

Issue Five - August 2011



Welcome to the August 2011 professional edition of the **harris black** Newsletter. In this month's edition we discuss key areas and opportunities affecting our clients wealth creation with a particular focus towards our professional and high net wealth clients. As always if you have any further questions regarding any of the topics raised please contact your **harris black** team member.

Recent changes to legislation means that SMSFs can, within specific constraints, borrow to acquire investment assets provided the borrowing is a non-recourse loan.

## Can I borrow funds for my Self Managed Superannuation Fund?

As our clients look to strengthen their post retirement position, we are constantly looking at ways in which to increase investments in self managed superannuation funds (SMSF). Traditionally any attempts by SMSFs to borrow funds to increase investment activity were not permitted.

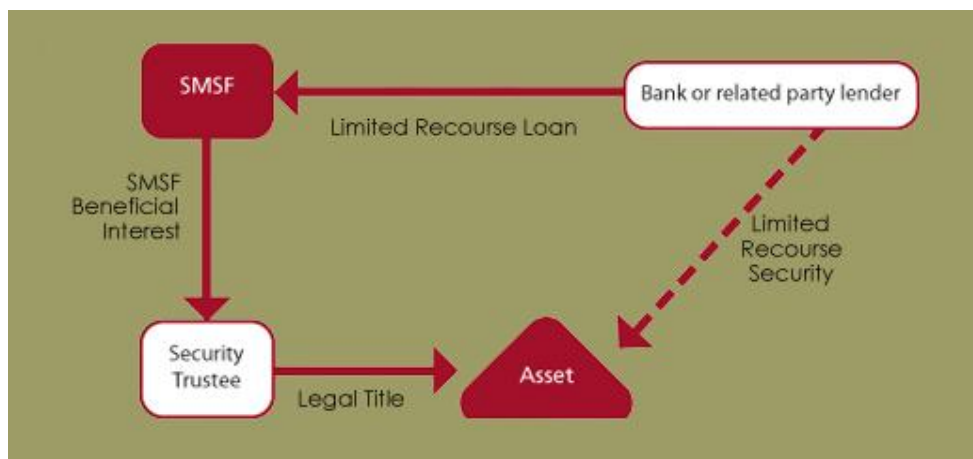
Recent changes to legislation means that SMSFs can, within specific constraints, borrow to acquire investment assets provided the borrowing is a non-recourse loan.

This is achieved by creating a separate security trustee/fixed trust to hold legal ownership of the asset that will be acquired as a result of the borrowing. The beneficial ownership of the asset is then held by the superannuation fund.

The borrowed funds must be used to acquire an asset that the fund is not otherwise prohibited from acquiring. For example, it would not be able to purchase a residential property from a related party.

The lender then uses the asset held by the trust as security for the borrowing. If there is a default on the borrowing by repossessing or disposing of the asset, the lender cannot recover the defaulted funds through recourse to the SMSF's other assets.

The arrangement is displayed as follows:



Once the superannuation fund attains the borrow funds and has acquired the asset, the superannuation fund is entitled to any revenue generated by the asset (rent or dividends). The fund then makes loan repayments to the lender and pays all other payments in relation to the use of the asset, for example, rates and insurance where the asset is a rental property.

Once the loan has been fully repaid, the ownership of the asset is transferred from the 'security trustee' back into the superannuation fund. As the superannuation fund was always the beneficial owner of the asset, there will be no capital gains tax consequences on transfer.

#### Fund Compliance Requirements

The fund's investment objective, investment strategy and trust deed should be reviewed prior to entering into a borrowing arrangement. Issues to consider include:

- Whether the proposed arrangement fits the fund's investment objectives;
- The impact the gearing arrangement will have on the funds future cash flows;
- Whether the funds trust deed allows the borrowing;
- Whether the funds trust deed or investment strategy allows beneficial ownership of fund assets.

#### Key issues:

- The lender can be a related party provided the requirements in relation to limited recourse borrowings are met.
- Related party lenders may lend their own cash to the fund under a borrowing arrangement that meets the requirements on a non-recourse loan.
- The legislation does not impose any limits on the ratio of the loan amount to the value of the underlying asset acquired. However, care should be taken to ensure the loan remains on commercial terms.
- Where personal guarantees are required to support superannuation fund borrowings, it is important to ensure that the guarantor has no right of indemnity to the fund's assets.
- Care should be taken in relation to related party loans to ensure that interest rates reflect what may be available commercially. The Australian Taxation Office has highlighted this as an area of potential concern where loans are made on terms which are not at arms length.

