

Self-managed super gets serious

With people running their own super funds now the largest and fastest growing segment of the superannuation industry, the tax office is doing more than ever to make sure they obey the rules. RetireInvest Brookvale's Sean Southwell and Tim Brady* say the Administrative Appeals Tribunal's ruling in July to affirm a Tax Office decision that declared a Self Managed Super Fund as non-complying and imposed heavy tax consequences shows just how serious enforcement can be.

Sean says if a Self Managed Super Fund or 'SMSF' is declared non-complying, it loses tax concessions so all the fund's assets, less any after-tax member contributions, plus any income in the financial year the fund is non-complying is taxed at the highest marginal rate. The resulting tax slug could mean a fund has to pay many tens of thousands of dollars or even over \$100,000 in additional tax, depending on the assets.

"While many people like the idea of controlling their own superannuation money, it's essential they understand and fulfil the legal responsibilities that come with it," Tim says.

In the recent case, the people running their own super fund made loans from the fund to support their struggling business and at levels much greater than the permitted 5 per cent in-house assets rule. They didn't repay the loan until long after the fund's auditors reported the breach, and long after the Tax Office provided further opportunity for them to rectify it.

Tax Commissioner Michael D'Ascenzo said the decision is a reminder to those running their own funds to act on any breaches. "The Tax Office has increased its focus on ensuring high levels of compliance among trustees given the important role of SMSFs and their access to concessional tax treatment," he said.

Sean says people running their own fund need to remember the sole purpose of the fund is to provide benefits for members in retirement. "With super's valuable tax advantages come responsibilities for the people running the fund. They can't just ignore the rules or delegate responsibility to a professional adviser."

According to statistics from the Tax Office, auditor reports of SMSFs not meeting the rules increased by almost 25 per cent in 2007/08 on the previous year. As of May 2009, the Tax Office had made 74 SMSFs non-complying and another 53 were underway. It also said it would be disqualifying or prosecuting more SMSF trustees than in the past.

Tim says those managing or thinking of managing their own super fund shouldn't necessarily be put off by the Tax Office's increased compliance activity.

Self Managed Super remains attractive to many people because of the potential for greater control and flexibility, particularly in the areas of investments, estate planning and benefit payment options. "Those running their own funds just need to respect the rules. Being able to choose specific assets and take a more holistic financial planning approach as a result of Self Managed Super Fund can be really rewarding, but with this comes responsibility."

Sean says given the stringent requirements on those managing their own super fund, it's important they get good advice. In addition to valuable support materials and guidance available from the Tax Office, those who run their own super fund or are considering doing so should work closely with a professional financial adviser and their accountant.

This editorial does not consider your personal circumstances and is general advice only. You should not act on any recommendation without considering your personal needs, circumstances and objectives. RetireInvest recommends you obtain professional financial advice specific to your circumstances. Past performance is not indicative of future performance.

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