



## ATO Interpretative Decision


ATO ID 2006/220

### Superannuation

### Superannuation Retirement Income Entities: additional investment by self managed superannuation fund in a related trust

FOI status: may be released

Status of this decision: Decision Current

 **CAUTION:** This is an edited and summarised record of a Tax Office decision. This record is not published as a form of advice. It is being made available for your inspection to meet FOI requirements, because it may be used by an officer in making another decision.

#### **This ATOID provides you with the following level of protection:**

If you reasonably apply this decision in good faith to your own circumstances (which are not materially different from those described in the decision), and the decision is later found to be incorrect you will not be liable to pay any penalty or interest. However, you will be required to pay any underpaid tax (or repay any over-claimed credit, grant or benefit), provided the time limits under the law allow it. If you do intend to apply this decision to your own circumstances, you will need to ensure that the relevant provisions referred to in the decision have not been amended or repealed. You may wish to obtain further advice from the Tax Office or from a professional adviser.

## Issue

Is an additional investment in a related trust by a Self Managed Superannuation Fund (SMSF) after 11 August 1999 an in-house asset of the SMSF as defined in subsection 71(1) of the *Supervision Industry (Supervision) Act 1993* (SISA)?

## Decision

Yes. The additional investment by an SMSF is an 'in-house asset' as defined in subsection 71(1) of SISA.

## Facts

The SMSF and related trust were established before 11 August 1999 where the SMSF is the sole beneficiary of the trust. Both trusts have the same corporate trustee.

The related trust purchased and paid a deposit for real property 'off the plan' prior to 11 August 1999.

The SMSF received further units in the related trust after 11 August 1999 after making an additional investment in the related trust.

The related trust intended to sell the property before settlement but was unable to find buyer. It then borrowed money to settle the purchase after subsequent issue of units to the SMSF.

The property is leased at arms length to an unrelated third party.

## Reasons for Decision

Subsection 71(1) of SISA provides that an in-house asset of a superannuation fund includes investments in a related trust.

Section 71A of SISA exempts such an investment from being an in-house asset if it was acquired before 11 August 1999. An investment is also exempted if it was acquired after 11 August 1999, but where that acquisition was made under a contract that was entered into before that date. In both circumstances the investment must not have been an in-house asset under the former rules.

In this case, the fund had an investment as at 11 August 1999. The exception under section 71A of SISA applies to this investment, meaning it is not an in-house asset.

The fund made an additional investment in the related trust after 11 August 1999 and was issued with further units. The exception under section 71A of the SISA does not apply to the additional investment.

Further investments in the related trust after 11 August 1999 that are not in line with a contract entered into before that date will be treated as in-house assets unless specifically excluded by sections 71D or 71E of SISA and made before the end of 30 June 2009.

The additional units were not acquired through a reinvestment of trust distributions.

The exception under section 71D of SISA does not apply.

The investment by the related trust was not geared as at 11 August 1999 and there is no evidence of an election to apply section 71E of SISA to the investment in the related trust. Therefore, the section 71E exception also does not apply.

The additional investment in the related trust after 11 August 1999 is therefore an in-house asset under the rules contained in section 71 of SISA.

**Date of decision:** 24 October 2001

**Year of income:** Year ended 30 June 2001

**Legislative References:**

*Superannuation Industry (Supervision) Act 1993*

- subsection 71(1)
- paragraph 71A(1)(a)
- section 71D
- section 71E

**Related ATO Interpretative Decisions**

ATO ID 2002/320

**ATO Interpretative Decisions overturned by this decision**

ATO ID 2002/552

**Keywords**

- Complying superannuation funds
- Self managed superannuation funds
- SMSF loans
- SMSF related parties
- Superannuation fund in house assets

**Date of publication:** 11 August 2006

**ISSN:** 1445-2782

---

**Copyright notice**

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute material on this website as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).

