The Australian
Saturday, October 27, 2012
Page : 29
Section :
Edition : All-Round Country
Region : National Metropolitan

Circulation : 130307
Area Of Clip : 233.28 sqcm
Clip ID : 5689744

WEALTH BUSINESS

Unwary face SMSF overseas pitfall

MONICA RULE

COUPLES who have established a self-managed superannuation fund need to ensure that their fund meets the definition of an "Australian superannuation fund" when they go overseas for a holiday. This is because taxation legislation lists three conditions that a SMSF must satisfy in order to maintain its complying status and continue to receive concessional tax treatment.

This is not something to be taken lightly. Currently, 68.8 per cent of SMSFs are two-member funds, consisting of husband and wife, and many have fallen foul of the rules. The first condition is that the SMSF must be established in Australia. The second is that the person who makes all the major decisions for the fund must ordinarily be residing in Australia. The third is that at least 50 per cent of the total assets of the SMSF must belong to resident members.

It is the second condition that most people fail to comply with. It requires that the person in the SMSF who makes all the high-level decisions, such as formulating, reviewing, updating the investment strategy and determining how the assets of the SMSF are to be used, must ordinarily be in Australia. If the person also travels overseas, they need to make sure their period of absence is temporary. It is a real-time test, which means the duration of absence must either be defined in advance or related (both in intention and fact) to the fulfilment of a specific, passing purpose.

This means the person must always have the intention to return to Australia and not have established a home outside Australia. If at any time their intention ceases, then their absence from Australia also ceases to be "temporary".

They cannot be absent from Australia for an indefinite time or have divested a majority of their assets in Australia before going overseas.

The ATO has published Tax Ruling 2008-09 on this topic. The ruling gives examples on how to meet the above three conditions.

In example 7(a) of the ruling, trustees comprising a husband and wife go overseas for three years due to the husband being transferred to work in London by his employer. It is always the trustees' intention to return to Australia at the end of his secondment. They rent their family home in Australia and live in a house in London provided by the husband's employer. They continue to maintain bank accounts and private health insurance cover in Australia. They travel back home for a holiday. The ruling states that the decision-making exercised by the trustees in their London home would result in them being ordinarily in Australia as their absence is temporary.

Then in example 7(b), the same scenario is provided as in example 7(a) but this time the husband abandons his intention to return to Australia at the end of the secondment and continues to work in the London office on an indefinite basis. The trustees would not be considered as being ordinarily in Australia from the time they changed their minds, as their period of absence also ceased to be temporary.

Another thing to consider as well as the trustees' intention is the two-year period stipulated under the tax legislation. A lot of trustees misinterpret this by thinking that as long as they are overseas for a period of no more than two years, their SMSF would remain as a resident fund. Example 8(b) of the ruling details where the trustees were outside of Australia for a period of less than two years. However, before leaving Australia, they divest themselves of the majority of their assets. They also intend to leave Australia indefinitely. Then, due to an illness in the family, they return to Australia after only being away for 18 months. Because the trustees moved overseas with the intention of remaining indefinitely, their absence would not be considered temporary even though it turned out to be for less than two years.

Monica Rule is the author of The Self-Managed Super Handbook
www.sunshinepress.com.au.