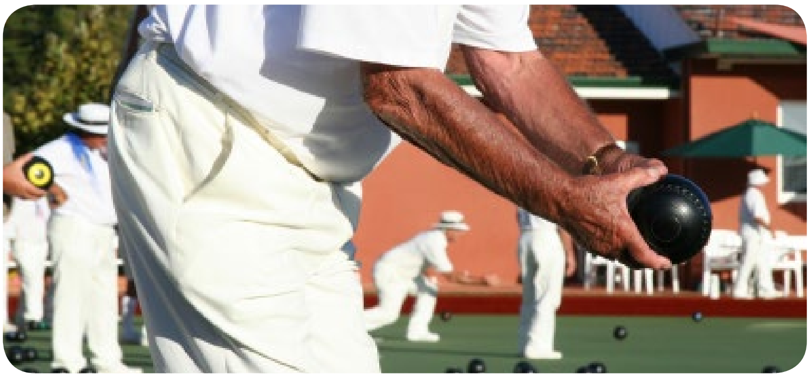
WEALTHWISE

YOUR PERSONAL GUIDE TO WEALTH CREATION

ISSUE 23
2013



New rules for SMSF trustees

New rules introduced as part of the 'Stronger Super' reforms will compel trustees who break super laws to undertake mandatory education.

The measures, which are expected to come into force on 1 July 2013, will tighten the responsibilities of SMSF trustees. In order to remain compliant with SMSF rules, trustees should be aware of their obligations.

The primary concern of trustees is to manage the fund for the benefit of members for their retirement, as well as ensuring fund assets are held in trust and invested on behalf of the members.

All trustees are equally responsible for managing the fund and making sure it complies with super laws.

Some of the rules that trustees must adhere to include:

- Making sure that the fund adheres to the sole purpose test in providing retirement benefits for its members.
- Taking care of administration tasks such as compliance, tax reporting, member statements and annual returns. These may be outsourced to a relevant professional.
- Ensuring that members' benefits are not accessed earlier than is legally permitted. As a general rule, members' benefits must be preserved in the fund until they reach their preservation age.
- Separately managing the affairs of the fund and their own personal or business affairs. This includes keeping personal and business assets separate from fund assets, and ensuring those assets are used solely for fund purposes.
- Making investment decisions that fall within the super laws, including borrowing money for property.
- Paying member benefits and accepting member contributions (such as SGC and Salary sacrifice) as per super and taxation laws.
- Updating the trust deed should the trustee/s change.
- Ensuring that there is an independent audit of the fund each year by an approved auditor.

Trustees are encouraged to outsource any tasks they are not entirely suited for, such as auditing, taxation requirements and investment advice, to professionals who may be in a better position to advise the fund and make sure that the trustees are compliant in their decisions.

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Motor vehicles as SMSF assets

Although SMSF trustees are aware of the risk in investing in collectibles and artwork, they may be less sure of the rules concerning cars and motorcycles.

In particular, trustees may have questions relating to the use and maintenance of motor vehicles and whether this breaks the rules governing personal use assets.

These may include:

Storage of the motor vehicle

Superannuation law prohibits motor vehicles from being stored in the 'private residence' of a member of a SMSF or of any related party of the fund. This includes areas such as the garage of a private home or other area that is considered a private dwelling.

However, there is an exception to this rule. According to the ATO, motor vehicles, as well as other personal use assets, are allowed to be stored in business premises owned by a related party of the fund. This does not extend to private residences, but rather business areas such as a purpose built storage facility, car park or garage that is part of a business.

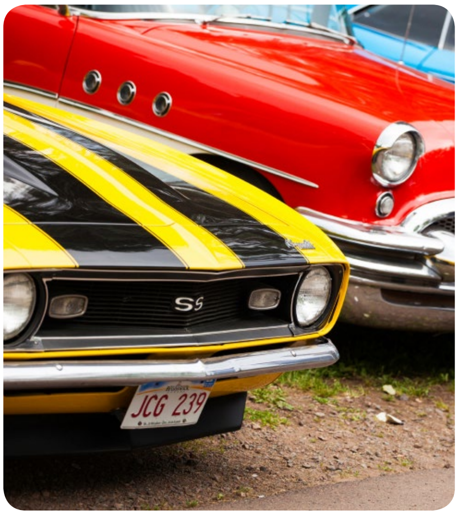
Taking out a motor vehicle for a maintenance drive

Under current super legislation, the ATO maintains that a trustee cannot "drive the vehicle for any reason, including taking it for a maintenance drive."