If you have any questions regarding borrowing in your SMSF please contact your **harris black** team member.

## Self Managed Super Fund Seminar

Running a SMSF can at times be very daunting, with trying to keep abreast of the constantly changing regulations. **harris black** in association with Newleaf Tailored Financial Solutions are offering **harris black** clients who are already running their own SMSF, an opportunity to hear about recent legislative changes and a refresher on trustee responsibilities.

Topics to be discussed:

- Regulation for SMSFs and recent updates
- Trustee responsibilities
- Borrowing within a SMSF



## Event Details

**Date:** Tuesday 6 September

**Time:** 5:45 pm for a 6:00 pm start  
Light refreshments will be served

**Location:** Harris Black  
Level 16, 333 Ann Street  
Brisbane

**RSVP:** 30 August 2011

**Parking:** Cathedral Square  
410 Ann Street  
Brisbane

Click here to  
**RSVP**  
to the event



The next **harris black** and Newleaf seminar will be held on 21 September 2011 titled being prepared for retirement

## Queensland Government Building Boost Grant - not just for first home buyers

We have received a number of inquiries from clients in relation to their eligibility to apply for the State Government's Building Boost grant, announced in the 2011-12 State Budget. Below, we have highlighted the key eligibility requirements applicants must pass to participate in the grant and guidance on how to formally apply. Please note, the government's building boost grant legislation has not yet passed parliament. When enacted, the legislation will have a retrospective effect to 1 August 2011. Until then, the grant will be administered under an administrative arrangement.

The Queensland Building Boost Grant is a grant of \$10,000 for a person or corporation buying or building a new home in Queensland. The grant is to assist recovery in the housing construction sector, Queensland's third-largest job generating industry.

### Eligibility test

An applicant must be a citizen or permanent resident of Australia (over 18) – or substantially Australian owned corporation or trust.

Between 1 August 2011 and 31 January 2012 the applicant must enter into a contract to purchase a new home, enter into a comprehensive building contract to have a new home built or commence building a new home as an owner builder.

The unencumbered value or consideration paid for the property must be less than \$600,000 (includes both house and land).

The property must be occupied within 12 months of completion.

The property must reside in Queensland.

**New home** is defined as a home that has not previously been occupied or sold as a place of residence. If these eligibility tests are met applicants must apply or give notice for intention to apply no later than 31 May 2012.



To complete an application form visit <http://boost.treasury.qld.gov.au/docs/boost-form.pdf>

For further information regarding the building boost please visit the application guide <http://boost.treasury.qld.gov.au/docs/boost-guide.pdf> or for any further advice or guidance in relation to your specific circumstances contact your **harris black** team member.



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## Dependent Spouse Rebate for spouses under spotlight

The Government announced it will phase out the tax offset for dependent spouses aged less than 40 (ie born on or after 1 July 1971) "to help encourage more Australians into paid employment".

This change will mean taxpayers with a dependent spouse aged less than 40 years will no longer be eligible for the dependent spouse tax offset (DSTO) from 1 July 2011. However, the change will not affect certain dependent spouses – for example, spouses who are permanently unable to work or who are carers.

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## SMSF Non-complying status affirmed, despite tragic circumstances

In a recent case, the Administrative Appeals Tribunal affirmed the decision of the Commissioner of Taxation that a self-managed superannuation fund (SMSF) be treated as a non-complying fund, despite acknowledging the tragic circumstances surrounding the case. The fund was created in April 2002 and its members included a husband, wife and their adult son. The Tribunal noted the son had a "drug addiction and took almost all of the money from the fund and spent it or gave it away". Although noting the circumstances of the family, the Tribunal was unable to exercise discretion to treat the fund as a complying fund under the superannuation law.

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## Trust streaming: extension to record beneficiaries' entitlements

Following a High Court decision last year – known as the Bamford decision – legislation has been formally enacted to provide certainty to trusts in relation to the streaming of capital gains and franked distributions (including any attached franking credits) to specific beneficiaries as an interim measure. However, as the legislation was finalised so close to the end of the income year, the ATO has decided to extend the time allowed for trustees to record a beneficiary's entitlement to a franked distribution for the purpose of the new legislation, for the 2010–11 income year only. The extension ends on 31 August 2011.

