WEALTHMATTERS

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INSIDE

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Splitting super after a relationship breakdown

When partners in a SMSF separate, there are specific legal and tax implications that should be considered.

It is possible to split super benefits, i.e., transfer assets, such as property, from one super fund into another and roll money over to another fund; however, trustees need to keep the following in mind:

- Separating couples need to work out how they will split their super. They can choose to enter into a formal written agreement, seek Consent Orders, or if the separating couple cannot reach an agreement, they can seek a court order.
- It is important to have necessary documentation in the event of an ATO audit including financial and non-financial records. Due to the tax outcomes of splitting super in an SMSF, it is essential to have documentation, such as the notice for splitting the super, to show a genuine separation.
- There is the potential for SMSFs with property as a major form of investment to create a liquidity problem; however, this can be addressed with future contributions. Individuals will also need to be aware of the market valuation rules for real estate in SMSFs.
- If one member establishes a new single member fund it is advisable to incorporate a special purpose company as the trustee. This avoids having a second person as a trustee.
- Trustees can now acquire assets from a related party of the fund (in-house assets) as a result of marriage breakdown. Legislation was recently amended to broaden the scope to the breakdown of opposite-sex and same-sex de facto relationships. Where in-house assets are acquired as the result of a relationship breakdown, transitional exemption provisions apply.

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Keeping your SMSF compliant while overseas

Travelling overseas for an extended period is an exciting adventure. What isn't so exciting is the prospect of breaking compliance laws relating to your SMSF while enjoying your trip.

There are specific conditions that must be met to deem the self-managed super fund ATO compliant. They are as follows:

Fund recognised as an Australian fund

The SMSF will be recognised as an Australian super fund provided that the setup of and initial contributions have been made and accepted by the trustee(s) in Australia or at least one of its assets are located in Australia.

Management and control of the fund in Australia

The central management and control of the fund must ordinarily be in Australia. This means the SMSF's strategic decisions are regularly made, and high-level duties and activities are performed in Australia. Some examples include formulating the investment strategy, reviewing the performance of the fund's investments and determining how assets are to be used for member benefits.

Generally, a fund will meet this condition even if its central management and control is temporarily outside Australia for up to two years. If central management and control of the fund is permanently outside Australia for any period, it will not meet this requirement.

Active member test

An "active member" is a contributor to the fund or contributions to the fund have been made on their behalf.

To satisfy the "active member test" trustees should ensure the fund has no active members, or it has active members who are Australian residents and who hold at least 50 per cent of the total market value of the fund's assets attributable super interests, or the sum of the amounts that would be payable to active members if they decided to leave the fund.

If a member of the fund becomes a non-resident but still wishes to make or receive contributions, they should do this outside of their SMSF, i.e., through a retail or industry super fund. When they return as an Australian resident, they can then rollover the contributions to their SMSF.

What is resettlement of a trust?

When making amendments to a trust deed, care must be taken to ensure a resettlement of the trust does not occur.

A trust resettlement occurs when an original trust is terminated and a new trust estate is established. The ATO explains in its Taxation Determination 2012/21 that a trust will be resettled "where it might be concluded that there is not sufficient continuity between the trust as originally constituted and the trust in its current form."

Tax implications

There are significant tax consequences associated with a resettlement of a trust including income tax, stamp duty and triggering capital gains tax (CGT).

If a CGT event is triggered, CGT assets held in the original trust will effectively transfer to the new trust at market value. This poses problems as either pre-CGT assets will become post-CGT assets or a capital gain will occur equal to the difference between market value and the cost base of post-CGT assets held in the trust.

Furthermore, any accumulated losses or gains from the original trust cannot be carried forward into the new trust.

Changes to the trust deed

A trust deed cannot be amended without an express power to do so and trustees must consider whether the amendments maintain the continuity in the trust estate. The ATO makes it fairly clear that any amendments must be made in accordance with the terms of the original trust.

The problem for trustees is that whether resettlement occurs or not is not clear-cut; it needs to be assessed on a case-by-case basis.

One of the things that trustees may want to determine is the potential CGT consequences for the trust if resettlement is deemed to have occurred. Once that's established it may be appropriate to apply for a binding ruling from the ATO to gain certainty on whether resettlement has occurred prior to making any changes.

Before making an amendment to a trust deed, trustees are cautioned to read the trust deed and check that the power specifically authorises the proposed amendment and that amendments made pursuant to a power are done so in accordance with any process outlined in the deed.

Resettlement of a trust can be quite complicated; seeking professional legal advice is recommended, particularly where changes are unrelated to tax issues such as estate planning.

Making house-flipping profitable

Flipping houses can be very profitable and can help build your wealth, but it can also be disastrous and cost you money if not done correctly.

