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canberra times: q&a

Q 1: I am referring to a previous question asked where the writer asks if it is possible to avoid capital gains tax (CGT) if an investment property is rented out. Your answer was broadly yes by saying;

1. **Offsetting gains with realising appropriate capital losses and**
2. **Selling an investment property in a financial year (generally just after retirement) where you can be considered substantially self-employed and therefore eligible to claim a tax deduction for a personal concessional contribution to superannuation.**

Can you please clarify no. 2 a little further? Are you referring to the provisions for self employed and self managed superannuation funds? Is there a way where those not self employed can also utilise these provisions?

P.A., Canberra

A 1: The key issues around point 2 is that the property is sold in a financial year where you can 1) contribute funds into superannuation, 2) claim a tax deduction for the contribution to superannuation, and 3) there is a tax benefit to be had in making the contribution and claiming the tax deduction. This strategy has nothing to do with self managed superannuation funds specifically, rather it can be applied where someone has a public offer fund or a self managed super fund.

As far as making personal contributions to superannuation – a contribution can be made at any time up to age 65 up to the concessional limit of $25,000 pa and the non-concessional limit of $150,000 pa (or $450,000 in a year under the “bring forward” rule). For contributions when aged 65 and up to age 75, the member needs to satisfy the ‘work test’ which is where the member has been gainfully employed for at least 40 hours in a 30 day consecutive period.

If a member can make contributions then you can look at whether a tax deduction can be claimed for the contribution. To be considered substantially self employed (and therefore allowed to claim a tax deduction for a personal super contribution), then less than 10% of your overall assessable income plus reportable super contributions (such as salary sacrifice) and reportable fringe benefits, for the financial year, is to come from employment as an employee that attracts super guarantee contributions. Someone who is not working at all (either employed or self employed) in a financial year would be considered substantially self employed and satisfy the ‘less than 10%’ rule.

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Assuming a contribution can be made and a tax deduction can be claimed, then you need to work out if it is worthwhile to claim the tax deduction in the first place. For example, if a member does not earn any income in a financial year other than a capital gain, then no tax will be paid on an assessable capital gain up to $20,542 for the year, due to the tax free threshold and the low income tax offset. Claiming a tax deduction for the super contribution will cost 15% in contributions tax and in some cases will mean the member has paid more tax than necessary.

As with all specific tax related matters it is a good idea to have a relationship with a Registered Tax Agent who can make sure you calculate your assessable capital gain correctly and can help you understand how much of a super contribution should be claimed as a tax deduction, if any.

Phil Thompson is a certified financial planner and authorized representative of Rise Financial Pty Ltd (ABN 86350987645), AFSL 311718, an Approved Financial Planning Association Professional Practice. Answers should be used as a general guide only and professional advice should be sought before making investment decisions.

Send your financial questions to phil@risefinancial.com.au

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