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CLIENT ALERT

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EVANS EDWARDS
CHARTERED ACCOUNTANTS

Investing in business real property

Investing in a business premise through a self-managed super fund (SMSF) is a popular investment strategy among small business owners in Australia.

While SMSFs are not permitted under Australia's superannuation rules to purchase a residential property that is owned by a member or anyone related to a member, SMSFs are allowed to lease a business property - or business real property - that is run by a member or a related party.

Business real property is an exception to the in-house asset and related party acquisition rules. As stated on the ATO website, business real property refers to land and buildings used wholly and exclusively in a business.

Before an SMSF invests in business real property, trustees must ensure the level of investment still meets the investment strategy of their SMSF, including diversification of assets, liquidity and maximisation of member returns in your fund.

In most cases, opting to own your business property through your SMSF can be a financially rewarding investment. The strategy ensures tenancy security and also helps business owners save more money for retirement since they are paying rent to their super fund at the market rate. It also allows SMSF trustees to hold a valuable asset in a more tax-effective structure.

However, SMSFs that lease the business premises to the business must ensure all transactions undertaken are on an arm's length basis to avoid a conflict of interest. The purchase and sale price of the business premise must always reflect true market value and the income from the business premise should always reflect a true market rate of return.

This means transactions must be carried out on a commercial basis i.e. as if there is no relationship between the SMSF and the business.

To ensure this happens, the SMSF must have a formal commercial lease in place between itself and the tenant (the business). The written lease agreement should be signed by both parties and include information such as terms of the rental payments and what should happen if or when the rent cannot be paid. SMSF trustees must be prepared to enforce the terms of the signed lease. For example, it is not acceptable for rent payments not to be made purely because the business is not doing well financially.

Those who fail to comply with the arm's length rules may come under scrutiny from the ATO, which can impose significant penalties, including disqualifying trustees and prosecution.

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Preparing for your business exit

Preparing a business for sale is a complex and often long-term process, which requires a lot of preparation and planning. Yet few business owners are prepared when it comes time to be sale-ready.

Exit planning involves careful preparation and consideration of the business, tax and legal implications. Here are five tips to help business owners prepare for a successful business sale:

Prepare early

Business owners should start preparing early to minimise the risk of a failed transaction and to optimise the value of their business. Anticipation of internal and external factors, including market conditions must be anticipated and managed prior to sale.

A seller must provide key factual information for a potential buyer through the due diligence process. Due diligence is a time-consuming process requiring a lot of documentation. A business' failure to keep adequate and accurate financial records can severely damage their sale price and slow down the sales process.

Reduce risk for buyers

Sellers must be very careful to ensure that information provided and statements made in the lead up to the sale are accurate and not open to interpretation. Be sure to provide a clear business forecast and realistic ongoing business model.

All verbal conversations with the buyer should be followed up in writing, such as email, as informal conversations can be relied upon for Court proceedings after the sale. Ensure the contract of sale is well-drafted and states in plain English what you understand to be the agreement.

Evaluate different exit options

It is not necessary to sell 100 per cent of the business immediately. A gradual exit can benefit both parties. For purchasers, it retains customer goodwill and gives new owners time to adjust to the business' operations. For sellers, there is the advantage of keeping an interest in the business and demonstrating its worth to the new owners.

If you are passing the business on to family members, the transition may be over a number of years. A formal succession plan can help guide the business through a smooth transfer of control.

Understand tax implications

Sellers may need to pay GST or capital gains tax (CGT) on some of all the business assets they sell, including land or buildings, or intangible assets, such as patents, licences or goodwill. Some small business concessions and exemptions may apply. Sellers will also need to cancel their GST registration within 21 days of ceasing business, and their ABN within 28 days. Business records will need to be kept for at least five years after the end of financial year in which the business is sold.

Avoid insufficient disclosure

To avoid a claim that there had been insufficient disclosure of financial information; sellers must ensure that the Disclosure Statement accompanying the Contract of Sale (or information provided in due diligence) complies with statutory requirements. Where the Disclosure Statement is sufficient, the responsibility is then shifted to the buyer to conduct their own enquiries about the suitability of the business. If you have any questions, please give us a call.

NBN – Be Prepared

There has been a lot of information and talk about the NBN recently and it is certainly worth making some enquiries early to ensure that you are prepared – particularly for businesses as there may be additional things that need to be considered. Some of the other things to think about for compatibility that you may not have considered are:

- Eftpos machines
- Lift phones
- Fax machines
- Emergency type call buttons etc

There is quite a bit of information on the NBN website to assist businesses so check out the link below and be prepared.

http://www.nbnco.com.au/connect-home-or-business/information-for-business.html

Protecting your computer system

The ATO has seen an increase in businesses that have had their computer systems affected by malware or ransomware where scammers attempt to trick you into clicking on links or opening attachments in emails they send you. This gives the scammers access to your files or can block you from accessing your files until you pay them.

If this happens to you, you're best to contact the ATO as soon as possible as there is still no guarantee that you will get access to your files or that scammers will not demand further payments even if you pay.

Here are a few suggestions to help keep your computer systems protected:

- Regularly update your computer's anti-virus and anti-spyware;
- Regularly update your computer's operating system;
- Secure your wireless network and remote accesses;
- Maintain regular physical backups, and keep these separate from your network;
- Do not open suspicious or unfamiliar attachments;
- Do not click in emails from unfamiliar or suspicious senders
- Only visit reputable websites.

New PAYG withholding rates

Following an announcement in July, the Australian Government recently increased the 32.5 per cent tax threshold from $37,001 – $80,000 to $37,001 – $87,000.

The new PAYG withholding rates will apply to individual taxpayers who earn more than $80,000 from 1 October 2016.

The Australian Tax Office provides a range of tables to assist employers work out how much to withhold from payments they make to their employees. Since the latest edition of the new tax tables is now available, employers should use these new tax tables for payments made from 1 October 2016.

The Tax Office also provides a tax withheld calculator employers can use to calculate the correct amount of tax to withhold. The tax withheld calculator applies to payments made in the 2016-17 income year and provides the correct rates for the 2016–17 income year.

Updated tax tables do not include any catch-up component for the portion of the year which has already passed. Individuals who are affected will receive the full benefit of the tax changes upon an assessment of their income tax return for the 2016-17 income year.

Employers do not need to make any other adjustments or refunds as the ATO will refund any over-payment of tax when employees lodge their 2016–17 income tax return.

WHO WE ARE

Evans Edwards Chartered Accountants has a long-standing reputation for delivering service excellence and helping clients to achieve their business and financial goals. Established in December 1980, when Tony Edwards and Bob Evans merged their firms to became Evans, Edwards and Associates, our principals and accountants continue to provide personal, professional and trusted service to Central Queensland and throughout Australia.

To truly understand your business, accounting and taxation needs, we believe it is essential to develop an honest and supportive relationship with you. We take the time to listen so we can provide practical advice that will help you and your business to prosper and grow.

OUR PEOPLE & VALUES

The skill base of our firm is extensive and utilises an effective mixture of experience and enthusiasm. Our firm consists of three offices, three principals, a practice manager, fifteen accountants and around eight administrative and secretarial team members. We have a "one-team" philosophy that encompasses our values, and inspires a high level of efficiency and consistent quality of service for all of our clients.

Our three locations gives us the opportunity to provide this high level of personal service to our clients across the region.

The success of our firm is built around our core values of:

- Teamwork
- Respect
- Enjoyment
- Achievement
- Service Excellence
- Honesty
- Responsibility

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- Business Improvement Strategies
- Business Structures & Succession Planning
- Self Managed Superannuation Funds
- Taxation & Accounting
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