The regulations also extend to prohibiting restoration work to take place on the motor vehicle. However, the law does not prevent a person who is not a member of the SMSF or a related party to drive the vehicle for maintenance purposes.

Other restrictions for personal use assets may extend to motor vehicles as well:

- Collectibles such as motorcycles and cars must not be leased to any related party.
- SMSF trustees must ensure that the vehicle is insured in the name of the fund within 7 days of acquisition.
- Trustees wishing to transfer ownership of personal use assets to a related party of the SMSF must do so at a market price as evaluated by a qualified independent valuer.
- SMSF trustees must record in writing the reasons for the decision on where to store the motor vehicle and other personal use assets and keep these records for 10 years.



Schoolkids bonus replaces the Education Tax

The Education Tax Refund (ETR) has now been replaced by the Schoolkids bonus, with the Government now making it easier for parents to receive assistance for education-related expenses.

Previously, the ETR required parents to collect receipts of their education expenses in order to claim deductions.

The Schoolkids bonus is now paid automatically into bank accounts and parents are able to choose how they wish to spend the payment to meet their children's education needs.

The Schoolkids Bonus can be claimed by anyone who receives the Family Tax Benefit Part A (or other certain income support payments) and have a child in primary or secondary school. Each year parents will receive:

- $410 for each primary student and
- $820 for each secondary student, half paid in January and half paid in July.

The changes apply from 1 January 2013.

Data matching for rental property deductions

The ATO has increased their data matching for rental property owners who have claimed incorrect tax deductions to offset their tax bills.

In April, the ATO revealed it would use new data-matching technology to closely scrutinise residential and commercial property sales to ensure tax payers paid the correct amount of tax.

Rental property owners should be aware of what tax deductions they are able to make on their rental properties. Expenses that can be claimed in the income year in which they are incurred include:

- Interest on a loan used to purchase a rental property.
- Interest on a loan to purchase land to build a rental property.
- Interest on a loan to purchase a depreciating asset for the property, such as fridges or to finance renovations or home improvements.

Investors are able to claim other expenses over a number of year including:

- The cost of depreciating assets.
- Structural improvements.
- Assets that are part of a property such as stoves, refrigerators, air conditioning and hot water systems as a 'decline in value' deduction.

However, rental property owners should be aware of deductions they are not able to claim including acquisition and disposal costs of the property, expenses not actually incurred by them, such as water or electricity charges borne by tenants and expenses that are not related to the rental of a property.

Testamentary Trusts and estate planning

Testamentary Trusts can be incorporated into a Will to provide greater flexibility for the beneficiaries of a deceased estate.

A Testamentary Trust operates under a Trust structure whereby assets are managed by one person or persons, such as a trustee, for the benefits of others, known as beneficiaries.

Under a Testamentary Trust, the trustee is able to distribute capital and income between the beneficiaries as nominated in the Will.

There are 2 types of Testamentary Trusts:

1. Discretionary Testamentary Trusts

The executor of the estate gives the beneficiary the option to take part or all of their inheritance via testamentary trust. The primary beneficiary has the power to remove and appoint the trustee and they can appoint themselves to manage their inheritance inside the trust.

2. Protective Testamentary Trusts

A protective testamentary trust may be useful where the beneficiary is not in a position to responsibly manage the inheritance due to age, disability or other behaviour that may put the assets at risk. Beneficiaries do not have the option to appoint or remove trustees and they must take their inheritance via the trust. There are many benefits to using a Testamentary Trust structure, such as the ability to protect assets and to reduce tax paid by beneficiaries from income earned from the inheritance.

