The DO'S and DONT'S of *self-managed* super funds

Recent share market volatility has negatively affected many people's superannuation savings. Taking more control of your financial future may be just what the doctor ordered, says Peter Quinn of Quinn Financial Planning

Self-Managed Super Funds (SMSFs) may seem complicated initially, particularly if you are not aware of current legislation. Here is your 10-step-guide to help you manage your own SMSF.

THE DO'S...

1. PREPARE AN INVESTMENT STRATEGY

Before you start making investments you need to prepare a plan to succeed. A written investment strategy requires that the fund's investment is made for the sole purpose of generating retirement benefits for the member(s) of the fund.

2. SEEK PROFESSIONAL ASSISTANCE AND ADVICE

If you establish an SMSF, or have already established a SMSF, you are in charge, you make the investment decisions and you are responsible for complying with the law. As parts of the law are quite complicated, it is important to seek professional advice with respect to the running of your fund to ensure it remains compliant.

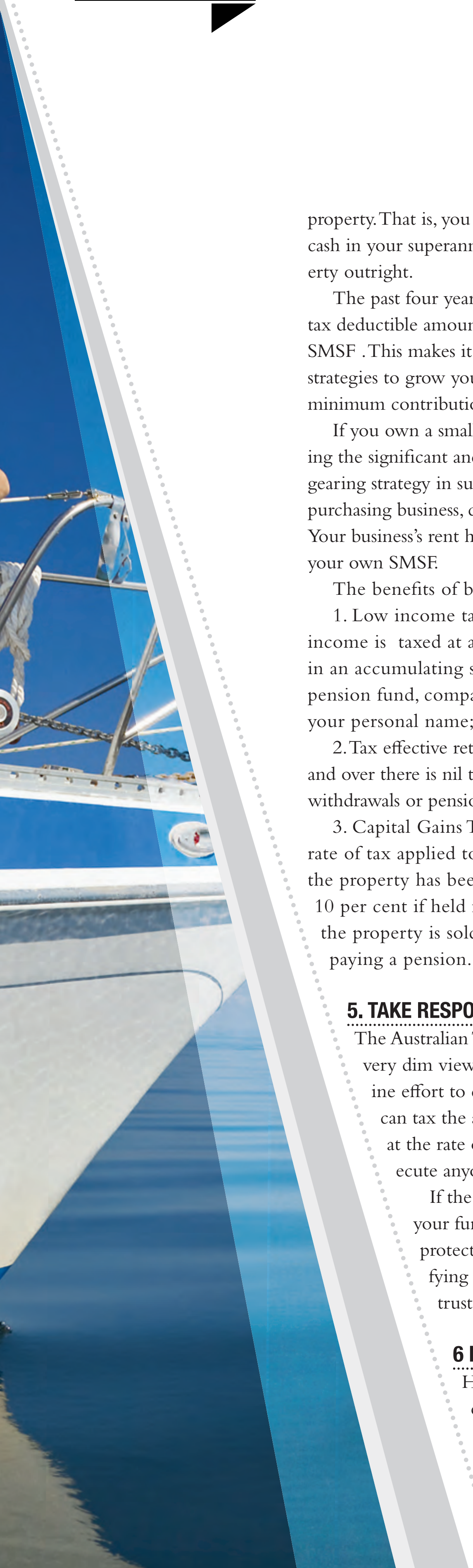
3. REVIEW YOUR CONTRIBUTION STRATEGY

If you are an employee, 9 per cent of your salary is paid into your super. However, you may wish to consider salary sacrificing more than 9 per cent to boost your super (and investment potential). The maximum concessional contribution this year is $25,000.

After-tax monies that you transfer into a superannuation fund are not tax deductible. Yet, the upside is that your super fund will not pay 15 per cent tax on this income. You can generally contribute $150,000 per annum, and in some circumstances, you can pre-pay two years in advance to increase this non-concessional contribution to $450,000.

4. CONSIDER GEARING WITHIN YOUR SMSF

In September 2007, the Government made gearing possible for SMSFs. Your SMSF can borrow within your superannuation fund to purchase an investment



property. That is, you no longer need to have sufficient cash in your superannuation fund to purchase a property outright.

The past four years has seen a sharp decline in the tax deductible amount you can contribute to your SMSF . This makes it very worthwhile exploring strategies to grow your super other than simply making minimum contributions.

