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SMART MONEY

YOUR QUESTIONS

Homing in on business properties

My husband and I have a holiday home we've owned through a company since the early 1980s and use personally for about 40 days a year. We want to develop the property into four houses to help fund our retirement. Our problem is capital gains. We have a self-managed super fund into which we wish to pay the proceeds. Could we also use the fund to minimise the capital gains tax; for instance, rent the property for a period and then transfer it into the fund as an income-earning property?
Both the capital gains tax rules and the rules that allow a self-managed super fund to buy investment assets from its members are complex, says Ed Bernard, technical adviser with Adelaide-based SuperGuardian.

For instance, a fund cannot acquire real estate from a member unless it is wholly and exclusively used in a business. There has been a recent draft ruling by the ATO (SMSFR 2008/D3) that provides guidance about when residential real estate might be considered business property. It gives an example where 15 residential rental properties owned by an entity would qualify as business real property, as "the scale of the operation together with the elements of repetition and purpose" indicate it is a property investment business. This suggests it is unlikely the definition of business property will embrace four houses built and owned by the company, even if they are being rented out.

Also, because you have a company does not mean you have a business. If you want to claim you are in the property business there needs to be clear evidence of this. This would seem to imply that your best bet is to sell the properties and contribute the proceeds to your super fund.

Although the property may have been owned before the introduction of CGT in September 1985, any development gain is likely to be taxable as ordinary income. Companies are not eligible for the 50 per cent general CGT discount. There is also the likelihood of the possible loss of the pre-CGT status of the company. It is worth obtaining professional tax advice.

If the company sells the properties for cash, some of this may be contributed to the SMSF as tax concessional directors' superannuation payments provided the directors are entitled to payment for their services. The company may then be able to claim the contributions as a deduction against its income. What can be contributed will of course be tested against the limits of $50,000 per member under 50 and $100,000 for someone over 50.

My question concerns workers' compensation insurance premiums my company is required to pay. I understand any compensation payment will be based on my salary. If I sacrifice my salary into super and replace this with a transition to retirement income benefit from my super, will an insurance company be able to argue that a zero salary means zero compensation?
Examine the contract with the insurer as important questions such as the definition of wages differs from state to state, says Sam Wall from Colonial First State Investments.

There can be many different forms of benefits such as weekly benefits, permanent impairment benefits and fees for medical or related treatment, to name three.

Your question seems to focus on weekly benefits where, as an example, the weekly compensation benefits in NSW paid to an injured worker during their period of incapacity are based on their current weekly wage. This is what is earned under under an award or agreement, excluding overtime, shiftwork, payments for special expenses and penalty rates. If no award or deemed award applies, 80 per cent of average weekly earnings is used. In NSW all amounts salary sacrificed into super on behalf of an employee or contractor will be counted as wages for workers' compensation purposes (including premiums from mid-2003).

My wife and I are over 60 and taking tax-free pensions from our super. We don't qualify for the government age pension but we do get the seniors health card. In this 2007-08 financial year, besides the monthly super pension payments we withdrew $60,000 in lump sums, which is in a bank investment account. Will these lump sums affect our entitlement for the health card in the coming financial year?
No they shouldn't, says Kate Anderson from Mariner Financial, as long as the bank investment earnings don't take your non-super taxable income above the $80,000 limit that applies to health-card eligibility for a couple.

Currently, as you are over 60 and entitled to tax-free benefits from your super, the lump-sum withdrawals are not included in means testing calculations for the health card. The health card income test will in future include gross income from tax-free super income streams; but this is not set to apply until after July 1, 2009.

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