



TAX TIPS

Property Investors

The ATO has recently published two flyers relating to common mistakes that are being made by property investors. These flyers can be found on its website at <https://www.ato.gov.au/Tax-professionals/Newsroom/Your-practice/Flyers-for-your-property-investor-clients/>

When the ATO publishes flyers of this nature, it amounts to a warning that they consider this an area of significant non-compliance. It can therefore be expected that taxpayers who have property investments will be a focus of the ATO and should therefore ensure that claims for deductions and write-offs are considered with care.

Self-Managed Super Fund (SMSF) Trustees

The ATO is focusing on SMSFs. There is concern that these funds are entering into aggressive tax planning arrangements and risky schemes. The ATO has initiated a Super Scheme Smart Programme (see <https://www.ato.gov.au/general/tax-planning/tax-avoidance-schemes/super-scheme-smart/>) to educate taxpayers and advisors about these types of schemes.

The ATO identifies the following schemes which it considers to be at risk:

- Involving SMSFs and related party property development ventures;
- Where an individual or related entity grants a legal life interest over a commercial property to an SMSF. This results in the rental income from the property being diverted to the SMSF and taxed at lower rates whilst the individual or related entity retains legal ownership of the property; and
- Where individuals (including SMSF members) deliberately exceed their non-concessional contributions cap to manipulate the taxable component and non-taxable component of their balance upon refund of the excess.

With many baby-boomers reaching an age when they have either accumulated a significant amount in their super fund or are considering ways in which to do so, it is very important to



know that the ATO is keeping a close eye on the types of investments these funds are making.

Foreign Property Investors

A foreign buyers surcharge of 4% is to be introduced to WA on all residential property purchased by foreigners from 1 January 2019. We do not have any legislation yet but there is a high probability of it being similar to New South Wales and Victoria.

In both New South Wales and Victoria, the legislation has deemed each beneficiary of a discretionary trust to have a 100% beneficial interest in the trust fund. Accordingly, if a foreign person is included in the list of beneficiaries and that trust holds residential land in the relevant State, a higher rate of transfer duty and land rate will be applicable.

If you are aware of any family trust which currently hold properties in New South Wales or Victoria, it is worth reviewing the definition of beneficiaries to determine whether any foreign residents are included in the definition of beneficiary. While there still is some time before the higher rates of duty are applicable in WA, these measures should be kept in mind if new trusts are to be set up with an intention to acquire residential property sometime after 1 January 2019.

Our specialised professionals are uniquely equipped to deal with the most complex tax advice for business and property transactions.

For further information contact Murfett Legal by emailing one of the following directors:

[Jason De Silva](mailto:jason.desilva@murfett.com.au) (Director): jason.desilva@murfett.com.au

[Kelly Parker](mailto:kelly.parker@murfett.com.au) (Director): kelly.parker@murfett.com.au

[Peter Broun](mailto:peter.broun@murfett.com.au) (Director): peter.broun@murfett.com.au

Author: Mike Frampton