Tips and traps for moving your money in an SMSF

Understanding the rules and processes involved in transferring assets in and out of your SMSF is essential for keeping your SMSF compliant and avoiding significant tax consequences.

MIRANDA BROWNLEE - Wednesday, 16 December 2015

Transferring assets following initial set up

Once a SMSF trustee has established their SMSF, organised the trust deed and set up a bank account, the next step is usually to make a contribution and then roll money over from another super fund. These are the only two ways assets can enter a SMSF, says Mark Wilkinson, director of Wilkinson Superannuation.

"There's a broad range of contributions that can be made to a SMSF but generally anything that increases the capital of the fund other than a rollover and is made for the benefit of the members, is broadly speaking, a contribution," says Mr Wilkinson.

Morgans Financial national manager of wealth management Terri Loy says during the initial set up of the fund, assets such as cash and listed shares can be transferred into the new SMSF as a contribution.

"If a member wants to roll other super monies into their new SMSF, however, they need to wait till the SMSF's ABN has been received from the ATO," said Mr Loy.

Rolling money over to the SMSF

If the trustee wants to transfer their assets from a retail or industry super fund, they'll need to inform the super fund they want to roll over the balance of their account into the SMSF, says WLM Financial director Laura Menschik.

“They’ll need to provide the industry or retail super fund with the ABN of the SMSF, the bank details and sign that as trustees to show that it’s a complying super fund,” said Ms Menschik.

The SMSF trustees she says need to ensure they have the correct wording of who the trustees are, make it clear whether they are individual trustees or whether it’s a corporate trustee and ensure the name of the SMSF is correct.

The retail or industry super fund can verify the ABN number and the bank details through the ATO lookups website, says Ms Menschik.

The assets she says will most likely be rolled over in the form of cash.

“If it’s a retail or industry fund the super member will most likely have to redeem all of their assets and the cash would then go into the cash account,” she said.

Once the money is in the SMSF bank account Ms Menschik says its then up to the trustees to invest that according to the investment strategy they have devised.

Making contributions to an SMSF

One of the key factors that SMSF trustees need to be aware of before making contributions is the contribution caps says Mr Wilkinson.

“If you breach those contribution caps you can be subject to excessive contribution tax liabilities so you’ve got to make sure you’ve got the market valuation correct at the time it’s transferred in,” he says.

In-specie transfers

Cash isn’t the only form of contribution that can be made to a SMSF, says Mr Loy. SMSF trustees he says can also make ‘in-specie contributions’ which are contributions to the fund in the form of an asset other than money.

Mr Loy says trustees should be aware, however, that section 66 of the SIS Act states generally the SMSF must not intentionally acquire assets, including in specie contributions, from related parties of the fund. According to the ATO a related party of the fund includes all members of the fund and associates of fund members including relatives, business partners, any spouse or child of those business partners and any company a member of their associates control or influence and any trustee the member or their associates control.

The ATO says a related party can also be employers who contribute to the super fund for the benefit of a member, under an arrangement between the employer and the trustee of the fund, as well as business partners of these employers and the companies or trusts they control and companies and trusts that control these employers.

There are expectations to this though to this related party rule however, says Mr Loy.

"These exceptions include any listed asset on a recognised securities exchange (so shares on the ASX), business real property, assets that are classed as in-house assets, widely held trusts including unlisted managed funds and non-geared unit trusts and companies," he says.

If the asset is an in-house asset it cannot exceed five per cent of the total market value of the fund's assets, he explains.

"Residential property owned by a related party cannot be transferred into the SMSF as it is not one of the exceptions," he says.

If the SMSF trustee plans to make a non-specie contribution, Mr Wilkinson says it is very important trustees ensure the asset is transferred across to the fund at market value.

Valuing Assets

Shares

The main type of asset that SMSF members generally transfer into a fund is listed shares on an Australian stock exchange.

"The main thing you need to understand is how to value your shares because I can look at BHP shares today and they may be worth $35.50 and I look again in four minutes time and they'll be worth $35 or $39 because of a large movement in the share market," said Mr Wilkinson.

"So what you need to do is value them according to the closing market value on the day on which the transfer takes place."

SMSF trustees he says will therefore need to value the shares based on the closing market value on the day on which the transfer takes place.

Where shares are purchased by the fund off market, the transfer he says will take place when the fund holds all the paper work necessary to transfer the interest or the legal ownership of those shares at that time.

If the trustee has the signed market transfer form then all they have to do is lodge it with the registry and that will the date used for the valuation for the transfer of that share.

“Then obviously you would add up the values of all those listed shares that you would transfer in order to make sure they don’t exceed your contribution caps,” he says.

Real business property

In the instance of real property Mr Loy says a valuation should be obtained from a qualified, independent valuer.

“A real estate agent’s valuation may not be sufficient,” he said.

Mr Wilkinson said while the official transfer date will be the settlement of the property, it’s important for someone to actually transfer the property prior to settlement taking place.

“If the fund trustee has all of the documentation it needs to implement the transfer without having to go back to the vendor, that date can also be used as the date in which the contribution or transfer is made.”

Capital gains tax consequences

With the exception of merging two super funds.

Mr Wilkinson says it’s important SMSF trustees are aware there are no rollover provisions under the capital gains tax (CGT)law for transferring assets in or out of a super fund, although there are some exceptions such as a divorce or family break-down scenario.

“Broadly speaking though there are no roll-overs allowing you to defer the CGT on the transfer of an asset when it goes into a super fund which means every transfer you make as an in-specie transfer you will be triggering a CGT event,” he said.

“Whether there is a CGT consequence of that, well it depends on what the market value of that asset is versus what you paid for it and the other elements of the cost base so you must have clearly established what that would be prior to implementing the transfer in the first place.”

Mr Loy said a lot of people forget that the transfer of an asset is a change of beneficial ownership for tax purposes.

“If the asset held personally has made a capital gain then capital gains tax will apply to the owner of the asset – similarly if a capital loss is triggered,” he said.

“Even though the SMSF trustees are also the owners of the asset, it’s a different tax entity as it is a trust structure. This means it is a change of beneficial ownership from personal to the trust.”

Ms Menschik says while rolling assets in or out of funds, selling assets or transferring assets can result in tax treatment on the capital gains during the accumulation phase, if the fund is in pension phase, there’s no tax on the capital gain.

“So it depends on what the original super fund is, what stage it’s in and what the member’s benefits consist of,” she said.

Other tips

For those SMSF trustees trying to outsmart the ATO, Mr Loy warns that the ATO has access to many databases and can generally find information at the push of a button.

“Thinking the ATO will never find out if you did transfer your residential property into your SMSF can lead to heavy penalties,” said Mr Loy.

“Fines are applied in units at $180 per unit -the more serious the breach the more units will apply.”

From 1 July 2014 Mr Loy says the penalty rules apply so that each and every individual trustee will be responsible for the fine.

“That is, if the ATO apply 10 penalty units this equates to $1,800 – each trustee must pay $1800 from their own pockets and the SMSF does not fund this penalty,” he said.