House-flipping is a relatively new concept; it is essentially purchasing properties, renovating them and then quickly reselling them for profit. Consider the following tips for house-flipping:

Work your way up

When house-flipping, one of the biggest mistakes you can make is to be over-ambitious, particularly when starting out. The best approach to take is to start small; start off with a small house or an apartment, one that doesn't require much work to flip.

Do your research

Don't underestimate the challenges and demands of flipping houses. The strategy has become very popular, with numerous television shows focused around house-flipping; don't be fooled by this. To be successful at house-flipping, you need to consider various factors, such as:

- Buying in the right area
- How much profit you can honestly expect
- Strategies for renovating in the most cost-effective way
- Delivering what homeowners will be looking for in the particular area you are selling

Build relationships with contractors

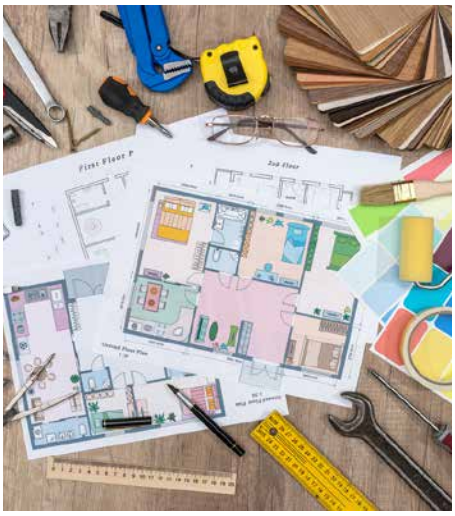
If you intend to make a career out of house-flipping and to build your wealth, it would be fruitful to build relationships with contractors. Contractors are people, just like you, and they are also looking to get their paycheck at the end of the week. Building a strong relationship with your contractors has benefits for both parties. For you as the flipper, it allows you to work with someone you can trust and who is dependable, who understands your wants and needs, who knows they will get paid on time and that you will be a continued source of income if they do their job well.

Focus on aesthetics

The idea of house-flipping is to do the flip quickly and efficiently. The best way to do this is to focus on aesthetic changes and avoid houses that are going to need any structural changes or repairs. When renovating rooms such as bathrooms and kitchens where plumbing is involved, it is wise to avoid rearranging and moving fixtures. It's also beneficial to prioritise the taste of the potential buyer over your own.

Stick to your budget

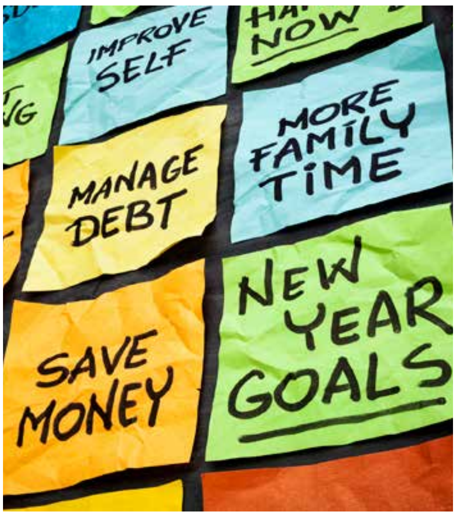
Breaking the budget is the biggest 'no-no' when it comes to flipping houses. If you do your research efficiently, there really should be no reason to go over budget. To avoid going over budget, speak to people you know who have flipped, or who work in this industry such as a contractor or a real estate agent.



Preparing your finances for the New Year

Managing your finances is a responsibility you should be on top of all year round.

However, the New Year is the perfect time to review and evaluate, and pay close attention to your investments and spending to enable you to enter the New Year on top of your finances.



Rebalance your portfolio

The New Year is an ideal time to sit down and review your investments. Without paying diligent attention to your portfolio, you may not notice that some assets aren't performing as well as you'd expect, or they have stopped performing in the way they once did. Revisiting and reevaluating the dividends your assets are providing will allow you to assess whether to keep investing in them or to cut your losses as you enter into the New Year.

Set financial goals

Ideally, you should set financial goals as the new financial year approaches, and reassess these bi-annually at the end of the year. Now is the perfect time to revise long-term goals and develop some new short-term goals. Seasonal goals might include establishing how well you want your holiday rental to perform, or developing renovation plans to begin after the holiday season to bring in more revenue for the next holiday season.

Research tax exemptions on your holiday spending

The New Year is often a period of big spending-dining out, purchasing presents, taking time off and going on holidays all add up. You may not be aware of the tax exemptions or claims you can make on the money you spend during this period. It is advisable to keep receipts from this time frame somewhere safe and speak to your financial advisor about deductions you are entitled to.

