TRANSFER YOUR BUSINESS PREMISES INTO YOUR SMSF

The strategy of transferring ownership of a commercial property to the business owner's self-managed superannuation fund (SMSF) has, at first glance, several advantages for both the business concerned and also for the members of the SMSF.

If your business is travelling along steadily, it will provide a steady source of rental income for the SMSF and capital growth. It may also provide a level of stability for you as a business owner by not having a third-party landlord. There are additional advantages that, depending on a business owner's circumstances, may make transferring commercial property into an SMSF a tempting option.

One of the primary reasons for making such a change is tax. As the asset, which is the business premises, will be held by a superannuation fund, tax on income and capital gains will generally be less than the business would have been liable for. For an SMSF, earnings (including rental income) are taxed at 15%. For the business, rent or lease expenses are deductible for the business taxpayer, which pays tax at a rate of 30% (if a corporate). The end result is that the people behind these two entities — the SMSF and the business — finish up overall saving 15 cents in the dollar of tax paid.

There are two other positives that can come out of the business making lease payments to the SMSF. These payments are a monetary contribution to the fund that is not counted towards the members' contribution caps for the year, as they are "investment earnings". It should be noted that rent must be charged at market rates. The situation can also be further improved once fund members commence pension phase, as tax on earnings then reduces to nil where the asset is supporting the pension.

A another reason to consider having the SMSF buy one's commercial premises is the resulting transaction will be a monetary fillip for business, and can either refresh its capital situation or perhaps pay down debt.

Further, depending on which state the business premise is in, can be stamp duty exemptions or concessions. Many states have legislated to provide stamp duty concessions when a commercial property is transferred into a super fund. However these concessions can vary depending on the state, so advice from this office may be needed.

Another potential attraction, which may depend on circumstances, is that assets can be rendered less accessible to creditors once they are held by superannuation funds. There are various allowances made within the bankruptcy laws, for example, that can open these transactions up to being unwound in some circumstances — so the fact that assets are held in an SMSF may not be an iron-clad strategy on the off-chance that creditors could come knocking.

One inflexible requirement, in order to comply with the regulations, is that the property in question must be "business real property" that is used wholly and exclusively for the business. And although the regulations permit purchasing from a related party, the acquisition must be made at fair market value, therefore an independent valuation must be carried out and recorded.

Buying the property must be consistent with the written investment strategy of the SMSF, and the asset must be acquired with the "sole purpose" of providing for the retirement savings of the fund's members.

An important consideration is the capital gains tax (CGT) implications that will be triggered by moving the property asset from one owner to another, which is the liability of the "seller" of the business premises to the SMSF. In many cases, the business owner may be eligible for the small business CGT concessions, which can significantly reduce or even remove altogether CGT payable on the sale of the property asset.