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The Secretary

The Board of Taxation

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By Email: cgtrollovers@taxboard.gov. au

CGT rollover relief

Self-Managed Superannuation Funds.

"No change in underlying economic ownership"

RE: Transfer of assets between self managed superannuation funds

CGT applies to transfers of assets between self managed superannuation funds (SMSFs).

Where the assets held within a self managed superannuation fund are "segregated", the beneficial ownership of specific assets are attributed to each member of the fund.

The in-specie transfer of the segregated assets of a member between SMSFs does not change the underlying beneficial ownership of the assets.

Where there is no change to the underlying beneficial ownership of assets, CGT rollover relief should apply.

"the CGT rollover relief for assets and losses that is available under Div 310 to APRA regulated complying superannuation funds, should also be available for transfers between SMSFs."

Transfers between SMSFs must be in cash to avoid CGT on the transfer.

The conversion of any non-cash assets to cash incurs CGT.

The conversion will also incur disposal costs (brokerage, real estate commission, etc).

If a member is in full pension phase the CGT on the conversion of non-cash assets to cash will be exempt from tax.

If a member is NOT in full pension phase the CGT on the conversion of non-cash assets to cash will NOT be exempt from tax.

The member will most likely choose to acquire new assets in the transferee SMSF with the cash transferred.

Acquisition costs will apply to the new assets.

The new assets acquired may be the same assets previously held in the transferor fund.

CGT, disposal and acquisition costs will be incurred for a member to re-acquire the same assets they held in the original fund.

Disposal and acquisition costs will be incurred for a member in to re-acquire the same assets they held in the original fund.

Without CGT rollover relief, there are costs incurred by members of SMSFs on the transfer of assets that does not apply to members of APRA funds or other taxpayers who hold assets in various entities where CGT rollover relief does apply.

Without CGT rollover relief the objective of the superannuation legislation (provide benefits for retirement) is therefore defeated.

Example

Family-2 brothers in Transition to retirement (with family issues) as beneficiaries in one superannuation fund. (original Fund)
One brother wishes to transfer his benefits to a new separate superannuation fund.

The original fund contains cash, real property and listed shares.

In this case the brothers have children, are divorced and in a de facto relationship and wish to uncomplicate their affairs as to estate strategies for their families and for their retirement.

The principle of Roll Over relief provided for Companies and Trusts is "that there is no change in underlying economic ownership".

Under the present legislation capital gains tax is payable on any asset, other than cash transferred to a new fund.

I also refer to the submission by
Telan lawyers
and the Association of Superannuation Funds of Australia
and The Tax Institute
which are relevant and which I support.

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Director