



SMSF STRATEGY UPDATE - AUGUST 2006

cooper
partners

SMSFS - AN EFFECTIVE VEHICLE FOR PROTECTING WEALTH

One of the benefits of having your own superannuation fund is the protection it offers to your retirement savings against potential creditor claims.

Proposed amendments to the bankruptcy rules will see the Bankruptcy Act 1966 allow bankruptcy trustees to recover superannuation contributions that are made prior to bankruptcy with the intention to defeat creditors.

However, if a bankrupt can demonstrate a regular pattern of substantial contributions being made as part of his/her legitimate right to provide for his/her retirement, a court will have the discretion to determine that those contributions immediately made prior to bankruptcy were not out of the character and therefore, not excessive. The courts will also be able to take into account the person's history of contributions and whether the contributions in question are "out of character". Importantly, genuine contributions to superannuation for retirement income purposes will be protected from recovery.

This is a better outcome to that of the Government's original proposal to put a statutory limit on contributions in the

period leading up to bankruptcy. In particular, the consultation paper proposed to enable bankruptcy trustees to recover "excessive" voluntary superannuation contributions made during the 5-year period before bankruptcy above an annual limit of \$12,686.

Accordingly, where a person is of risk of being declared bankrupt, so long as they can establish a pattern of substantial superannuation contributions, it is likely that these superannuation benefits will be protected.

It follows therefore, that if a person has a pattern of making the maximum employer aged base limits and personal contributions up to the \$150,000 per year limit, these amounts would be protected, together with accompanying earnings. Where the Government's 2006 budget announced the removal of Reasonable Benefit Limits, could result in superannuation being the most effective vehicle for protecting wealth as well as accumulating one's wealth.

Date of effect:

The amendments are proposed to apply to any contributions made after 27 July 2006.

cooper
partners

Taxation Specialists and Business Advisors

Level 3, 267 St George's Terrace, Perth WA 6000
t 08 9261 7704 f 08 9261 7700
enquiries@cooperpartners.com.au
www.cooperpartners.com.au