



ATO Interpretative Decision

ATO ID 2002/516

Superannuation

Retirement income entities - Fund money deposited in member's bank account


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ATO ID 2002/516 history

	Date	Version
	27 July 2001	Original statement
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FOI status: may be released

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Issue

Has a contravention of section 65 of the *Superannuation Industry (Supervision) Act 1993* (SISA) occurred where money payable to the self managed superannuation fund (SMSF) was unintentionally deposited into the trustee's personal bank account?

Decision

No. A contravention of section 65 of SISA will have occurred if the trustee intended to borrow the money for his or her personal use.

Facts

A share broker, accustomed to receiving instructions from the trustee in both, his personal capacity, as well as in

his capacity as trustee of an SMSF, inadvertently made all cheques payable to the member.

The cheques were deposited into the trustee's personal bank account.

The cheques were due to be paid to the SMSF and not to the trustee in his personal capacity.

The trustee has on several occasions, deposited money belonging to the SMSF into his personal bank account.

Reasons for Decision

Section 65 of SISA prohibits the trustee of a regulated superannuation fund from lending money to a member of the fund or a relative of a member of the fund.

However paragraph 52(2)(g) of SISA places trustees under a covenant to keep the money and other assets of the superannuation fund separate to those of the trustee personally (among others). A breach of a covenant may result in an action for loss or damage that occurred as a result of the contravention.

This paragraph was inserted on 14 February 2003

Note, when a trustee becomes aware of (or should have become aware of) such an error, the trustee should immediately take steps to rectify the situation. Where the trustee fails to rectify such an error immediately on becoming aware of the error (or should have become aware of the error), they will be considered to have made a loan and have contravened section 65 of SISA.

Amendment History

Date of amendment	Part	Comment
14 February 2014	Reasons for Decision	Updated for clarity
	Legislative References	Updated

Date of decision: 27 July 2001

Legislative References:

Superannuation Industry (Supervision) Act 1993

Section 65

Paragraph 52(2)(g)

Keywords

Self managed superannuation funds

SMSF loans

SMSF trustee

SIS covenants

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