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INFORMATION NOTES
TRANSFER OF LAND FROM SMSFS

The information contained in these notes is general in nature and is intended only to cover transactions involving the transfer of property from a self managed superannuation fund to a fund member. Prior to transferring the property from an SMSF, the trustees should have regard to the following (which is not an exclusive list of considerations):-

TAXATION & DUTY ISSUES

Transfer Duty

Transfers of Victorian land are dutiable transactions under the Duties Act. If the property is purchased by the Superannuation Fund Members, duty will be payable on the market value or sale price (which ever is higher) of the property.

The property transfer should be exempt from duty provided it is made as a distribution in specie whereby:

- no consideration is paid by the Fund Member
- any duty payable by the Fund when it first acquired the property has been or will be paid
- the person receiving the property was a Member of the Fund when the property was acquired by the Fund
- the dutiable value of the property transferred does not exceed the value of the Member's benefit.

Although a formal transfer is not required where all the Trustees are also the Members receiving the property, it is still necessary for duty and superannuation purpose to prepare a Statement of Change of Beneficial Ownership. The Statement is exempt from duty on the same conditions as a transfer of land.

Goods & Services Tax

If the property is sold by the Fund, GST will be payable on the sale if the Fund is registered or required to be registered for GST unless an exemption is available. A "going concern" exemption may be available if the Fund is registered for GST and the property is sold subject to an existing written lease. You should discuss GST registration and exemption issues with your accountant.

GST will not be payable on a transfer of property made as a distribution from the Fund to the Member. This is because the distribution is not being made for consideration and therefore is not a taxable supply for the purposes of the A New Tax System law.

After receiving the property, the Fund Member may be required under the A New Tax System law to register for GST, if not already registered. If the property is residential property, it is input taxed and there is no requirement to account for GST. Farmland is exempt from GST and therefore has no GST implications for the member. As a rule of thumb, if the rental from commercial property exceeds $75,000.00 per annum, the Fund Member will be required to register.

Capital Gains Tax

The transfer of the property by the Fund to a Member can have CGT implications for the fund depending upon the age of the Member. Transfers of property as lump sum payments are tax free for those above 60 years of age. It is expected that you will have sought and obtained advice on any CGT implications from your accountant or financial adviser prior to instructing the offices of MJHC Legal to transfer property from the Fund. You should not take any steps to transfer the property until you are aware of any CGT implications.

Other Important Financial and Accounting Issues

It is important that you and your accountant consider all other financial and accounting implications associated with transferring out fund property. To comply with superannuation law payment standards, a transfer of property is a lump sum payment and cannot be treated as payment of a pension. Where a pension is already being paid, the superannuation law required the Member pensioner to notify the fund that the transfer of the property in specie is to be treated as a lump sum.

The payment of the property as a lump sum may be taxable depending upon the age of the Member and the component of the payment. Lump sum payments are tax free for those above 60 years of age. Tax may be payable on the lump sum that the property transfer represents for people between age 55 and 60.

Generally, Centrelink does not assess a lump sum payment from an account based pension as income. However, transfer of the property as a lump sum will have an effect on the amount of the account based pension that is assessed by Centrelink for income and asset test purposes. Any government pension being received may be affected when pension entitlements are recalculated as a result of the transfer of the property as a lump sum payment.