SMART MONEY

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YOUR QUESTIONS JOHN WASILIEV

Splitting contributions can only be concessional

My wife and I are both trustees of a do-it-yourself super fund. We work full time and I've started a transition-to-retirement pension from part of the fund, while still contributing to an accumulation account. To date my wife's only contribution in the DIY fund has come from me transferring money from my employer's default fund, which receives my super guarantee contributions, and then splitting the allowed amount to my wife. The employer default fund provides me with a death and disablement benefit at no cost. On these facts, am I able to split the contribution I am making to my accumulation account in our DIY fund and transfer the appropriate amount to my wife's accumulation account? We are both 60 and it's likely my wife will retire within the next 12 months.

Based on the facts you have provided, it would appear the contributions you are making to your DIY fund are non-concessional or contributions that you haven't claimed a tax deduction for, says Peter Burgess, general manager of superannuation services at Kingston Capital.

Before July 1 last year, it was possible to split non-concessional contributions – then called undeducted contributions – if the contributions were made on or before April 5. Since then it is only possible to split concessional contributions such as the employer contributions received by your default fund. The maximum split amount can't be more than 85 per cent of your concessional contributions for the year. You can split these contributions by rolling over the amount you wish to split directly to your DIY fund for the benefit of your spouse.

ASK US

It is critical to get your superannuation right. Many readers send us questions about retirement saving and more are welcome. We seek expert advice where necessary to help make sense of it all. Send any query, big or small to: **wasiliev@yoursuper.net**

My question concerns the minimum amount one is required to take under a superannuation account-based pension. In line with falling markets worldwide, a percentage of 5 per cent may now equate to 10 per cent of the current balance, which will be difficult to make up when markets recover. Is there any way one is able to take less than the minimum pension that was calculated on the fund balance on July 1 of this financial year?

If you started a pension on July 1 and your account balance has plunged dramatically, one choice you have is to stop the pension based on the July 1 balance and restart it based on the lower balance. Your major requirement will be to ensure you have paid the minimum amount on a pro-rata basis. If your account balance was $500,000 and the required minimum is 5 per cent, the annual payment would need to be $25,000.

Say the balance declined to $400,000. You could stop taking the pension at the end of November, pay the required pro-rated income up to this time and then start a new pension using the lower balance. The pro-rated income is calculated on the basis of the number of days the pension has been running.

Say you stopped the pension 150 days into the year: the minimum pension requirement will be 150 divided by 365 multiplied by $25,000. This proportion is calculated to four decimal points and converted into a percentage. In this case it will be 41.09 per cent of $25,000, or $10,270. The restarted pension would be 5 per cent of $400,000, or $20,000, which again would be pro-rated for the balance of the year. Alternatively, one could withdraw enough money from the fund to last for the rest of the year and then roll the pension back to accumulation phase until the market recovers.

This is a follow-up to last weekend's question about making off-market transfers of personally owned shares that have fallen in value into a SMSF. Could this strategy breach the Australian Taxation Office's wash sale rules?

Wash sales, says Ed Bernard of super administrator SuperGuardian, are a tax avoidance strategy where an investment is sold for a tax benefit but there is no substantial change in the seller's interest in the asset.

An example of this would be where you sell an investment for a capital loss to offset capital gains on other investment sales and then immediately buy the loss-making investment back. This is classified as tax avoidance because the purpose of the sale is to generate a loss to offset against gains.

The ATO has issued Taxpayer Alert TA 2008/7, which raises its concerns about wash sales. While it does not specifically deal with the situation where someone sells shares to a super fund, Bernard says, ordinarily this should not be considered a wash sale as the purpose behind contributing the shares to super should be to provide benefits for retirement.

But if the shares are transferred into the fund resulting in a capital loss, but then transferred back out of the fund shortly after, there will probably be an issue. Where wash sales are identified, the ATO has the power to disallow any capital gain or loss.

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