

The Impact of the Super Reviews

Starting 26 April 2010 the Government began rolling out proposals to change the way that SMSFs operate. The reviews – the Cooper Review on SMSFs and the Henry Tax Review, get a big tick from us. What could have proved a disaster has ended up entrenching SMSFs and their member/trustees as the leader of the superannuation pack with a lot more exciting opportunity and innovation to come. We can expect SMSF assets to hit \$1 trillion by 2015.

In this article we will consider each of the reviews and highlight their more important features and how they will impact our client's SMSFs and long term family wealth.

Henry Tax Review and 2010 Budget

All of us in the superannuation industry awaited the Henry Tax Review and ensuing Budget with trepidation – talk of 30% contributions taxes had many of our clients concerned. But in the end, the only industry that was really targeted was mining and superannuation escaped another Budget. If anything, superannuation was well looked after with a range of positive long term changes, including:

- an increase in the superannuation guarantee charge (SGC) from 9% to 12% from 2013 to 2019 as well as extending the SGC to those aged 70 - 74.
- providing the Commissioner with discretion to change an excess contributions tax assessment where a member of a superannuation fund is paid excessive contributions by mistake.
- a continuation of the concessional contributions cap of \$50,000 for members over age 50 where their total superannuation benefits are less than \$500,000.

- changing the taxation laws to ensure that there is no capital gains tax in relation to the transfer of property, shares or other assets subject to a SMSF borrowing when the loan is paid off and the asset is transferred to the fund.
- a partial deduction to the trustee of a SMSF where it pays a lump sum to a member with a terminal medical condition. As an aside the lump sum payment is tax free to the member and family.

Cooper SMSF Review

For the past two years Jeremy Cooper – the former head of ASIC, has been conducting a review of the superannuation industry, including SMSFs. The Cooper Panel of experts released a comprehensive series of preliminary recommendations to make important changes to SMSFs including:

- continuing the SMSF borrowing rules for a further two year period.
- SMSF advice to require specialist education levels for advisers – up from the current generalist level. This is important as our firm's advisers have completed SMSF specialist education.
- extending the reach of the Superannuation Complaints Tribunal to cases of assessing the merits of children and other dependants claiming on a member's superannuation benefits in the event of the death of a member that did not leave an effective SMSF Will.
- establish a body to aggregate SMSF investment data to determine what SMSFs are investing in and their overall investment performance.
- Provide the Commissioner with flexible penalties as opposed to using the blunt instrument of making a SMSF non-complying.

- all SMSF auditors to be independent, registered and with specialist knowledge standards.
- dealings with members assets to be abolished with the exception of business real property leases. Also to go is the investment by the trustee of the fund in collectables.
- the trustee of the fund to consider an insurance strategy for the fund and its members.

The Cooper Review highlighted the importance of SMSFs to the superannuation industry with the above recommendations to maximise its potential. They are preliminary at this stage and we will keep in contact with our clients on any formal changes as they arise.

From a strategy perspective, it is now important for all of our SMSF trustees to consider:

1. Using the SMSF borrowing rules to acquire residential and commercial property or shares while the laws allow – they may be too good to last.
2. Put in place a SMSF Will to maximise your SMSF estate planning possibilities with security and certainty.
3. Bring children into the fund to make a SMSF a true Family Super Fund.

For further information or to talk about your situation contact Superannuation Principal, Mark Geldens, on 02 8346 6000 or email mgeldens@lawlerpartners.com.au