




ATO Interpretative Decision

ATO ID 2010/185

Superannuation

Self managed superannuation fund: limited recourse borrowing arrangement - charge

FOI status: may be released

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Issue

If the trustee of the holding trust in a limited recourse borrowing arrangement grants a charge over the asset in the holding trust in favour of a person other than the lender under the arrangement, does that result in the trustee of the self managed superannuation fund (SMSF) contravening subsection 67(1) of the *Superannuation Industry (Supervision) Act 1993 (SISA)*?

Decision

Yes because the arrangement, which was entered into on or after 7 July 2010, fails to meet requirements of section 67A of the SISA.

Facts

The trustees of an SMSF enter into a borrowing arrangement on 15 July 2010. Under the terms of the arrangement, a corporate trustee of a holding trust will acquire a residential property from a party unrelated to the SMSF. The trustees (that is, members) of the SMSF will be the directors of the corporate trustee of the holding trust.

To facilitate the acquisition one member of the fund borrows money from a financial institution and on-lends the money to the SMSF for investment into the holding trust.

Under the terms of the arrangement the corporate trustee of the holding trust holds the residential property on trust for the SMSF subject to a charge in favour of the financial institution to secure the loan to the member.

Reasons for Decision

Regulated superannuation funds are generally prohibited from borrowing money or maintaining a borrowing of

money by subsection 67(1) of the SISA unless the borrowing satisfies one of the exceptions provided for by section 67 of the SISA.

One such exception is provided for by section 67A of the SISA (applying to limited recourse borrowing arrangements entered into on or after 7 July 2010).

As this arrangement was entered into on 15 July 2010 the requirements of section 67A of the SISA apply. Paragraph 67A(1)(f) of the SISA requires that the asset being acquired under the arrangement must not be subject to a charge other than in relation to the borrowing by the SMSF trustee. The charge is granted to secure the borrowing by the member from the financial institution, rather than the borrowing by the SMSF trustee from the member. Therefore, the arrangement in this case fails the requirement of paragraph 67A(1)(f) of the SISA.

Date of decision: 20 July 2010

Year of income: Year ended 30 June 2011

Legislative References:

Superannuation Industry (Supervision) Act 1993
subsection 67(1)
former subsection 67(4A)
section 67A

Keywords

Self managed superannuation funds
SMSF borrowings
SMSF charge over assets

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