



ATO Interpretative Decision


ATO ID 2002/388

Superannuation

Retirement income entities: In-House Assets and leasing property from a Unit Trust.

FOI status: may be released

Status of this decision: Decision Current

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Issue

Has a contravention of section 71 of the *Superannuation Industry (Supervision) Act 1993* (SISA) occurred where the member/s of a Self Managed Superannuation Fund (SMSF) lease a residential property from a unit trust which is a related party or related trust of the SMSF?

Decision

No, the members leasing of a residential property from a unit trust related to an SMSF would not cause the fund to contravene the in-house asset rules as set out in section 71 of the SISA.

Facts

The SMSF has two members.

Persons associated with the SMSF established a unit trust prior to 11 August 1999.

At all times, all the units in the unit trust have been held by the trustee for the SMSF. The unit trust has a residential property as one of its investments. The residential property was funded in part by borrowings by the trustee of the unit trust.

The members of the SMSF wish to lease the property for themselves and pay a market rate for the lease.

Reasons for Decision

An in-house asset of a superannuation fund includes, '...an asset of the fund subject to a lease or lease arrangement between the trustee of the fund and a related party of the fund...' - subsection 71(1) of the SISA.

A lease arrangement involving members (in their capacity as members and not as trustees) of an SMSF (as lessees) leasing residential property from the unit trust does not fall within the definition of an in-house asset. This is because the asset involved is that of the unit trust and not an asset of the SMSF. The SISA places no restrictions on the members of the SMSF tenanted the residential property of the unit trust provided the SMSF's investment in the unit trust is consistent with its investment strategy and the unit trust is conducting its dealings with SMSF members on an arms length basis. However, the lease agreement would need to be entered into and maintained on an arm's length basis. Further the SMSF's ongoing investment in the unit trust would need to be continually reviewed against the investment strategy of the fund. Dealings between the unit trust and members of the SMSF will need to be on an arms length basis to avoid a contravention of the implied investment covenant in paragraph 52(2)(f) of the SISA.

Date of decision: 6 September 2001

Legislative References:

Superannuation Industry (Supervision) Act 1993

Paragraph 52(2)(f)

Section 71

Subsection 71(1)

Keywords

Self managed superannuation funds

SMSF investments

Superannuation fund in house assets

SMSF related parties

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