

SELF MANAGED SUPER GUIDELINES

As you are aware, the ATO has full regulatory control over SMSFs, ensuring compliance not only with the relevant tax laws, but also with all other regulatory requirements.

As part of this regulatory control, there are a number of important management issues that go hand in hand with having a self managed superannuation fund (SMSF), including

- having a proper investment strategy;
- adhering to required investment and operational rules;
- auditing the fund as required;
- maintaining proper records; and
- preparing and lodging tax returns and other statutory documents.

Recently, the ATO has started to release draft rulings and determinations targeted specifically at SMSFs. These documents address a number of administrative and interpretative issues and two recent draft rulings are of particular interest:

- the sole purpose test
- giving financial assistance

The sole purpose test

Essentially, an SMSF must be run with the exclusive purpose of providing retirement or death benefits in relation its members – the sole purpose test.

In draft Self Managed Superannuation Fund Ruling 2007/D1 (SMSFR 2007/D1) the ATO has issued its preliminary views about the scope of this test.

This strict test is fundamental to the operation of an SMSF and one that causes confusion for many SMSF trustees. Practical complications arise because it is also possible for the fund's trustee to provide benefits outside those specified in the superannuation legislation without necessarily breaking the sole purpose test.

The ATO's overall position is that the provision of remote, insignificant or incidental benefits that fall outside the scope of those specified in the superannuation legislation are only likely to be acceptable if they are an inherent or unavoidable part of the legitimate activities of the SMSF.

The draft Ruling sets out a range of indicators used by the ATO to determine if your fund is compliant with the sole purpose test. To give you an idea of the types of things covered by these

indicators, the Draft Ruling provides examples of the ATO's approach to incidental benefits arising in situations like:

- holiday apartments provided through a property syndicate involving incidental upgrade rights;
- shares in a golf club with assignable membership rights attached;
- the use, lease and loaning of artwork; and
- shareholder discount cards (which result in reduced dividend rights).

A WORD TO THE WISE

Working out what are acceptable benefits under the sole purpose test can be confusing and you need to tread very warily if your SMSF goes down the route of providing "remote, insignificant or incidental" benefits outside the strict scope of the superannuation legislation.

Giving financial assistance

The superannuation legislation prohibits the lending of fund money to a member of the fund or a relative of a member. This rule is also a source of confusion for many fund trustees because its scope is perhaps wider than you would expect.

In draft Self Managed Superannuation Fund Ruling 2007/D2 (SMSFR 2007/D2) the ATO has issued its preliminary views about how this rule operates. In particular, according to the ATO your SMSF may have problems under this rule if it:

- gives a gift using the resources of the SMSF to a member/relative;
- sells an SMSF asset to a member/relative for less than its market value;
- purchases an asset from a member/relative for greater than its market value;
- acquires services from a member/relative on non-arm's length terms (e.g., paying for unnecessary services or paying an amount for services in excess of an arm's length amount);
- provides security or a charge over SMSF assets or giving a guarantee for the benefit of a member/relative;
- forgives a debt of a member/relative, or releasing a member/relative from an obligation to the SMSF, including where the amount is not yet due and payable; or
- takes on a financial obligation of a member/relative.

A note on compliance....

It pays to keep in mind that non-compliance with regulatory requirements can have disastrous effects, including:

- the denial of tax deductions for contributions to the fund;
- taxing the funds' earnings at marginal rather than concessional rates; and
- taxing benefits paid from the fund at retirement at marginal rates.