

# TAX MATTERS

Tax strategies for you and your business



CHARTERED ACCOUNTANTS

## Real property and SMSFs

**B**oosting SMSF returns through rental of business real property is a common strategy, but not one without risks.

In order to meet the definition of 'business real property' the property must be wholly and exclusively used in one or more businesses. When looking at this business real property Trustees should be wary of breaching the 'in-house' asset rules.

An 'in-house' asset is considered to be

- Loan to or investment in a related party of the fund;
- An investment in a related trust of the fund; or
- A leased asset arrangement between the trustee and a related party.

The level of in-house assets that a SMSF can hold is currently limited to five per cent of a fund's overall asset value.

The test applies at the end of each income year, as well as at any time that a new in-house asset is acquired. Breaching this limit can result in the ATO deeming the fund to be non-complying, which may have major tax implications for the fund.

To be exempt from the 'in-house' asset rules the property must be subject to a lease arrangement on arm's length terms.

Trustees are obliged to ensure that the fund deals with the related tenant as if the tenant was an unrelated party.

Trustees should ensure that rent is paid at the amount and frequency required by the lease, that annual increases required by the lease are complied with.

The rental payments cannot fall into arrears and all outgoing expenses are to be paid by the party specified in the lease.

There are serious consequences for SMSFs that fail to maintain the arrangement on arm's length terms. In some circumstances auditors are required to immediately report the breach on non-compliant activity to the ATO.

An immaterial breach will also cause a contravention to be reported to the ATO if the breach occurs in more than one year or if the fund is recently established.

An immaterial breach may occur for instance, when a fund pays occupancy costs such as rates, which the tenant should be paying.

A breach may also result in an ATO audit of the SMSF, which can prove a very costly exercise. The professional fees associated with the audit, as well as the ultimate penalties that the ATO can impose on an SMSF that fails to comply with the superannuation legislation.

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### IN THIS ISSUE - EDITION 4

- Real property and SMSFs
- Tax audits for wealthy
- New reporting for construction
- Tax focus - extra contributions allowed

# New reporting for construction industry

**The new financial year sees new reporting requirements for the construction industry.**

The Government announced the introduction of taxable payment reporting in the last Federal Budget.

Businesses that operate in the building and construction industry should be aware of new reporting requirements that came into effect from 1 July 2012.

A business is considered to be primarily operating in the building and construction industry when:

- In the current financial year, more than 50 per cent of business income is derived from providing building and construction services
- In the current financial year, 50 per cent or more of business activity relates to building and construction services

- In the financial year immediately before this one, more than 50 per cent of income was derived from providing building and construction services.

From 1 July 2012, businesses will be required to report the total payments they make to each contractor for building and construction services to the ATO.

Businesses need to report provided that they make payments to contractors for building and construction services and they have an ABN.

The first taxable payments annual report is due 21 July 2013. For the 2012/13 financial year businesses that lodge their statement quarterly may lodge by 28 July 2013.



## Wealthy to be audited

**The ATO actively monitors many High Wealth individuals each year.**

In the 2012/13 tax year, there will be hundreds of audits done by the ATO on wealthy Australians.

These are classified as individuals who are actively accumulating wealth and investment portfolios. As well as individuals with investment properties, successful small businesses and multiple international investments.

There are several ways the ATO will gather information. The sources are tax returns, information from ASIC and AUSTRAC as well as land title documents. The ATO also has information exchange programs with international tax agencies.

The ATO's main focus areas include:

- Lifestyles funded without relying on income in a conventional taxable form
- Use of business assets for private purposes
- Capital gains tax not returned or overly minimised
- Late or incomplete tax returns



## TAX FOCUS: EXCESS CONTRIBUTIONS ALLOWED

Individuals can now receive a once off chance to have excess concessional contributions of up to \$10,000 a year refunded.

The ruling, passed on 29 June applies to excess contributions made on or after 1 July 2011, the assessments for which will start issuing from September 2012.

The excess concessional contributions will be taxed at a personal marginal rate, rather than the usual 46.5 per cent rate, and will also not be counted as non-concessional contributions.

The refund request should be made in writing to the ATO. Any resulting tax refund will be paid to the individual after other outstanding tax liabilities have been cleared.

The ATO determines eligibility after the individual has lodged their tax return for the financial year in which the excess concessional contributions were made. The tax return is required to be lodged within 12 months of the end of that year, but a longer period may be allowed.

2011-12 is the first year the refund option can apply. The ruling does not cover any excess concessional contributions made prior to 1 July 2011.

To pursue the refund, eligible individuals have 28 days to accept the offer from the ATO.