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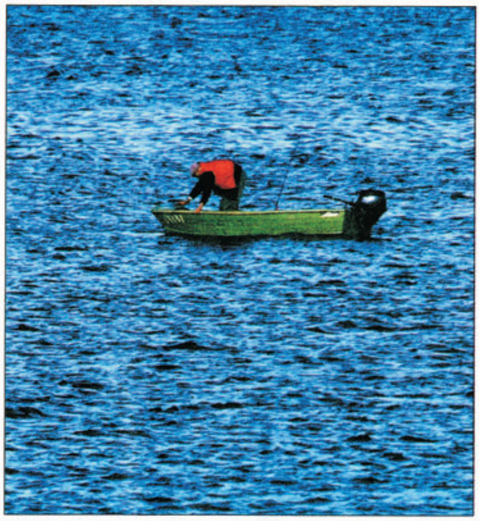
SMART MONEY

YOUR QUESTIONS JOHN WASILIEV

Self-employed can test limits



Don't go overboard . . . when contributing to super, stay within the tax concessional amounts.

I am 56 and working full time, but intend to retire in two years. My husband is 60 and working full time, and intends to work for some years yet. Recently I inherited one-sixth of a commercial property with gearing. Under the new gearing rules, can my self-managed fund buy this from me? If my husband then starts a transition to retirement pension, will the rental income from this be tax free?

If you follow the guidelines set down in the new rules that allow a self-managed fund to borrow as part of buying an asset, your fund will be able to buy the commercial property, says lawyer Peter Bobbin of the Argyle Partnership in Sydney. But there are some issues you need to consider. The sale of the interest to your fund will trigger stamp duty based on its value. As far as the debt is concerned you will need the lender to agree that your fund's liability is limited to the value of the property and no other fund assets. As far as the rental income being tax exempt for your husband's transition to retirement pension, if the property is part of the fund investments that are paying his pension, this will be the case. But if the property is part of a broad fund portfolio where another member (such as yourself) is still saving super or has not started a pension, then the rental income will only be partly tax exempt.

Regrettably, last week's Your Questions column contained an error in the first question that is best corrected by repeating both the question and the answer.

I am 62 and planning to retire at the end of December. Since July my employer has contributed 9 per cent of my salary into my super and I have salary sacrificed all of my salary.

If I sell an investment property this financial year and incur a capital gains tax (CGT) liability, and I pass the self-employed test of having less than 10 per cent of my income this financial year come from salary, am I able to make a contribution to super and claim it as a deduction to offset the CGT. Or does the fact that an employer made contributions to my super for six months in the year mean that I cannot do this?

The self-employed test has nothing to do with any period of employer contributions to your super. Rather, the test stipulates that if less than 10 per cent of your assessable income plus reportable fringe benefits for the income year is from employment-related activity, then you will be eligible to claim a deduction on personal super contributions, says Ed Bernard, technical adviser with Adelaide super administrator SuperGuardian. In your case, neither the 9 per cent employer super guarantee contributions nor your salary sacrificed contributions are counted as part of your assessable income or reportable fringe benefit. You could have very little employment related income as far as the test is concerned.

But you do need to watch out for tax-concessional contribution limits. As you are over 50, this limit is $100,000. If the total of your employment sourced concessional contributions (i.e. the 9 per cent super guarantee and the salary sacrificed amounts) plus the personal concessional contributions you plan to make exceeds $100,000 for the income year, then you will exceed the concessional contribution limit.

In this instance, any excess contributions will be up for an additional tax of 31.5 per cent on top of the 15 per cent tax that applies to concessional super contributions. Depending on the CGT, you could be up for on the investment property, this could well be a penalty tax rate. Say your property profit is $150,000, then $75,000 will be taxable under the entitlement to claim a 50 per cent discount on the gain earned by a personally owned asset.

But say your salary sacrifice and employer concessional contributions come to $75,000, you'll be eligible to contribute $25,000 in personal tax concessional contributions. Any excess will face tax at the top personal tax rate of 46.5 per cent via your super fund.

Compare that with an average tax rate of less than 21 per cent that you will pay on the capital gain if you do things correctly.

You can claim the $25,000 personal super contribution agains your $75,000 net gain (after allowing for the 50 per cent CGT discount), reducing your taxable profit to $50,000. Depending on any rebates you may be entitled to the $10,350 tax on this reflects an average tax rate of just under 21 per cent, which is less than hal the top personal tax rate.

So it's vital that the personal contribution does not exceed the $100,000 limit. If you want to make further contributions, they should be after-tax contributions from either the tax-free discountec profit or the after-tax assessable profit. Another important point to note is that when you retire and receive a lump sum payout of your accrued leave, you will need make sure the assessable component of this employment related income does not compromise your 10 per cent position.