

FY2011 SMSF Checklist

As we are now over the half way mark for this financial year, this edition of DBA News outlines a number of important issues that SMSFs should focus on leading up to 30 June 2011.

Contributions

Concessional contributions ('CC')/Non-concessional contributions ('NCC')

CCs are generally contributions which are included in the assessable income of the SMSF. An example of a CC is a contribution made by an employer on behalf of an employee. An NCC is a contribution by a member that is not claimed as a deduction.

Most members are subject to a maximum \$25,000 CC cap unless they wish to pay excess CC tax of 31.5%. However, a member who is 50 or over on the last day of the financial year has a \$50,000 CC cap. (This higher CC cap ceases after FY2012).

Both CCs and NCCs are subject to contribution caps. If these caps are exceeded, excess contributions tax of up to 93% may be payable. Planning a strategy now to optimise contributions subject to the caps means making sure there will be no excess contributions tax.

Gainful employment

'Gainful employment' is a condition that must be met by members aged between 65 and 75 wishing to contribute to a fund. Such members must satisfy this test before making a contribution. A person is gainfully employed on a part-time basis if they are employed for at least 40 hours in a period of not more than 30 consecutive days.

Government co-contribution

Members who make a NCC to a fund may be eligible to receive a co-contribution from the Government. The Government will make a co-contribution where the member's taxable income (ie, broadly assessable income less deductions) is less than \$61,920.

Self-employed

Where a member is self-employed and makes personal contributions, less than 10% of their assessable income (and certain other amounts) must be attributable to their employee activities for them to claim a deduction.

A valid notice must also be given to the trustee in an approved form (ie, NAT 71121) before their tax return is lodged. If a pension is being commenced which uses any of the contribution, then the notice has to be given to the trustee before the pension commences.

Pension planning

Minimum and maximum payments

The minimum payments, calculated in accordance with Schedule 7 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) ('SISR'), for account-based pensions ('ABP') and transition to retirement income streams ('TRIS') must be paid before the end of each financial year. Note that for FY2011, the minimum payment for these pensions is halved.

A TRIS has a maximum annual payment of 10% of the opening account balance funding the TRIS.

Appropriate minimum and maximum payments should be made before 30 June 2011.

SMSF borrowing

Related party lending

SMSF trustees should ensure that any related party loan supporting a borrowing is properly maintained. For example, regular payments should be made in accordance with the loan agreement.

Division 7A

If the lender to the SMSF is a related company or discretionary trust, care should be taken such that the loan agreement continues to meet the requirements of Division 7A of the *Income Tax Assessment Act 1936* (Cth) ('ITAA 1936'). The Division 7A interest rate is currently 7.4% and the interest rate under the loan agreement may differ.

Succession planning

Binding death benefit nominations ('BDBN')

BDBNs should be reviewed at least annually to ensure they still accurately reflect each member's wishes. The SMSF deed should also be reviewed to ensure a BDBN can continue indefinitely as many older SMSF deeds require BDBNs to be updated every 3 years.

Auto-reversionary pensions

A pension that has already commenced can be made 'auto-reversionary' (ie, it automatically reverts to another eligible dependant upon a member's death). Members should consider the status of their existing pensions and whether they would be better off having auto-reversionary pensions. The deed should also be reviewed to determine whether a BDBN is also required.

In-house assets ('IHA')

Level of IHAs

Broadly, the market value of an SMSF's IHAs must not exceed 5% of the total market value of the fund's assets. Firstly, trustees and advisers should ensure this 5% threshold is not exceeded as year end approaches.

Furthermore, if this IHA limit has been contravened during the year, the trustee may rectify the breach, which should generally be done before 30 June.

Unpaid distributions considered IHAs

Where an SMSF is presently entitled to an unpaid distribution from a related unit trust, the ATO is of the view that this amount will generally be an IHA if it is not received by the SMSF within 12 months of the relevant end of financial year, see: SMSFR 2009/3.

Related party dealings

Terms and conditions

It is a requirement that SMSFs maintain all their dealings at arm's length. Broadly, arm's length is determined by terms similar to that available in an open market.

Indexations of rent, evidence of insurance, maintenance of capital/asset ratios are examples of commercial terms which can often fluctuate due to market conditions. As such, SMSF trustees should examine and maintain their related party transactions on arm's length terms; preferably with third party evidence in support.

Resolutions

Resolutions must be documented

The trustees and fund members may resolve to undertake a number of actions throughout a financial year. It is essential that each major or important trustee decision is recorded in written form, eg, it is good practice to review and update an SMSF's investment strategy on an annual basis.

Resolutions can also be completed today (with a current date) to record and ratify past decisions. Resolutions should not be back dated.

Online SMSF Updates – 11 Feb

In 2010 DBA Network Pty Ltd hosted online live webcasts which proved a great success based on client feedback. The first of four Online SMSF Updates for 2011 is on Friday 11 February 2011 between 10 to 11.30am. The session will cover some hot topics including the latest cases, legislation, regulatory developments and other SMSF tips and traps.

To register please visit <http://websem.dbanetwork.com.au>. Alternatively, direct all enquiries to Marie Zarifis on (03) 9092 9400 or mzarifis@dbanetwork.com.au.

FY2011 SMSF Kit

DBA Lawyers offers a FY2011 compliance kit, which provides an action list running you through all relevant SMSF issues to consider in the lead up to 30 June 2011. The action list includes contributions, pensions, overseas issues, binding death benefit nominations, issues related to SMSF investments, annual administration requirements and more. The kit is useful for both SMSF trustees and advisers alike.

The kit is available for a cost of \$150 incl GST. Please contact Marie at mzarifis@dbalawyers.com.au to place an order.

For further Information please contact:

DBA LAWYERS PTY LTD (ACN 120 513 037) Level 1, 290 Coventry Street, South Melbourne Vic 3205

Ph 03 9092 9400 Fax 03 9092 9440 dba@dbalawyers.com.au www.dbalawyers.com.au

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