trustee's) name. If your SMSF is buying a collectible, insurance needs to be in place within the first seven (7) days. If the fund already owns the asset it must be insured in the trustee's name before 1 July 2016.
5. The asset must not be used by a related party. For example, if your fund owns a vintage car, you cannot drive it for any reason, not even to go to the mechanic.
6. If the asset is sold to a related party, the asset must be sold at a market price determined by a qualified and independent valuer.

A few issues come out of these requirements. Sometimes insurance is difficult or impossible to get for collectible assets. If you cannot secure insurance, the asset may need to be sold. If a collectible asset needs to be sold because the rules cannot be met, the sale process can sometimes be protracted – this could be an issue if you need to sell the asset pre-30 June.

Before your fund acquires a collectible asset, it is also important to ensure that the fund's Trust Deed allows for collectibles to be acquired, the Investment Strategy of the fund allows for the collectible to be acquired, and that the sole purpose of acquiring the collectible is to provide retirement benefits for members.

What is a collectible and personal use asset?

The definition of a collectible is quite broad and will often capture assets that many fund members do not realise qualify as collectibles.

A common example is motor vehicles. The definition of a collectible includes motor vehicles such as utes, not just classic cars that are generally considered collectors' items.

When the Tax Office talks about collectibles, they mean: artwork – including paintings, sculptures, drawings, engravings and photographs; jewellery; antiques; artefacts; coins, medallions or bank notes (coins and banknotes are collectables if their value exceeds their face value, and bullion coins are collectables if their value exceeds their face value and they are traded at a price above the spot price of their metal content); postage stamps or first-day covers; rare folios, manuscripts or books; memorabilia; wine or spirits; motor vehicles and motorcycles; recreational boats; and memberships of sporting or social clubs.

The following article appeared in the SMSF Adviser and was written by Miranda Brownlee on 8 February 2016.

"SMSFs Urged to Utilise Contributions Before Potential Reforms

Practitioners should encourage clients to maximise their contributions and commence pensions this financial year, before the government introduces potential tax reforms in the May Budget, HLB Mann Judd has warned.

Speaking at an event in Sydney, HLB Mann Judd partner, wealth management, Jonathan Philpot said the level of contributions individuals are allowed to make appears to be one area where the government is looking at making changes.

Mr Philpot said there could be a potential change with the large non-concessional contribution limit of $180,000 or $540,000 with the three-year bring-forward rule.

"We'd like to see clients who are in a position to make these large contributions in this current financial year to do so," he said.

He also added that any potential changes could mean that trustees need to think about building up super at a younger age.

Traditionally, Mr Philpot said, superannuants have looked to transfer assets such as personal investments, shares and investment properties into their super in their 50s as they approach retirement.

"That is what we think might change in the future, you'll no longer be able to just move it all in pre-retirement or at retirement," he said.

"With the potential changes that are coming along, at a younger age you'll have to start considering superannuation if you do wish to build up a larger balance and at the moment it's a use it or lose it system, if you're not maximising those concessional contributions then you can't carry them forward, that's it for the year and a year gone."

If trustees are 55 or older, they should also be looking at commencing a pension if they're eligible, said HLB Mann Judd director of superannuation Andrew Yee.

"People should be looking at turning on a pension if they're eligible, if they're over 55, start turning on that transition to retirement pension – this could be a good time to do it, before any changes," said Mr Yee.

"The government sees there are so many tax concessions on the pension side, they may put a tax on it."

H&R Block director of tax communications Mark Chapman told SMSF Adviser last month that it is unlikely that superannuation tax concessions will be left untouched in the government's mission to reform Australia's tax system.
"Of all the various pots of money that the government could raid to reduce the deficit, superannuation seems to be one of the biggest," said Mr Chapman."

FBT 2016: The Top 5 Things Every Business Needs to Know

If your business is in the hospital/non-profit sector and uses salary packaging for team members, if you are a small business, or if you provide team members with a gym or space to do yoga, then there are a few things you need to know beyond the basic fringe benefits tax (FBT) changes when the new FBT year starts on 1 April 2106.

1. You will pay more FBT

The FBT rate is currently 49%. The rate increased from 47% on 1 April 2015 in conjunction with the introduction of the 2% debt tax on high-income earners (Temporary Budget Repair Levy). The FBT year that is just ending is the first year at the higher tax rate - which means if you have an FBT liability, you will pay more tax.

The FBT rate will stay at 49% until 31 March 2017 when the impact of the debt tax is scheduled to be removed.

2. Meal entertainment crackdown – medical professionals beware

If your business is an FBT exempt entity (public and not-for-profit hospitals, public benevolent institutions, health promotion charities, public ambulance service) or qualifies for the FBT rebate, then there are significant changes that come into play on 1 April you need to be across.

In the past, employees of FBT exempt and rebatable entities have been able to salary sacrifice an unlimited amount of meal entertainment expenses (e.g. restaurant meals) with no impact on their existing annual caps. But this will all change on 1 April 2016. From this date, a separate single grossed-up cap of $5,000 for salary sacrificed meal entertainment benefits for employees of exempt and rebatable employers will apply.

To give you some idea of the impact let's look at the example of a doctor employed by a public hospital who salary sacrifices $32,000 of meal entertainment benefits. If the doctor salary sacrificed these benefits in the 2015-16 FBT year, the full $32,000 would be exempt from FBT and he has nothing to report in his tax return. If the doctor salary sacrifices these benefits in the 2016-17 FBT year, then the first $5,000 will not count towards their annual exemption cap. However, the balance will be taken into account in determining whether the employee exceeds their exemption cap for the year. If this excess amount causes the employee to exceed their annual exemption cap then an FBT liability will arise. The entire amount (including the first $5,000) will also be included in their reportable fringe benefits amount for the year, which could impact on their ability to satisfy other income based tests within the tax system.

As an employer, it will be essential to review the existing salary packages of team members affected by the changes as someone will be paying the extra FBT that arises as a result of the new cap being introduced.

3. Salary sacrificing may not be worth it

By now you should have reviewed any salary sacrifice agreements to ensure that they are still viable at the higher 49% FBT rate. In some cases, salary sacrifice agreements may no longer achieve the intended goals and simply create an administrative burden for little to no benefit.

For high income earners (above $180,000), however, the difference in timing between the FBT year and the income year means that there will be a planning opportunity between 1 April 2017 when the FBT rate reduces back to 47% and 30 June 2017 when the 2% debt tax is removed.

With any salary sacrifice agreement, be aware that certain rules must be followed. For example, the appropriate documentation needs to be in place to ensure that the arrangement is "effective". This means that the employee should agree in writing to forgo an amount of salary and wages *before* that entitlement has been earned. If it its after, it is not valid and the employee will simply be taxed on that amount. The business would also be liable for obligations such as PAYG withholding and superannuation guarantee amounts.

4. Two laptops are better than one for small business

If your business is a small business (turnover under $2 million), from 1 April 2016 the FBT exemption on portable electronic devices will be extended. From this date, you can offer employees more than one work-related portable electronic device, such as a mobile phone, laptop and tablet and not have to pay FBT on it even if the device is the same or similar to other devices already provided in that same FBT year. All other businesses are limited to one device that is identical or similar to another.

5. Yoga or gym classes at the office?

Wondering what to do with that extra office space? Put in gym facilities for the team? Use a room for a yoga class or personal trainer perhaps? A recent ATO decision confirmed that the FBT implications of these two options are quite different. The reason is the definition of a "recreational facility." A recreational facility is exactly that, a facility for recreation. Recreational facilities can be exempt from FBT if certain conditions can be met. However, a fitness class or a personal trainer is not a recreational facility and, therefore, FBT would generally apply.

2016/17 Federal Budget

The 2016/17 Federal Budget will be handed down on 10 May 2016.

We encourage any clients considering non-concessional superannuation contributions to contact us as soon as possible to ensure contributions are paid prior to the Budget.

We will also be emailing clients eligible to commence Transition to Retirement pensions (TRP) to discuss the option of commencing TRP prior to 10 May 2016.