Reassess your mortgage and insurance

When your insurance is up for renewal, compare against other products and companies to ensure you are getting the best deal. In the same token, shopping around for a better deal on your mortgage could potentially save you thousands over the lifetime of your home loan.

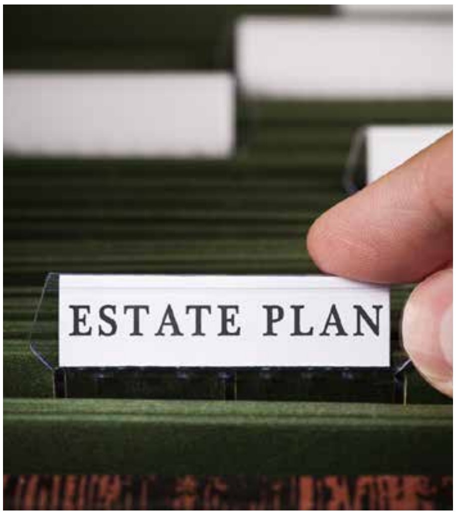
Estate planning essentials

Planning your estate is an important part of managing your financial affairs. It allows you to pass on your assets to intended people in your life while minimising adverse tax implications.

When planning your estate, consider the following:

Having a valid, up-to-date Will

First and foremost, individuals should have a valid and up-to-date Will. A Will sets out who you wish to receive your assets upon your death, provides funeral instructions and details such as guardianship over minor children. The assets in your Will form part of your estate and include property, bank accounts, shares, managed funds and so forth. However, superannuation is separate from your estate, so you will need to make a death benefit nomination to choose eligible beneficiaries to receive your super.



It is critical to keep your Will up-to-date especially after major life events, i.e., marriage, having a child, divorce, an executor dies, etc., as these may affect the validity of your Will.

Carefully considering your Executor

An executor has significant responsibilities and duties in managing your estate. It is the executor's role to carry out the instructions of your Will including the distribution of assets, locating the Will, applying for probate, arranging the funeral, preparing and lodging tax returns and so on. Individuals must carefully consider and preferably ask the nominated person(s) before appointing them to the role as the duties can be quite complex and demanding, especially during a time of grief. An executor(s) must also be aware of the tax, accounting and legal requirements of the role as well as the time demands of finalising an estate. Appointing two executors is beneficial in the case where one becomes unwell or does not wish to accept the role.

Donating to charity

Leaving a portion or all of your estate to charity is a great legacy. However, it is critical to use clear wording and provide accurate details of the charity or organisation to prevent the gift from failing. Clear instructions must be included for your executor in the circumstance where the charity ceases to operate to ensure your intentions are honoured. This may include giving your executor power to select a charity on your behalf.

Setting up a trust

Setting up a trust within your Will may be beneficial if you wish to protect assets from bankruptcy or divorce, need to provide for children with disabilities or if you have high-risk beneficiaries (i.e., a beneficiary with gambling, drug or alcohol addictions). A trust has the added benefit of providing significant tax savings especially in regards to income tax and capital gains tax (CGT).

Power of Attorneys and Guardianship

Appointing a Power of Attorney and an Enduring Guardian allows nominated persons to make legal decisions on your behalf. A General Power of Attorney will make financial decisions on your behalf for a specific period or event, such as going overseas. An Enduring Power of Attorney appoints someone to make financial and legal decisions on your behalf in the case where you lose the mental capacity to make decisions. Appointing an Enduring Guardian allows an individual to make lifestyle decisions on your behalf, such as healthcare treatment in the event you become incapable of making such decisions.

Understanding leverage in investment property

Property investors can benefit from using leverage to grow their portfolios.

If you are a first-time property investor or just starting to think about investing, you may be wondering what leverage is. Leverage is the use of borrowed capital to increase the return on an investment. Taking out a mortgage to purchase a house is one such example of borrowed capital.

Investors can leverage the equity in one of their existing properties to purchase another property. For example, if an investor wants to purchase an investment property with a market value of $420,000, and the bank will lend $320,000, they will require a $100,000 deposit.

Instead of using cash as a deposit, an investor can use the equity in an existing property to raise money to borrow for a deposit or redraw on an existing loan. For example, if the market value of an investor's existing property is $700,000 and the mortgage is $350,000, then there is $350,000 in equity.

Leveraging equity to purchase new properties is attractive to investors as they do not require a cash deposit, which can mean years of saving is not required. However, using leverage is only beneficial if property prices and rental rates in the property's area are rising. Additionally, the equity should be able to cover the deposit, stamp duty, and the buyer's agent fees.

It is best to seek professional advice if you are unsure whether using leverage is suitable for you.

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