SUPERMATTERS

SUPERANNUATION STRATEGIES FOR YOU AND YOUR BUSINESS

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IN THIS ISSUE:

Newcombe & Co. Pty Limited
Chartered Accountants

Transferring Your Property To Your Super Fund

Often superannuation can be a great structure for people to hold their property in. It is usually a lower tax environment and offers protection against bankruptcy.

But sometimes, you may feel that a property that you own in your own name would be better off in your SMSF. In that case, what do you need to consider if you would like to move the property into your SMSF?

The Rules

Only certain properties can be transferred to your super fund. Usually, only a property that is wholly and exclusively used in one or more businesses is able to be transferred to your own SMSF. For example, if you were in possession of a residential rental property, you would not be able to move it into your super fund. A shop on the other hand could be transferred into a super fund.

Transferring an eligible property to an SMSF is considered a sale, which means that capital gains tax (CGT) may apply. You need to consider what your CGT obligations may be and if you are entitled to any small business concessions to reduce that gain.

You will also need to consider whether stamp duty is applicable to the property. Some states (Victoria, NSW & WA) offer concessions on transferring property from your own name to your SMSF in certain circumstances. And of course, SA has no stamp duty on commercial property.

You may also need to undertake financial modelling to confirm that you would be financially better off transferring your property to your SMSF. If this is something that you would like to do, please contact us so that we can assist you.

This is why it is of paramount importance that you work together with your auditor and ensure that you fix any contraventions as soon as possible, once you are made aware of them.

NEWCOMBE & CO

SUITE 202
118 GREAT NORTH ROAD
FIVE DOCK NSW 2046

TEL (02) 8753 0033
FAX (02) 8753 0088

EMAIL
ross@newcombeandco.com.au

WEBSITE
www.newcombeandco.com.au

DIRECTOR
Ross Newcombe

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New Superannuation Laws Around Divorce Evening The Split

Superannuation is one of the major assets that most Australians have in their possession. It's also often an asset that often gets overlooked during divorce proceedings, especially with its lack of physical presence.

During a divorce, it's important that both parties get their fair share of available super.

However, not all divorces are clean. When there is animosity between the parties, family law proceedings are in effect, or one party is being dishonest or evasive about their available super, the process can become far more complicated as a result.

In September, a new law was passed by the federal government that promotes the visibility of superannuation assets in family law proceedings. The new law — contained in the Treasury Laws Amendment (2021 Measure No. 6) Bill 2021 that received Royal Assent on 13 September — provides an information-sharing mechanism between court registries and the ATO to improve the visibility of superannuation assets.

The Aim

The primary aim is to allow for more partners to receive back what is rightfully theirs in the event of a difficult or messy divorce, and to split super on a more just and equitable basis.

It is believed that more than 60% of women suffer from financial hardships within 12 months of separation as a result of a lack of disclosure by a former partner about their financial situation.

This means that women, who often have less super as a result of circumstances (such as taking time off work to care for children) receive a smaller share of the property (particularly superannuation) than they are entitled to.

Specifically, the amendment was designed with the intent to alleviate the hardships often faced by parties who experience significant drops in disposable income after divorce, particularly for women and domestic and family violence victims.

The amendments should make it harder for parties to hide or under disclose their superannuation assets.

What Is Involved?

The Australian Taxation Office (under the ATO) will be allowed to release super information to a family law court upon request as a result of this legislation.

To obtain the information, an applicant would have to be a party to a family law property proceeding and apply to the court registry to request their former partner's super information, which is held by the ATO.

The information may only be accessed by relevant parties and for the purpose of permitted family law proceedings.

Splitting The Difference

While the super pool held between two parties is considered joint property, it does not get split 50/50 in the event of a divorce. Each case will be examined to determine what is fair and equitable by parties. Considerations should include what was brought into the marriage, what was contributed during the marriage, capacity after the marriage and number of dependents.

Both de facto and married relationships will have this lens applied to them, however, de facto couples in Western Australia are an exception to these rules.

Are you concerned about your superannuation in the event of a divorce, and looking for advice or more information? Speak with us.

Using Superannuation To Pay The Mortgage - Is It A Good Idea?

A relationship has been established around superannuation and mortgage debt that could impact the stability of your retirement.

As prospective Australian retirees approach their preservation ages and retirement, those who are yet to own their own homes may struggle to maintain a comfortable retirement.

Housing is quickly becoming a critical aspect of retirement, alongside the pension, super and voluntary savings as the main means of ensuring a comfortable retirement.

Mortgage debt and the threat of continued payments to pay it off is something that workers must now take into consideration when looking into their retirement, as Australians struggle to pay off their homes. Can it be paid off without the extra income earned from their work?

As more and more Australians retire with healthy superannuation balances, the allure of using that money to pay down a mortgage is strong.

Factors that may be affecting retiree's mortgage debts could include:

- Higher property prices (now ten times the average wage as compared with three or four times two decades ago).
- A delayed entry into the property market as they save a deposit, leaving fewer working years to pay off the loan.
- Record low-interest rates - currently, every dollar used to pay down a mortgage is saving less than 3% on interest, while in superannuation that same dollar has the potential to return 7 or 8 per cent.

Paying down a mortgage is a growing problem for retirees who are increasingly leaving the workforce with mortgage debt, which is far from the norm among middle-income Australians as recent as a decade ago. Among retirees, homeowners in the years prior to retirement (ages 55-64) had dropped from 72% in 1995 to 42% in 2015-16.

However, those who began their working careers prior to the 1990s face another challenge as they move closer to their preservation age; the superannuation guarantee was only introduced in 1992, which means that many may have accumulated less superannuation than other generations after.

It is understandable that for those approaching retirement, preferencing super over mortgage could seem like a logical move, as the extra funds generated can be diverted back into property on retirement. Using superannuation to pay a mortgage can make some tax sense - in an assets test, a primary residence is exempt while superannuation is not.

This may become a more common approach for retirees and those looking to retire within the next few years. However, you should consider what the best approach is for your situation, and whether paying off the mortgage with your super is worth it in the long run.

Checking For Unpaid Super - The Checklist

Do you trust that your employer is paying you the right amount of superannuation, just because it says so on your payslip?

Every year, thousands of employers fail to pay their staff the correct amount of superannuation, costing those workers billions of dollars every year. In many instances, it's an honest mistake and easily rectified. However, there are malicious employers out there who are looking to avoid having to pay you the correct super guarantee.

You may not have realised it either if you are trusting the information on your payslip.

How Do I Check?

Checking for unpaid superannuation is very simple. You can:

- Call your superannuation fund directly or
- Check your statement online

If you are unsure of the amount of superannuation owed, you can also contact the Australian Taxation Office (ATO) to chase down the unpaid superannuation. They will be able to determine if there has been an offence committed, and will be able to punish them.

However, if a company is going through insolvency proceedings and you haven't been paid superannuation, it can get a little more tricky. The ATO in this instance won't pursue the unpaid super, but you will be able to legally pursue the company directors in court.