



## Property and Self Managed Funds

When looking at property with a self managed fund there are a range of issues which need to be taken to account.

1. What type of property is it? (i.e. Residential Rental Property or Business Premises)
2. Who owns it? (i.e. if owned by an associated party of the member can it be purchased by the fund)
3. Are there to be any Borrowings? (if so the property can not be used as security and the fund can't borrow)
4. Who is renting it? (if a business premises then it can be the members or associated party to the fund otherwise if it is a residential rental party then **NO** member or associated party of the member can rent it)

### Business Property

Provided such assets fall within the investment strategy of the fund and objectives of the members, a Business Real Property can be purchased from the any arms length person, from the members or related parties provided it is purchased at market value. In addition the property can be rented to members or related parties or businesses provided the rent is calculated at market value and is actually paid. There can be no loan over the property and the property cannot be used as security for any other purposes.

By purchasing the premises as tenants in common, you can progressively purchase the premises (i.e. over time) if the superannuation fund does not have sufficient funds to purchase it outright.

It is important to note the Stamp Duty may be payable (depending on the particular state) and CGT will be payable if the property has made a taxable gain.

### Residential Property

A residential property can be purchased by the fund.

- ◆ It can not be purchased from a member or related party of a member
- ◆ It can not be rented/used by a member or a related party of a member
- ◆ It can not be progressively purchased from the member

The fund can jointly purchase it with the member (or an associated party of the member [including a trust or company]) but it can not then purchase additional amounts of that property from the member (unlike a business premises). The property, if purchased jointly, can only be purchased as tenants in common. You can not interpose a unit trust with a residential property.

The member or an associated party can not use this type of property at all. For example, a holiday house which is commercially leased for 48 weeks a year and then used by the member or associated party of the member for the balance of the year is **NOT ALLOWED**.

### What about loans

If either property (business premises or residential) is purchased with the member or an associated party then the property must be purchased tenants in common (not joint tenants). If this is the case the property ownership is then split in proportion to that tenants in common ownership and the rent is apportioned appropriately.

If this is the case then the member or associated party can borrow the money to purchase their portion.

The security provided to the bank **CAN NOT** be the property. Some other security must be used.

If the member or associated party of the member borrows funds and uses some other security (i.e. their home) then the member can use those funds to purchase the property with the fund.

Normal Gearing issues will apply (i.e. interest is deductible and the portion of rent paid to the member is taxable).

### Gearing arrangements

Self managed superannuation funds can now borrow to invest provided the fund trustee borrows the money in accordance with an arrangement that has the following features:

- ◆ The borrowing is used to acquire an asset
- ◆ The asset is held on trust so that the Fund trustee receives a beneficial interest and a right to acquire the legal ownership of the asset (or any replacement) through the payment of instalments
- ◆ The lender's recourse against the SMSF trustee in the event of default on the borrowing and related fees, or the exercise of rights by the Fund trustee, is limited to right relating to the asset
- ◆ The asset (or any replacement) must be one which the Fund trustee is permitted to acquire or hold directly

Funds cannot borrow in regards to an asset that is already held by the Fund. The in-house asset rules still apply – trustees cannot purchase assets that they already own, either in their own name or through any related party transactions, unless specifically permitted (e.g. business real property).

### What is defined as business property?

Section 66 (5) business real property, in relation to an entity, means:

- (a) any freehold or leasehold interest of the entity in real property; or
- (b) any interest of the entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
- (c) if another class of interest in relation to real property is prescribed by the regulations for the purposes of this paragraph—any interest belonging to that class that is held by the entity; where the real property is used wholly and exclusively in one or more businesses (whether carried on by the entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate.

### Examples of Business Premises

- ◆ Commercial building, commercially leased
- ◆ Retail or industrial building, commercially leased
- ◆ Car park, commercially leased
- ◆ Mooring for a boat, commercially leased (but not to the member unless the member is running a business from it [i.e. chartered boat])
- ◆ Rural land (as defined by the act)

### An example strategy for a business property

- ◆ Business premises purchase price - \$500,000
- ◆ Self Managed Fund has \$100,000 in cash
- ◆ Member borrows \$400,000 (secured by the members home not the business premises)
- ◆ Initially the super fund owned 1/5 of the property and the member owns 4/5.

The member makes contributions to the fund and pays 1/5 of the rent to the fund. The fund then uses this to purchase an additional 1/5 from the member. Over a period of time the fund has acquired the full property from the member.

The benefit is 2 fold. To pay off debt you need after tax money. You can either do this in your own hands having paid personal rates (presume 48.5% for this purpose) or you can pay it from the fund after paying the contributions tax (presume 15% for this purpose). If you earn \$100,000 and \$48,500 is paid in tax then you have \$51,500 to pay off the debt. If you put \$100,000 in the fund (i.e. rent and contributions [being mindful of contribution caps]) then you will have \$85,000 to buy the property from the member and the member can then pay off more debt.

As previously noted you must consider stamp duty and CGT before doing anything – seek advice.

Over time the assets will be owned by the fund therefore the rent will be taxed at 15% and the capital gain taxed at 10%. (or zero in a pension phase)

The benefits are often significant, but must be tailored to an individuals needs. In this example the benefit is in the order of \$190,000 (less stamp duty and CGT if applicable) plus the ongoing benefit of rent and capital gain.