Flexibility for beneficiaries

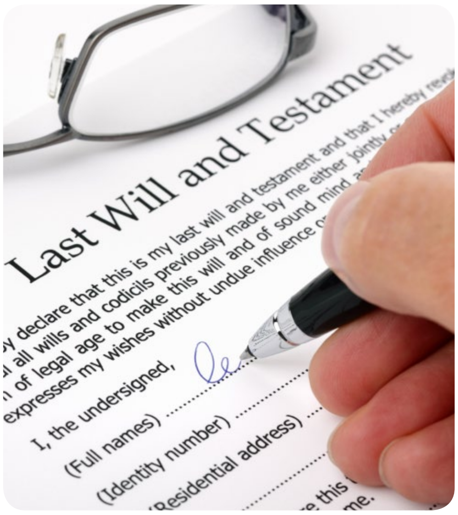
A Testamentary Trust gives the beneficiaries greater flexibility and control over when and how they take their inheritance. Trustees are able to distribute capital and income to any nominated beneficiaries at any time and in any proportion.

Protection of assets

Only the trustee is able distribute assets in a Trust. The assets are not owned by the beneficiaries but by the trust, and as such can be protected in the case of divorce/breakdown, issues with creditors and protection from high risk beneficiaries at risk of bankruptcy.

Taxation advantages

If a beneficiary takes their inheritance in their personal name, they will pay tax on the income generated from their inheritance at



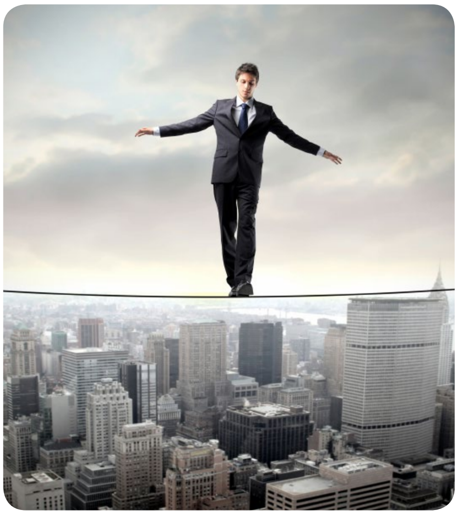
their personal marginal tax rate. There may be significant tax advantages in taking an inheritance through a Testamentary Trust, particularly where the beneficiary has:

- A high personal marginal tax rate
- A partner on a lower income
- Minor children and grandchildren
- Children or grandchildren with no, or lower, taxable income.

ATO to chase directors

The Australian Taxation Office (ATO) now has a greater ability to make company directors accountable for unpaid PAYG withholding and superannuation guarantee charge obligations of their company.

These changes are intended to discourage directors from being involved in fraudulent phoenix activity. The changes also mean



that directors cannot simply avoid their director penalties by placing their company into administration or liquidation where PAYG withholding or super guarantee charge amounts have not been reported within three months of the due date.

The director penalty regime now includes superannuation guarantee payments. Directors of a company can now be penalised where the company does not satisfy its super guarantee obligations.

An estimate of unpaid super can be used as a basis for determining the superannuation guarantee charge payable, and the estimated amount may then give rise to director penalties. The objective is to protect employee entitlements by providing additional avenues to collect superannuation guarantee payments.

It has also become more difficult for directors to place the company into voluntary administration or wind up avoiding liability for penalties where the company has not been reporting its obligations to the ATO.

This measure is intended to encourage directors to promptly place the company into liquidation or voluntary administration if the company is unable to meet its tax or superannuation obligations.

Under the new rules, the ATO can estimate a company's super guarantee charge liability using information provided by various other sources including third parties. This may occur in circumstances where the ATO is unable to gain access to an employer's records. Where an estimate is issued, the director can be liable for a penalty equal to that estimate.

Once a penalty is issued directors have 21 days to pay or arrange payment before the ATO can commence proceedings to recover the assessed amount. Recovery of the penalty from the director can occur in a number ways, including garnisheeing bank accounts, offsetting any refunds against the liability, or by court proceedings.

So if a company has not paid any super guarantee or has not reported its unpaid super guarantee to the ATO for over three months, it should take immediate steps to lodge the company's superannuation guarantee charge statement for the quarter and pay the super guarantee charge that is due.

If a company is unable to make the required payment, it can enter into a payment arrangement with the ATO. Whilst a payment arrangement is in place, the ATO will not take steps to recover the penalty from the director.

Superannuation changes ahead

End of year is usually a time when things get completed. After 30 June, this year, there are still many changes ahead, particularly in the superannuation area.

Here is a list of the major changes planned for 2014.

