Watch the GST Trap!

In-Specie Contributions to Self Managed Super Fund: Commercial Real Property

Many of our clients are utilizing the stamp duty exemptions available on transferring 'In-Specie' (meaning no consideration physically changing hands) commercial real property into Self Managed Superannuation Funds (SMSF's) before 30 June 2007 to take advantage of the $1 million un-deducted contribution limit (available from 9 May 2006 to 30 June 2007) before 30 June 2007. Commercial real property can be a doctor's surgery, factory/warehouse or a shop. A condition on transferring the property on title into the SMSF is that the property must be debt free and totally unencumbered (property not used for security for any other investments) on transfer. No physical funds are being transferred (in most cases), just a change of title. Victoria is the only State where such transfers (no consideration being paid) do not trigger stamp duty; this is a significant advantage in Victoria!

Many of our clients are looking to transfer (In-Specie) surgery freeholds that are owned in the family trust's name into the SMSF before 30 June 2007. The property held in the family trust must first be transferred on title down to a beneficiary of the family trust before it can be transferred (In-Specie) into the SMSF; it cannot go directly from the family trust to the SMSF without incurring stamp duty.

An important detail being missed by some advisors is the potential GST implications of such In-Specie contributions of property into the SMSF. The Commissioner of Taxation takes the view that an In-Specie distribution of property from a trust that is registered for GST to a beneficiary for no consideration can be a taxable supply. Although an In-Specie distribution from a discretionary trust is not for consideration, it can still be a taxable supply if Division 72 of the GST Act applies. This means, if the beneficiary of the discretionary trust, that in the first instance is receiving the property on title, is not registered for GST and receiving rental income as the owner for say a minimum 1 month period, the transfer of title could trigger GST, even if no consideration has been paid.

What to do to ensure property transfer does not trigger a nasty GST surprise!

In short, to ensure the transfer on title, in the first instance, from the discretionary trust to the beneficiary of that trust, and then from the beneficiary to the SMSF, the following should occur-:

- Ensure the beneficiary of the discretionary trust is registered for GST prior to receiving the property on title (for no consideration)
- Ensure the beneficiary of the trust on owning the property on title, uses the property for credible purpose; i.e. receives commercial rent, for a minimum period of 1 month, paid by the tenant
- The SMSF is registered for GST prior to In-Specie transfer of property from beneficiary of discretionary trust

Advisors and clients simply cannot rely on the 'going concern' (tenant continuing to lease premises) provisions for the In-Specie transfer of property to ensure the transaction does not trigger GST.

Super Deductibility and Capital Gains consequences as part of In-Specie Contribution of Property to SMSF

In some instances, part of the In-Specie transfer of property is deductible as an aged-based superannuation contribution; an example is shown below-:

Assume a doctor's surgery is being transferred In-Specie into a SMSF and the doctor is treated as self employed and aged 56.

Cost of Surgery	$500,000 (purchased 1988)
Market Value	$1,100,000
Gross Capital Gain	$600,000
Less: General Disc	($300,000) owned >12mths
Capital Gain	$300,000
Less: Active Asset Disc	($150,000) surgery treated as active asset
Capital Gain	$150,000
Less: Retirement Exemption	($150,000) over age 55
Taxable Capital Gain	$Nil
*Less: Super contribution	($105,113)

*This amount is claimed as a full tax deductible super contribution against the doctor's other income as part of the In-Specie transfer of property into the SMSF.

Note: the doctor is claiming a full tax deduction on super contributions without physically transferring the cash funds into the super fund. In addition the $1 million un-deducted cap is being utilized as part of the transfer.

The information provided in this article is not specific to any particular reader's circumstances and we urge professional advice is sort before contemplating such a transfer.

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