CTC ACCOUNTANTS

TAX & BUSINESS SERVICES

SMSF NEWSLETTER

October 2015

SPECIAL POINTS OF INTEREST:

1. Main areas where SMSF trustees are going wrong
2. Can your SMSF register for GST?

INSIDE THIS ISSUE:

TOP MISTAKES MADE BY SMSF TRUSTEES

With the new ATO trustee penalty regime now in full swing, this month's article discusses the top mistakes made by SMSF trustees, according to ATO research.

ATO research findings

If your SMSF auditor detects certain breaches of the superannuation laws, it must report these contraventions to the ATO in the "Auditor contravention report". The ATO's data from auditor contravention reports showed that the top 10 errors made by trustees were:

Breach	%
1. Loans / financial assistance	21.5%
2. In-house assets	19.0%
3. Administrative breaches	10.8%
4. Separation of assets	12.7%
5. Operating contraventions	8.0%
6. Borrowings	7.8%
7. Sole purpose	8.0%
8. Investments at arms length	7.7%
9. Other	3.1%
10. Related party acquisitions	1.4%

The 'top two' breaches are briefly explained below.

1. Financial assistance

Number one on the reported breaches list is SMSF trustees using their SMSF to provide money or other forms of financial assistance to members or their relatives.

In addition to your typical loan to a member or relative, the ATO considers that the following transactions also break the rules because they involve 'financial assistance' being provided to a member or a relative of the fund:

- selling an asset below market value to a member, or a relative;
- providing a member or relative financial assistance via another entity (e.g. your fund lends money to a company which then lends money to a member); and
- providing a security or charge over an SMSF asset to benefit a member or relative.

2. In-house asset breaches

One feature that makes SMSFs so attractive is the ability as trustee to generally make investment decisions as you see fit. However, the superannuation rules contain restrictions that seek to ensure your retirement savings are not dependent on the success of investments or businesses in the family group.

Generally speaking, the rules achieve this by capping certain transactions (called 'in-house assets') involving your SMSF and family group to 5%. More specifically, an in-house asset is:

- a loan by your fund to a family group structure, such as a family company. Note, the financial assistance rules at 1. above prohibit your fund from providing **any loan at all** to a member or relative. This generally means that your SMSF can only lend within the 5% cap to a related family structure (**not** to related individuals);
- a lease of a fund asset (such as a property) to a related party; or
- an investment in a structure controlled by the family group.

Exceptions to these rules apply, with leasing of business property (such as warehouse or factory) to a related business being the main one.

EXAMPLE–The Rose SMSF is keen to invest 100% of its assets in a family business structure operated by the members. The investment is likely to be caught as an in-house asset (and subject to the 5% cap) because the SMSF is seeking to invest in a structure controlled by the family group (exceptions apply).

"...your SMSF generally will not need to register for GST unless it derives rent from a commercial property of $75,000+ (exceptions apply)."

"Firstly, SMSFs that are not GST-registered cannot claim any GST credits at all."

UNDERSTANDING GST AND SMSFS

Trustees often ask if any GST implications arise in relation to running an SMSF. In this article, we provide a brief overview of key GST issues for SMSF trustees to be aware of.

Does my SMSF need to register for GST?

Generally speaking, your SMSF must register once it earns income for GST purposes of $75,000+ per annum (other requirements apply). Not all SMSF income counts towards this $75,000 GST-registration threshold, as shown in the table below:

Typical SMSF Income	Counts?
Commercial property rental	**Yes**
Receipt of superannuation contributions	**No**
Proceeds from selling shares	**No**
Dividend income	**No**
Interest income	**No**
Residential rental property rent	**No**
Managed fund distributions	**No**

Therefore, your SMSF generally will not need to register for GST **unless** it derives rent from a commercial property of $75,000+ (exceptions apply).

EXAMPLE–The Frog SMSF buys and sells shares on a regular basis. The fund sold over $1m of shares during the last financial year. It also received dividends of $22,000 and interest of $10,000.

The Frog SMSF is **not** required to register for GST because neither the share sales, interest nor dividend income counts towards the $75,000 registration threshold.

Voluntarily registering for GST

Your SMSF can choose to voluntarily register if it is below the registration threshold. However before doing so, your SMSF needs to weigh up the following:

- the benefit of any GST credits available. Note, your SMSF may only have a limited entitlement to GST credits for the reasons explained below;
- the cost of GST payable (if any) on income earned; and
- the cost and additional book work associated with lodging activity statements with the ATO.

WARNING–It is not a viable strategy for a fund purchasing a commercial property to voluntarily register for GST to claim back the GST credits on purchase of the property, and then deregister again (i.e. because rental income is below $75,000). This is because the GST law requires an SMSF that ceases be registered to repay any GST credits back to the ATO that it claimed on purchase of an asset.

SMSFs claiming GST credits

Firstly, SMSFs that are not GST-registered cannot claim any GST credits at all.

A GST-registered SMSF can claim GST credits that relate to a commercial rental property. For example, a GST-registered SMSF can generally claim the GST credits on repairs it makes to a commercial property it owns.

However, GST-registered SMSFs with only shares, term deposits and/or managed funds, cannot generally claim GST credits because the expenses are **not** connected with income that is subject to GST. As a concession, the law allows a GST-registered SMSF to claim 75% of the GST credits on a specific, limited range of expenses, including:

- investment management services (e.g. establishing a financial plan); and
- administrative functions, (e.g. maintaining trustee records) but **excluding** tax and audit services.

TIP–Your GST-registered SMSF could also potentially claim additional GST credits if:

- the fund earns comparatively large levels of income subject to GST (e.g. a large portion of its income is from commercial property rental). Tests apply to determine your fund's eligibility; or
- at least part of the expense relates to earning income that is subject to GST (apportionment is required).

Contact Us

ctc@ctcaccountants.com.au

www.ctcaccountants.com.au

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND