'Too good to be true': Watch out for these three dodgy retirement schemes, ATO warns

THE tax office could confiscate up to 50 per cent of your savings if you get caught up in one of these "too good to be true" investment schemes.

DODGY investment schemes intended to take advantage of complex superannuation loopholes are being spruiked to unsuspecting retirees, putting them at risk of significant penalties, the Australian Taxation Office has warned.

The ATO says it has identified three specific "retirement planning schemes" being shopped around at various forums such as superannuation conferences, all of which relate to channelling income through self-managed superannuation funds (SMSFs) to avoid paying tax.

"They might sound good but in fact they're too good to be true," said ATO Deputy Commissioner James O'Halloran. "By drawing attention to these three schemes that concern us, obviously we're trying to prevent people accidentally moving into them."

The first scheme involves artificial arrangements involving SMSFs and "related-party" property development ventures. The second relates to an individual or related entity granting "legal life interest" over a commercial property to an SMSF, resulting in the rental income being diverted to the SMSF and taxed at lower rates while the individual retains legal ownership of the property.

The third relates to individuals deliberately exceeding their non-concessional superannuation contributions cap in order to manipulate the taxable component and non-taxable component of their fund balance upon refund of the excess.

"With the changes to super [announced earlier this year], people are obviously exploring all sorts of scenarios," Mr O'Halloran said. "We're warning people [against] anything which suggests what I would call 'inventive' use [of SMSFs] bordering on aggressive tax minimisation."

He said dodgy arrangements may be cleverly disguised to look legitimate, involve "a lot of paper shuffling" and are framed as being designed to give the taxpayer a minimal or zero amount of tax or even a tax refund or concession.

But just because an arrangement is "structured in a way which appears to satisfy certain regulatory rules does not mean it is legal". "Such arrangements can put SMSFs at significant risk of breaching the superannuation regulatory rules as well as the taxation law," he said.

The ATO has released detailed information on these illegal arrangements through its Super Scheme Smart program, breaking down how they work, warning signs to look for and where to go for help.

Mr O'Halloran said no penalties had yet been handed down for these particular schemes. "We're actually trying to prevent these three in particular getting a groundswell, so we're quite intentionally going out early," he said.

Possible penalties range from unpaid tax bills to the SMSF itself being deemed non-compliant in the most extreme cases, in which case the ATO confiscates 50 per cent of the fund's assets. Fewer than 50 funds are deemed non-compliant by the ATO each year.

NewsComAu. (2017). 'They might sound good but are in fact too good to be true'. [online] Available at: http://www.news.com.au/finance/superannuation/too-good-to-be-true-watch-out-for-these-three-dodgy-retirement-schemes-ato-warns/news-story/8da871601a2219f40e9eba10edce6eb9 [Accessed 21 Nov. 2017].

Deduction item D10 (cost of managing tax affairs) to be split

In response to feedback and recommendations from the tax profession, the ATO has announced that for Tax Time 2018 it will implement a change to split deduction label D10 – the cost of managing tax affairs – on the individual income tax return.

As practitioners will be aware, among other things, label D10 currently includes deductible amounts of ATO interest charges and litigation costs.

The ATO is concerned that the aggregation of these expenses distorts interpretation and analysis of what costs are actually being claimed.

It has therefore announced that to improve transparency around deductions being claimed and counteract any misunderstanding, label D10 will, on the 2018 individual tax return, be split into three sub-components comprising:

- Cost of managing tax affairs
- Deductible ATO interest charges
- Litigation costs.

Also the ATO plans to rename label D10 with a new title to better describe the collective nature of its three sub-components. These changes will apply for the 2018 and all future financial years for individual tax returns.

The ATO is also working internally with digital service providers to implement the change, and says it will communicate this more widely to individuals and the profession in the coming weeks through the usual communication channels.

To complement this change, the ATO will also add a new category to the other income label (24) to capture assessable amounts of ATO interest charges.

"Deduction item D10 (cost of managing tax affairs) to be split", Breaking tax and super news - Tax & Super Australia, 2017. [Online]. Available: http://taxandsupernewsroom.com.au/deduction-item-d10-cost-managing-tax-affairs-split/. [Accessed: 07- Dec- 2017].

Expanding the empire (and retaining the CGT main residence exemption)

A question that surfaces now and then from clients in regard to capital gains is whether the main residence exemption extends to additional land acquired after the time of acquisition of the residence.

The short answer is yes — provided that certain requirements are met (which in the main pertain to subsections 118-120 and 118-165 of the ITAA97). And it should also be noted that where the exemption applies upon satisfaction of the following requirements, it applies to both pre- and post-CGT dwellings (before and after 20 September 1985).

The requirements are:

- The additional land (including the area of land on which the dwelling is built) is adjacent to that on which the dwelling is situated;
- The total area of land is not greater than two hectares;
- The additional land is used primarily for private or domestic purposes in association with the dwelling; and
- The CGT event that happens in relation to the additional land also happens in relation to the dwelling (or your client's ownership interest in it).

To further explain, the taxation determination (TD92/171) gives an example.

Tom and Mary purchase a home in 1987 and occupy it as their main residence. The home has never been used for income producing purposes.

In 1989, they purchase the vacant block of land that adjoins the land on which their dwelling is situated and construct a private swimming pool. The total of the area of adjacent land and the area of the land on which the home is situated is less than 2 hectares.

In 2001, they enter into a contract to sell the home with the adjoining block. A full main residence exemption is available.

Under the ATO's "Project Refresh", which is aiming to modernise and tighten a lot of tax legislation, the above ruling and a few other related determinations are to be consolidated (TD1999/67, TD1999/68 and TD2000/15).

The project is working through the vast amount of legislation with a view to update legislation, or re-write rulings if they can be improved. The ATO may also consolidate several rulings where the subject is identical or very similar (as with the above) or completely withdraw other rulings if they are identified and redundant or less than useful (for example, the ruling dealing with deductions for contributions to a locust fighting fund, initiated in 1974, was still cluttering up Australia's tax legislation until April this year).

"Expanding the empire (and retaining the CGT main residence exemption)", Breaking tax and super news - Tax & Super Australia, 2017. [Online]. Available: http://taxand-supernewsroom.com.au/expanding-empire-retaining-cgt-main-residence-exemption/. [Accessed: 07- Dec- 2017].