SuperGuardian™
Superannuation administration made simple!

Chartered Accountants

SuperGuardian in the Press

SMART MONEY

Published: The Weekend Australian Financial Review Dec 20-21, 2008

YOUR QUESTIONS JOHN WASILIEV

Valuable art assets need not paint you into a corner

My DIY super fund owns a couple of works of art that are leased to a related company and displayed in its offices. They are classified as in-house assets of the fund. I am aware that in-house assets must not represent more than 5 per cent of the fund's total value. The other investments in my fund are mainly shares and managed funds that have lost value during the financial market falls. What must I do if the assets breach the 5 per cent limit, which they did recently?

The trustees of any super fund that owns in-house investments, says Colonial First State senior technical manager Craig Day, should always track their asset values against the total fund value during the year and take action to avoid breaching the 5 per cent limit in the lead-up to the end of the financial year.

If the breach remains at the end of the financial year, the trustees will be required under super law to prepare a written plan that identifies the amount of the fund's assets in excess of in-house asset limit and the action you propose to remedy the situation.

The action plan could be to dispose of one or more of the assets during the following year, with the value of the assets sold at least equal to the amount in excess of the in-house asset limit. Given that works of art cannot generally be split, being forced to sell the asset within 12 months could potentially trigger a capital gain or loss. Alternatively, the trustees could sell the excess portion of the asset to a related party, such as a member, to hold it as tenants in common. However, you would then be prohibited from leasing the asset back to a related party.

Other action you could take is making additional contributions to water down the level of the fund's in-house assets or stop leasing the asset to a related party. Considering there are potential penalties of up to $220,000 for breaching the in-house assets rules, it is very important to avoid this.

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**

I will turn 60 next year and am looking into the merits of converting my super into a pension stream from about November. I am aware my fund balance will not be taxed once I start the pension, but because there is a good chance there will be some investment losses in the portfolio, am I better off waiting until these losses are offset against gains before converting to an account-based pension?

A decision to start a pension should depend on whether you intend to move into retirement and are likely to need the income, suggests Jason Menzies, head of technical services at Westpac Financial Planning.

While starting the pension will result in you losing the ability to offset any investment capital losses against capital gains, because investment income is exempt in the pension phase it doesn't really matter that you forgo the losses. Most people benefit because they have more gains than losses.

Another important benefit is that investment returns can include income other than capital gains, which creates assessable income on which tax may be payable by the fund. Of course if you choose to remain in accumulation phase you will be able to offset capital gains generated against the losses produced, but the income will be taxable. Commencing the pension will ensure no tax is paid by the fund on investment earnings.

I am 60 years old and have a DIY fund paying a transition to retirement pension. I also have some super in the savings phase that I wish to consolidate into one pension as I believe that moving all my funds to a pension will save me tax. My accountant, however, is telling me that in order to do this I need a financial adviser and a new pension document needs to be drawn up. The accountant has also informed me that the new document will cost me more money than the tax saving. Do I need more documents or can this be sorted by trustee minutes?

The process of combining super savings with an existing pension should be able to be sorted out through trustee minutes, says technical adviser Ed Bernard of super administrator SuperGuardian.

As a member you firstly request in a letter that the trustees (of which you are one) stop the existing pension and consolidate all account balances into a new pension. The accountant will need to reflect this change in the fund accounts, which would attract fees.

If you need professional assistance with the preparation of the relevant documents and calculation of the new pension income levels, this may also attract additional fees.

Whether these costs outweigh the benefits of consolidating the pension will depend on a number of factors, including the expected future income of the fund and the amount of fees charged.

Bernard says that usually, the tax saving will significantly outweigh the costs, unless the consolidation process is undertaken on an excessively frequent basis, which would result in an increase in the fees. Although SuperGuardian recommends that advice be sought from a financial planner in relation to superannuation fund balances and pension income streams generally, there is no obligation to use an adviser.

You should be aware, however, that under financial services laws your accountant may be limited in the advice they can provide. It should also be noted that a financial product generally needs to be accompanied by a product disclosure statement. But an exemption to this requirement exists for an interest in a self-managed super fund if the member has access to all the information the statement must contain.