SUPERANNUATION DEDUCTION FOR THE TRANSFER OF BUSINESS REAL PROPERTY (LAND AND/OR BUILDINGS) TO A SUPERANNUATION FUND

Contributions
Superannuation funds are able to receive contributions from members in a number of forms.
Two such forms are as follows –

1. Public listed shares
2. Business real property

This article deals with the transfer of business real property into a self-managed superannuation fund (SMSF).

Business real property is broadly defined as freehold land (which can have buildings on it) that is unencumbered (has no borrowings against it), which is used in the operation of the related business venture.

Typical examples are –

- Small business operators who own their business premises from which they operate their business and they have free title to the land.
- Primary producers who have a free title to a block of land that is used in the operation of their farming business.

Thus a self employed business person can transfer all or a part of a title to their own SMSF and get a taxation deduction for the value of this transfer.

Aims of the exercise
- To build assets under the superannuation umbrella
- To assist in protecting assets from legal claims
- To minimise income tax payments

Areas to consider
<u>Capital gains tax (CGT)</u>
The Australian Taxation Office (ATO) treat the transfer of property to a superannuation fund as a sale of the property at it current market value and thus CGT is triggered.
A current market value is required to be determined by a valuer.
An assessment of the CGT status of the property and the CGT payable if any will need to be considered before making any transfers.

<u>Stamp duty (SD)</u>
The State Revenue Office treat the transfer of property as a sale of the property and as stamp dutiable. However there is an exemption if the ultimate members of the superannuation fund are the same people as the owners of the property.
Rent of property
Once the property or part thereof is transferred to the Superannuation Fund the business will need to commence payment of rent at a commercial rate to the super fund for the use of the property.
The rent paid becomes tax deductible to the business and the rent received is taxable to the S/F.

Assets in a superannuation fund

Assets in a superannuation fund will generally stay in the fund until the members are 60 years and retired.

Can assets be sold? Yes and instead of having the asset in the fund the fund will have cash in the bank.

Can the members get financial access to the assets of a superannuation fund before retirement? Generally no, only in limited circumstances.