

# Transferring a business premises to your SMSF

## what you need to know

One of the advantages of self-managed super funds (SMSFs) is the ability to acquire a business real property (BRP), such as a commercial property, a shop or even a farm through your SMSF. The property can then be leased back to a member to use in a business. This handy guide gives you the information you need to know about transferring ownership of a business premises to your SMSF.

### What are the advantages of transferring a business premises to your SMSF?

- Potential for positive returns through rental income and capital gains on the property.
- Any rental income or realised capital gains will be taxed at the concessional superannuation tax rates.
- Allows a member to significantly increase their retirement savings by contributing their business premises to their SMSF, without needing to sell the property.
- Assets held within an SMSF are generally protected from creditors in the case of bankruptcy.
- Provides access to an alternative asset class that is consistent with the SMSF investment objectives.

### Are there any disadvantages?

Capital gains tax and stamp duty may have to be paid when the property is transferred to the SMSF. Concessions can in some circumstances apply for small businesses that can reduce any capital gains tax due. Non-concessional caps must be taken into account to determine if the property can be transferred via an in-specie non-concessional contribution. For example if the market value of the property is in excess of the non-concessional caps the property cannot be transferred via an in-specie contribution. Speak to your financial or tax adviser for more information.

### Let's look at how it works – a case study

Sally and David are married and are both aged 62. Together they own a commercial property that they lease to their company. The property satisfies the definition of BRP, so they transfer ownership to their SMSF.

**Property purchase price (five years ago)** \$550,000  
**Current property valuation** \$600,000

#### How the strategy works

Sally and David transfer the property into their SMSF via an in-specie contribution. As the property satisfies the definition of a BRP, Sally and David contribute the property to their fund as a \$300,000 non-concessional contribution each. In this case, the transfer triggers a capital gains tax liability and stamp duty liability.

#### Outcomes

	Property owned by Sally and David	Ownership transferred to the SMSF – Year 1	Ownership transferred to the SMSF – Year 2
<b>Marginal tax rate</b>	39% <sup>1</sup>	15%	15%
<b>Capital gains tax (one off liability)</b>	\$0	\$9,750 <sup>1</sup>	\$0
<b>Annual lease payments (paid by the company)</b>	\$20,000	\$20,000	\$20,000
<b>Tax paid on rental income – combined (annual)</b>	\$7,800	\$3,000	\$3,000

- Sally and David save \$4,800 in tax annually.
- They recoup the capital gains tax paid in just over two years.

- If Sally and David then commence account based pensions upon reaching age 65 and start using the rent from the property to fund their pension payments, the rent will become tax-free.
- In addition any capital gains the SMSF realises on the eventual sale of the property in pension phase would also be tax-free.

<sup>1</sup> Including Medicare Levy of 2%

Assumes the property is in NSW and the transfer is subject to nominal stamp duty of only \$500 under Section 62A of the Duties Act 1997. This nominal duty has not been included in the above calculations.

## What you need to know before you get started

There are a number of areas that should be considered before transferring business premises to an SMSF. The checklist below is a good starting point. However, we recommend you also speak with your financial and/or tax adviser.

<b>Types of property that qualify as business real property (BRP)</b>	<p>BRP includes any freehold or leasehold interest in real property (ie. land and any buildings permanently attached to the land) where the property is used wholly and exclusively in one or more businesses.</p> <p>Examples of BRP include:</p> <ul style="list-style-type: none"><li>• commercial premises – such as a doctors surgery</li><li>• retail premises – such as a shop</li><li>• industrial premises – such as a factory</li><li>• land used in a primary production business – such as land used for grazing or cultivation</li></ul>
<b>Investment strategy and trust deed</b>	<p>Establish whether purchasing the property is allowed under the SMSF's trust deed and that it's appropriate for the fund given its investment objectives, risk profile and liquidity requirements. Trustees may need to engage a lawyer and a financial adviser to confirm this.</p>
<b>Borrowing to acquire the property</b>	<p>Under the limited recourse borrowing rules a trustee of an SMSF may be permitted to borrow to acquire an asset. However, these rules are complex and require specific structures and agreements to be put in place. It's important to seek specialist financial advice before entering into any superannuation borrowing arrangements.</p>
<b>Arm's length valuation</b>	<p>An SMSF is only permitted to purchase a business property from a related party (such as a member of the SMSF) for its market value. Trustees may need to obtain an independent professional valuation prior to transferring a business property to their fund to remove any uncertainty about the validity of the property value.</p> <p>Where a business property is then leased back to a member or other related party of the SMSF, the lease must be on an arm's length basis.</p>
<b>Costs, duties and taxes</b>	<p>Transferring and holding a BRP in an SMSF may incur a number of costs, duties and taxes, including:</p> <ul style="list-style-type: none"><li>• legal fees;</li><li>• stamp duty, goods and services tax and land tax; and</li><li>• strata levies, council rates and property maintenance fees.</li></ul> <p>These costs should be considered before making a decision to hold BRP in your SMSF.</p>
<b>Asset can't be used as security for a loan</b>	<p>The superannuation investment rules generally prohibit any asset of the SMSF being used as security for a loan. Once a property has been transferred into an SMSF it can't be used as security for any loans taken out by a member or other related party.</p>
<b>Estate Planning</b>	<p>In the event of a member's death the trustees may be required to sell SMSF assets in order to pay a death benefit to a member's beneficiaries. In this situation tax may apply to both the assets of the SMSF as well as the death benefit payment.</p>

## How your financial adviser can help

Your financial adviser can help you assess all of the relevant issues and provide advice on whether acquiring a business premises through your SMSF is an appropriate strategy for you and your fund.

## Speak to us for more information

If you would like to know more about self managed super funds and their borrowing arrangements, talk to your Count Financial Adviser. They can give you more detailed information on the best approach for your situation.

### Important information

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