

TAX TALKS

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In-specie contributions and payments are complex since you get two transactions “for the price of one”.

In-Specie Contributions and Payments

With an in-specie contribution your SMSF receives a contribution and acquires an asset. And with an in-specie payment your SMSF makes a benefit payment and ‘sells’ an asset.

In this episode of Tax Talks Gordon Mackenzie of UNSW discusses in-specie contributions and payments in more detail. Here is what we learned.

No Cash

For in-specie contributions and payments no cash changes hands. It is just a transfer of beneficial ownership. Not a transfer of legal ownership. The legal owners of the asset don't change. Only the beneficial owners.

Because after all an SMSF is just a fiduciary relationship between the trustee and the members with regard to the fund assets.

In-Specie Contributions

There are two ways to get an asset into an SMSF. The trustee outright buys the asset. Or the trustee receives an in-specie contribution.

Buying an asset is relatively straight forward, but an in-specie contribution is complex. It is a contribution, so the contribution caps and bring-forward rules apply. But it is also an acquisition. And not just any acquisition but an acquisition from a related party. Who else would contribute into your fund?

The SIS Act got plenty to say about acquisitions from related parties. Particularly in s67 not to do it. To never acquire an asset from a related party – ever. So that would ban any in-specie contribution. But there are exceptions to this rule.

And the three main exceptions are business real property, listed securities and in-house assets below the 5% threshold.

If you got one of these, you can make an in-specie contribution as long as you comply with the other superannuation investment rules around an acquisition.

In-Specie Payments

There are two ways to make a benefit payment. The trustee pays cash. Or the trustee makes an in-specie payment.

Either way the member must first have met a condition of release before the trustee can make any payment including an in-specie payment.

An in-specie payment can only occur for a lump sum payment but not for a pension. So the relevant asset has to leave the super environment. You can't transfer an asset from one super account to the next.

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