The age threshold for superannuation guarantee (SG) contributions increases

Employers will now have an obligation to make superannuation contributions for employees who are 70 years and over as the upper age limit for SG contributions is removed.

In addition, employers may now be able to claim SG contributions as a deduction where an employee is over 75 years old and not covered by an industrial award.

Increased concessional contributions cap for 2014

For those aged 60 and over at any time during the 2014 financial year, the cap increases from $25,000 to $35,000.

Previous indications of a required balance of $500,000 to be eligible for the higher cap have been abandoned. This increase does not apply to concessional contributions made by 50-59 year olds until 1 July 2014.

There is no change to the non-concessional contribution caps.

Excess contributions can be withdrawn

Individuals can withdraw excess concessional contributions made to their SMSF made after 1 July 2013.

Superannuation Guarantee contributions increase

The minimum SG contribution will be raised from 9% to 9.25%, with the first increased payment for the September 2013 quarter due by 28 October 2013.

Pension minimums increased

The Government's relief on the required minimum pension payments will end with the minimum percentages returning to their 'pre market downturn' rates.

This will impact upon both Transition to Retirement and Account Based Pensioners, resulting in higher minimum pension payments for the 2013/14 financial year.

New powers for the ATO

The ATO will have the power to make mandatory directions in relation to education of trustees, directions to rectify contraventions in a specified period of time, issue administrative penalties against trustees for contraventions occurring from 1 July 2013. Trustees will be able to appeal penalties issued by the ATO through the Administrative Appeals Tribunal.

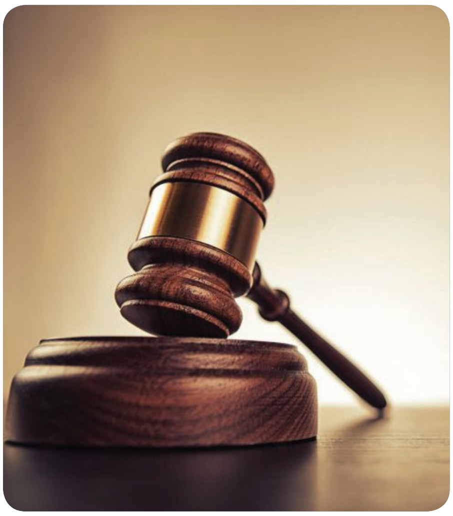
Auditors must be registered

SMSF auditors must be registered with ASIC from 1 July 2013. Auditors have been able to register since 31 January 2013 and will be issued with an SMSF auditor number.

Taskforce to tackle trusts

There has been increased manipulation of trusts as vehicles to avoid or evade tax. That is the finding of recent compliance operations carried out by the ATO.

In the recent Federal Budget, the government announced increased spending to allow the ATO to audit taxpayers who have been involved in tax avoidance or evasion using trusts. The Budget will provide nearly $68 million over four years, with the measure estimated to increase revenue by $379 million over the forward estimates period.



The Trusts Taskforce will target higher risk taxpayers and does not intend to target ordinary trust and tax planning arrangements that are associated with genuine business or family dealings.

The Taskforce will focus on those people that exploit trusts in order to hide information, intentionally misclassify transactions and deal with trust income to avoid or reduce tax.

Where cases are considered serious, criminal sanctions will be pursued in collaboration with law enforcement authorities.

Some of the factors that will attract the attention of the Taskforce include arrangements where:

- Trusts or their beneficiaries who have received substantial income are not registered or have not lodged tax returns or activity statements.
- Agreements are in place that have no commercial basis, with the objective of directing income entitlements to a low-tax beneficiary while the benefits are enjoyed by others.
- There are offshore dealings involving secrecy jurisdictions.
- There has been mischaracterisation of revenue activities to achieve concessional CGT treatment.
- There is artificial characterisation of amounts, such that tax outcomes do not reflect the economic substance, resulting in some parties receiving substantial benefits from a trust while the tax liabilities corresponding to that benefit have been attributed elsewhere.
- Transactions have excessively complex features or sham characteristics, such as round robin circulation of income among trusts.
- Changes have been made to trust deeds or other constitutional documents, exclusively for the purpose of achieving a tax planning benefit.
- New trust arrangements have come into existence involving taxpayers and/or promoters who have histories of or connection to previous non-compliance.