JAMES HUNTER
Wilson HTM
(02) 8247 6626

# Owning your farm within your fund

SELF-Managed Superannuation Funds (SMSFs) are subject to stringent rules, but with some important exemptions.

As a farmer, one of the most valuable exemptions allows you to own your farm as a business within your SMSF.

**Why is it possible to own a farm (or part of a farm) in your SMSF, but not your home or holiday house?**

This is because owning your home or holiday house would breach the in-house assets test and the sole purpose test, while owning the farm you use for your business would not.

The in-house assets test stipulates no more than five per cent of an SMSF's assets can impart a benefit on members or related parties, such as relatives.

Under current legislation, this means five per cent of your SMSF balance is the maximum that could be used to buy/hold a residential property that a member or relative lives in.

Importantly, the recent Cooper Review has recommended that the five per cent in-house asset limit be abolished with a five-year transition period.

An exemption to this rule is that your farm (or a share of the farm) or similar rural property can be owned by your SMSF even though you, as the manager of the farm, live in a house located on the farm with your family.

This is because your SMSF is allowed to invest in a "business real asset".

This exemption is complicated by the sole-purpose test, which states that the investments of an SMSF must be made with the solitary aim of accumulating savings to fund retirement.

**Doesn't owning your farm through your SMSF breach this test?**

After all, there would appear to be at least a dual purpose – saving for retirement and subsidising your accommodation costs by providing you a place to reside in while managing your farm.

In practice this is not a problem, however, it is important to ensure the following are met:

- The farming business must rent the farmland at a commercial rent back from the SMSF.
- The land being used for domestic or private purposes is less than two hectares and the main use of the farm is not for private and domestic purposes.
- The ownership of the farm has to be consistent with your SMSF's written investment strategy.

Now may be an opportune time to transfer your farm (or part of your farm) into your SMSF should land prices be depressed in your local area.

At lower prices, you would minimise any potential tax payable by the current ownership structure on the sale to the SMSF, and your SMSF will benefit from buying your farm at the lower price and capturing the subsequent growth in a tax effective superannuation environment.

If the farm is held for at least 12 months and the SMSF is still in accumulation phase, any capital gains upon sale are taxed at 10 per cent.

Importantly, however, should the farm be eventually sold while you are in pension phase, your capital gains on the farm will be tax free.

**It is important to consider the implications of consolidating assets within an SMSF.**

A transfer of assets into an SMSF would trigger a capital gains tax event for the seller.

However, opportunities may exist to manage these capital gains tax events.

You could potentially offset any long-term gains with short-term losses, transfer assets where valuations may be at historic lows (which would lower crystallised capital gains), or, depending on your situation, potentially take advantage of a deduction through the use of concessional contributions.

**It is very important not to exceed contribution limits.**

Since June 30, 2007, non-concessional contributions have been limited to $150,000 per person per financial year.

It is important to note the "bring forward" provision: $450,000 for those under 65.

Non-concessional contributions are viewed as a tax-free contribution to super, but no deduction is allowed.

For concessional (deductable) contributions, a limit of $25,000 per person per financial year exists.

The exception to this is members aged over 50 who will have a transitional limit of $50,000 per year up to June 30, 2012.

(This may be extended for member balances under $500,000.)

Concessional contributions are deductable, but, remember, 15 per cent tax is paid within the super fund.

There are severe tax penalties for exceeding these contribution limits, so it is important to get the right advice for your situation.

**Personal super contributions.**

Personal super contributions can work in your favour by minimising your CGT liability through tax deductable (concessional) contribution into your super account.

If you are self employed, substantially self-employed, recently retired and are eligible to contribute to super and have recently sold or plan to sell an asset, then you can benefit from the potential opportunity to offset any personal income tax that would have been payable on any capital gains you made on the transfer of the asset to the fund.

**■ To talk further about owning your farm within your self managed superannuation fund, contact James Hunter, senior financial adviser, Wilson HTM Investment Group, email james.hunter@wilsonhtm.com.au or contact (02) 8247 3105, or Wren Bligh, authorised investment manager, Wilson HTM Investment Group, email wren.bligh@wilsonhtm.com.au or contact (02) 8247 6626.**

● This article has been prepared by Wilson HTM Ltd (ABN 68 010 529 665), Australian Financial Services Licence No.238375. This information is unsolicited general information only, without regard to any investor's individual objectives, financial situation or needs. It is not specific advice for any particular investor. Prospective investors should consider the appropriateness of the information in this article, having regard to their own objectives, financial situation and needs. Also, changes in legislation may occur quickly, so we recommend that formal advice be sought before acting in any of these areas.

## Consolidation of investments
## What's allowed under current legislation?