

Don't be an idiot abroad

Self-managed super can be hit hard if you go overseas for a while

DIY
SUPER

Monica Rule



If you have a self-managed superannuation fund and are considering heading overseas for an extended period, you should get some good advice or get your head around some complex tax law.

You could feel some serious tax pain if your prolonged absence or that of a fellow member causes your DIY super nest-egg to no longer have the status of an Australian resident fund.

That pain will come in the form of a tax of 47 per cent imposed on the your fund's investment income.

There are three tests that must **?ALL?** be satisfied for a fund to have the enviable status as an Australian superannuation fund and enjoy the renowned tax concessions, including the modest 15 per cent tax on fund earnings in the accumulation phase.

The three crucial tests relate to the location of the fund or its assets, the location of the person who calls the shots, and the location of active members.

AUSSIE FUND

The SMSF must either be established in Australia or have at least one asset situated in Australia. This test is pretty easy to satisfy.

AUSSIE BOSS

The person who makes high-level decisions for their SMSF must be situated in Australia. If this person is not in Australia, it will still be OK as long as this person is away from Australia only temporarily.

The period of absence must be temporary, and the duration of the



absence must either be defined in advance or related to the fulfilment of a specific purpose (e.g. temporary overseas employment or an overseas holiday).

The test is not applied retrospectively or with the benefit of hindsight.

Mistakes are often made with this test because the superannuation law lists the two-year period of absence as temporary. People misinterpret this by thinking that as long as they are overseas for a period of no more than two years, their SMSF will remain an Australian resident fund.

Be careful! It is not just the two-year time period that is considered, it is also the intent of the trustee and the purpose of going overseas.

There is also some confusion caused by the old pre-2007 residency law where if a trustee was absent from Australia for a period of up to two years, then their SMSF would be deemed to meet the residency rules.

This law is no longer valid. Some trustees were incorrectly advised to re-trigger the two year period by returning to Australia for a period of twenty-nine days or more.

Please be aware that under the current law, returning to Australia for a minimum period, either before or after two years have

elapsed, will not change the legal requirement of whether the absence is of a temporary nature or not.

It is only if the intention to be overseas is temporary and the duration is no more than two years that the central management and control of the SMSF will be considered "ordinarily" in Australia.

OZ ACTIVE

If an SMSF has any "active" members, then at least fifty per cent of the total assets in the SMSF must belong to active resident members. An active member is a member who contributes to an SMSF or on whose behalf contributions have been received.

If an SMSF member is no longer an Australian resident for income tax purposes under the Income Tax Law, then they will become a foreign member.

If a foreign member makes contributions into their SMSF, then their total superannuation balance must NOT be more than fifty per cent of the total assets belonging to all active members of the SMSF.

Some people are getting this test wrong by only measuring the balance of resident members against the balance of foreign members. It is not the balance of members that is important, it is the balance of

"active" members that is measured.

To ensure that at least fifty per cent of the total assets belong to resident active members, it will be necessary for each resident member to be an "active" member by making contributions, or having contributions made for them.

Under the residency law, the concept of "contributions" is much broader than people think and few trustees are aware that money rolled into their SMSF will trigger an active member event.

An SMSF member needs to be aware that the residency test for them as an individual taxpayer and the residency test for their SMSF are assessed differently under the Income Tax Law. A taxpayer's residency status is based on the following:

■ The **"resides"** test: this test assesses a person's day-to-day activities in Australia in relation to their intention or purpose; family and business ties; location of assets; and social and living arrangements in Australia.

■ The **"domicile"** test: this test assesses whether a person's permanent home is in Australia.

■ The **"183 days"** test: this test assesses whether a person is present in Australia for more than half the income year and their usual place of abode is not outside of Australia.

■ The **"superannuation"** test: this test ensures that Commonwealth Government employees working at Australian posts abroad are treated as Australian residents.

An SMSF member living overseas needs to discuss their personal residency status with their accountant to determine whether they are treated as a resident or non-resident for income tax purposes and whether they are treated as a foreign SMSF member.

SMSF trustees must consider the impact of any contributions into their SMSF while any member is a foreign member. Foreign members should avoid making contributions into their SMSF if their balance in the SMSF is at least fifty per cent of the total assets that belong to active members.

Monica Rule is an SMSF Specialist and author of *The Self Managed Super Handbook – Superannuation Law for SMSFs in plain English* – www.monicarule.com.au



THAT PAIN WILL COME IN THE FORM OF A TAX OF 47 PER CENT IMPOSED ON YOUR FUND'S INVESTMENT INCOME.

Cash in on Government's superannuation backflip

Neale Prior

If you've got a cash stash lying around, or about to come your way, it could be worthwhile getting down to see a decent accountant or financial adviser well before June 30.

The Federal Government's backflip last week on lump-sum superannuation and its scrapping of proposed retrospective limits will be giving you an eight-month opportunity to kick \$540,000 into your super.

Proposed rules unveiled in the Federal Budget in May not only imposed an instant \$100,000 annual cap on so-called non-concessional contributions and a lifetime \$500,000 cap.

The Budget proposals also had a highly controversial retrospective

element that meant contributions for the past eight years would count towards this newly imposed lifetime cap.

After a coalition backbench backlash, Assistant Treasurer Kelly O'Dwyer last week postponed the proposed implementation of the \$100,000 rule until July 1, 2017.

She also dropped controversial plans to impose a \$500,000 lifetime cap and backed away from plans to scrap the three-year bring-forward rule, which allows someone to make the equivalent of three years of contributions in one year.

The Financial Planning Association said the delay until July for the new rules meant that this financial year superannuation savers could continue to contribute up to the existing, legislated \$180,000 annual

cap. Super savers can also use the rescued three-year bring-forward rule to contribute \$540,000 if they have not made any non-concessional contributions over the past three years.

The Federal Government's proposed laws are subject to being passed by Federal Parliament.

The combination of the proposed new \$100,000 cap and keeping the the bring-forward rule should mean someone who enjoys a \$300,000 net windfall next year will be able put it into superannuation right away.

FPA policy chief Ben Marshan said explanatory material published by Treasury indicated that from July 1, the \$300,000 cap would include amounts contributed in the two previous financial years.

Mr Marshan said this would like-

ly mean that if someone contributed \$300,000 or more this financial year they would have to wait at least two years to make more concessional contributions. Someone who put in \$180,000 this year would likely be able to put in only \$120,000 next year using the bring-forward rule.

As the proposals now stood, he said it seemed those with up to \$540,000 could be best off getting the money in this financial year.

Non-concessional contributions come from cash or asset holdings on which tax has already been paid, such as the net proceeds from the sale of investment property and inheritances.

Ms O'Dwyer said those with super balances of \$1.6 million or more would not be able to make non-concessional contributions.



Kelly O'Dwyer