If you own a small business you are probably carrying the significant and increasing burden of rent. A gearing strategy in super is worth considering such as purchasing business, commercial or residential property. Your business's rent helps quickly build the equity in your own SMSF.

The benefits of borrowing in super are three-fold:

1. Low income tax environment: net rental income is taxed at a maximum rate of 15 per cent in an accumulating super fund, and nil tax in a super pension fund, compared to up to 46.5 per cent in your personal name;

2. Tax effective retirement: if you are 60 years of age and over there is nil tax applicable to superannuation withdrawals or pension earnings; and

3. Capital Gains Tax (CGT) savings: the maximum rate of tax applied to capital gains is 15 per cent if the property has been held for less than one year, 10 per cent if held for longer, and potentially nil if the property is sold when your superannuation is paying a pension.

5. TAKE RESPONSIBILITY FOR YOUR SUPER

The Australian Taxation Office (ATO) takes a very dim view of anyone failing to make a genuine effort to comply with legislation. The ATO can tax the assets of your superannuation fund at the rate of 45 per cent and will also prosecute anyone failing to obey the law.

If the ATO considers that the assets of your fund are at risk, it can take action to protect them. This may include disqualifying you as a trustee, removing you as a trustee, or freezing your fund's assets.

6 RENEW YOUR TRUST DEED

How up-to-date is your fund's trust deed? There have been numerous changes to the Superannuation Industry (Supervision) Act (SIS Act). Depending on when your superannuation trust deed was established, there is a very strong possibility that it no longer complies with current legislation. For example, changes after 2007 now permit gearing in certain circumstances. If your deed was established prior to SIS Act changes in 2007, it may not allow for gearing within your superannuation fund.

Other deeds do not allow specific areas such as the payment of pensions or reversionary pensions (which start after you pass away), binding death benefit nominations, or do not set out how your benefits can be paid.

If you are unsure about how up-to-date your trust deed is, consider having an expert review it now to ensure that it allows you to implement the strategies you wish to achieve.

7. REVIEW YOUR DEATH BENEFIT NOMINATION

Many people are surprised that their will is ineffective when disposing of their superannuation benefits on their death.

The consequences can be dramatic as was seen in the legal case of Katz v Grossman [2005] NSWSC 934. In Katz's case, a member of the fund died leaving behind two children – a daughter who was a trustee of the family SMSF, and a non-member son.

The father left $1 million in superannuation benefits with a direction in his will that all of his superannuation assets were to be equally split between his two children.

On his death, the remaining trustee (his daughter) did not take into account his nomination and paid all of the deceased member's benefits to herself.

The NSW Supreme Court held that she was entitled to take this action under the fund's trust deed and the will was ineffective.

8. CONSIDER LIFE INSURANCE WITHIN YOUR SMSF

Whether you're young and just starting your career, a single parent, approaching mid-life or looking forward to your retirement, if you unexpectedly have an accident or illness that prevents you from earning your income, how will you pay your bills and expenses? This is when having life insurance cover is very reassuring and provides peace of mind.

Taking out life and total permanent disability (TPD) insurance through a superannuation fund is an attractive and cost-effective option.

The main benefit of life insurance through a super fund is the premiums paid are deducted from your super contribution, which means you are paying for your cover before tax – a far more affordable and convenient option than a stand-alone policy.

THE DONT'S...

9. DON'T PROVIDE FINANCIAL ASSISTANCE TO SMSF MEMBERS OR THEIR RELATIVES

As a SMSF trustee, you are prohibited from lending money or providing financial assistance to a member, or a relative of a member, regardless of whether you are charging commercial interest rates on that loan.

Lending money to your son or daughter to purchase a property at commercial interest rates may appear a sound investment decision for the fund, but it is actually in breach of the SIS Act and regulations.

10. DON'T ACQUIRE RESIDENTIAL PROPERTY FROM A RELATED PARTY

Superannuation funds are prohibited from acquiring assets from a related party of the superannuation fund, except in the following (limited) circumstances:

1. The acquisition of the asset acquired from the related party would not result in more than 5 per cent of the assets of the superannuation fund being invested in related parties;
2. The asset is a listed security, for example shares, units or bonds listed on an approved stock exchange;
3. The asset is "business real property". Business real property is generally land and buildings used wholly and exclusively by a business for business purposes. ◆

Contact Peter Quinn at www.quinnfinancialplanning.com.au.

The information in this document does not take into account your personal objectives.

It is recommended that you seek assistance from a financial adviser.