WLP Accountants Pty Ltd

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Everyone smiles in the same language

Author Unknown

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Reviewing your trust deed before 1 July

With changes to Australia's superannuation rules coming into play on 1 July 2017, self managed super fund (SMSF) trustees would do well to review their fund's trust deed.

Despite the fact that maintaining an up-to-date trust deed is a vital aspect of managing a SMSF, many trustees fail to do so, usually due to the time and cost restraints associated.

However, a SMSF trust deed can only ensure compliance and protect the trustee's interests if it is regularly updated and reflects current superannuation rules.

As part of the super reforms announced in last year's Federal Budget, tighter superannuation rules will apply from 1 July 2017, including a $1.6 million super balance cap for after-tax contributions; a maximum of up to $25,000 for concessional contributions; and the removal of the current "bring-forward" rule allowing $540,000 of contributions in one year.

According to some industry analysts, these changes are likely to result in many out-of-date trust deeds. But often changes to superannuation legislation provide the perfect opportunity for trustees to review and upgrade their deed.

One of the major changes to super which will affect traditional SMSF trust deeds is the $1.6 million limit on retirement balances, which the Government also wants to make retrospective. This means those who already have more than $1.6 million saved in their superannuation will need to adjust their strategy and trust deed accordingly to meet the new limit.

Updating a SMSF deed will particularly benefit those SMSF members with money locked in the old term-allocated pension and with a pension balance greater than $1.6 million in a mix of term-allocated pension and account-based pension balances. This is because the term allocated pension can be converted back (in full or in part) to the accumulation phase to remove any excess over the $1.6 million cap.

Another major change to consider is the deed's death benefit control mechanisms. The new super rules will allow certain death benefits to be rolled over, so it may be worthwhile reviewing whether the SMSF trust deed has sufficient options in the death benefit payment provisions.

SMSF trustees will also need to consider whether their current trust deed will allow for the terms of the trustee's pension to change without needing to stop and restart the pension.

Many of the upcoming super changes will dramatically affect the strategic landscape of SMSFs in Australia, and some of these changes will challenge old deeds, so, as with any other financial decision, seek professional advice if you are considering updating your trust deed.

Preparing for contribution cap changes

From 1 July 2017, many of the 2016 Federal Budget super reforms will take place, including the reduction to both the annual concessional and non-concessional contribution caps.

Concessional contributions

Concessional contributions include employer contributions and salary sacrifice amounts. Personal contributions claimed as a personal super contribution deduction also count as concessional contributions.

The concessional (pre-tax) contributions cap will be lowered to $25,000 for everyone. Previously, those aged 50 years and older could contribute up to $35,000 and $30,000 for everyone else.

Individuals who wish to make extra concessional contributions before 1 July will need to check what concessional contributions have been made to all their super funds from 1 July 2016 and arrange for the additional concessional contributions (up to their age cap) to be paid to their super before 30 June 2017.

A new super rule will be introduced effective from 1 July 2018 which will allow individuals with a total super balance of less than $500,000 at the end of 30 June of the previous year to 'carry-forward' their unused concessional contributions cap. This allows individuals to access their unused cap space on a rolling basis for five years.

For example, in 2018-19, Tom makes $10,000 in concessional contributions, leaving an unused amount of concessional contribution cap of $15,000. Tom can carry forward for up to five years to increase his concessional contribution cap. In 2019-20, in addition to his normal $25,000 concessional cap, Tom can use the $15,000 of unused cap from the previous year. This means Tom's total concessional cap for 2019-20 is $40,000.

Non-concessional contributions

Non-concessional contributions include personal contributions for which you do not claim as a tax deduction. All non-concessional contributions made to all your super funds are added together and count towards the cap.

The annual non-concessional (after-tax) contribution cap will be reduced from $180,000 to $100,000. Those aged between 65 and 74 years old can still access this cap, provided they satisfy the work test.

If any individual has a super balance greater or equal to the general transfer balance cap for the year ($1.6 million for the 2017/18 financial year) as at 30 June for the previous financial year (e.g. 30 June 2016) they are ineligible to make non-concessional contributions in the following year. Any non-concessional contributions made in the following year will be treated as excessive contribution.

For those under 65 years, you can still bring forward three years worth of non-concessional contributions. However, as the non-concessional cap has lowered to $100,000, you will only be able to bring forward $300,000 in a single year from 1 July 2017 onwards.

To access the non-concessional bring forward arrangement for 2017-18, you must be under 65 years for one day during the first year and you must have a total super balance less than $1.5 million.

The remaining cap amount for years two or three of a bring-forward arrangement is reduced to nil for a financial year if your total super balance is greater than or equal to the general transfer cap at the end of 30 June of the previous financial year.

Transitional arrangements will apply for those individuals who have triggered the bring-forward period in the 2015-16 or 2016-17 financial years but have not fully used their bring-forward before 1 July 2017.

Insurance through super: is it right for you?

Taking out insurance through a super fund can be a great option for some members, but it does also come with some pitfalls.

Most super funds provide their members with insurance options and an option to increase, decrease or cancel default insurance cover. There are many benefits of taking out insurance through super, including the ability to purchase policies in bulk, not having to pay for premiums with your take-home income, and the convenience of having your policy managed for you.

Additionally, life insurance inside super is deductible to the fund at 15 per cent annually; whereas life insurance premiums held outside of super are not tax deductible.

However, there are pitfalls of holding insurance through your super. Generally, there is a limit on the payout that can be received from an insurance policy purchased by a super fund. Some self-managed super funds may not face any limit, this will depend on the policy and insurance company.

In public funds, it is usually between $100,000 and $200,000. For some people, this amount may be more than enough. However, if you have dependants and a mortgage, it may be insufficient to look after your loved ones should something happen to you.

Members should be aware life insurance coverage inside super ends when you reach a certain age (usually 65 or 70), whereas policies outside of super may cover you for longer.

Anyone using a super fund to provide insurance should ensure that they have an appropriate death benefit nomination in place that specifies who their super will go to in the event of their death.

What is an arm's length transaction?

Running a self-managed super fund requires trustees to adhere to complex laws and follow a number of onerous rules.

One of the most fundamental investment rules for SMSFs is that the trustees must transact on an arm's length basis to ensure no conflict of interest arises. An arm's length transaction requires trustees to conduct on a commercial basis as if there was no relationship between the parties.

This means the purchase and sale price of fund assets should always reflect the true market value of the asset, and the income from the assets held by the fund should always reflect the true market rate of return.

SMSF trustees must obtain independent valuations for assets which are not listed on a public market. Furthermore, if a SMSF sells an asset to a related party or member of the fund, the sale price must be at market value.

Any non-arm's length income is taxed at the highest marginal tax rate. The ATO considers non-arm's length income as income which is derived from a scheme in which the parties were not dealing with each other at arm's length and if it is more than the SMSF might have been expected to derive (if the parties had been dealing on a arm's length basis).

WLP Accountants Pty Ltd

Taree: Level 1, Cnr Manning & Albert Streets, Taree
Forster: 20 Wallis Street, Forster

Taree: 6552 3533
Forster: 6554 7566

E-mail: wlp.accountants@wlpca.com.au
Web: www.wlpca.com.au