**TIP:** The trust streaming changes are technical. Please contact your **harris black** team member for any assistance.

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## Car fringe benefit taxation changes

Legislative changes to simplify the method for determining the taxable value of car fringe benefits has been formally implemented. Broadly, the changes introduce a flat 20% rate to replace the previous method which, according to the Government, encouraged people to drive their vehicles further than they needed to in order to obtain a larger tax concession.

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## Low income taxpayer offset ends for most minors

From 1 July 2011, the ability of minors (children under 18 years of age) to access the low income tax offset to reduce tax payable on their unearned income (dividends, interest and rent) has been removed. The Government said the tax law amendments are designed to discourage income splitting between adults and children.

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## Tribunal denies deduction for interest on loans made to trust

In a recent case, the Administrative Appeals Tribunal confirmed that husband and wife taxpayers were not entitled to a deduction for interest on loans made to a discretionary trust which ran their building business, or a deduction for interest on their investment properties which they made available to the trust to provide accommodation for building contractors. The taxpayers argued they had certain agreements in place with the trust which made them entitled to distributions of trust income, so accordingly, the deductions were permissible. However, the Tribunal disagreed and found there was an insufficient connection between the interest expenditure and claimed trust income.



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## Personal services income rules applies to taxpayer

The Administrative Appeals Tribunal has confirmed that the personal services income (PSI) rules under the taxation law applied to a taxpayer who provided his services as a draftsman through his private company. Accordingly, over \$67,000 was included as personal income in the years in question. The Tribunal also held the taxpayer did not meet either the "unrelated clients" test or the "business premises" test to relieve him of his personal liability.

**TIP:** Many consultants and contractors operate as a sole trader or through a company, partnership or trust. In many cases, the income received for the work they do may be classified as PSI if certain tests are not passed. It should be noted that the PSI rules limit the deductions that an individual may claim against PSI. Please contact your **harris black** team member for any assistance.

## Leaders are Readers - or are they?

I'm not sure who first used the expression "Leaders are Readers", however, it certainly has been used a lot since then. We agree with the idea that people who lead are generally people who read. There are very few successful people who are not big readers and love a good book. This love of reading shows up in their mindset, in their language and their ability.

On the other hand, I bet a lot of you reading this know someone who is "book-smart" but couldn't lead a horse to water!

The difference - actually applying the knowledge you gain from reading. Too many books are wasted on people who read them and then do absolutely nothing different with what they have learned.

Readers become leaders by the consistent application of the lessons contained within the pages of the book they are reading.

Some books the **harris black** team are currently reading are:

Brendan Power – The Snowball – Warren Buffet

Kirsty Davis – Think and Grow Rich – Napoleon Hill

Paul Whimp – Differentiate or Die: Survival in Our Era of

Killer Competition – Jack Trout

Renee Bettenay – Lazarus Rising – John Howard

James McGaw – The Westing Game – Ellen Raskin

Kristy Mannell – Jane Eyre – Charlotte Bronte



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## Superannuation – too much super can mean extra tax



When taxpayers put more money into their super than the law allows, they can be heavily penalised by being taxed at up to 46.5% of the excess contributions. Briefly, the concessional (before-tax) contributions cap is currently \$25,000 for those under 50, (\$50,000 for those aged 50 and over), and the non-concessional (after-tax) contributions cap is \$150,000.

The manner in which the current law is drafted means that where excess contributions are made, the Commissioner of Taxation has very limited discretion to disregard the excess contributions. Tax is payable at the rate of 31.5% of excess concessional contributions (in addition to the 15% already paid when the contribution is made) and 46.5% of excess non-concessional contributions.

As part of the 2011 Budget, the Federal Government announced that it will provide eligible individuals who breach the concessional contributions cap by up to \$10,000 with a one-off option to request that these excess contributions be refunded to them. This new refund option will only apply to first time breaches from 1 July 2011. The Government expects that this reform will help to reduce the number of occasions where the concessional contributions are exceeded resulting in an excess contributions tax (ECT) assessment.



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