




ATO Interpretative Decision

ATO ID 2014/7

Superannuation

Keeping money and other assets separate from those of other parties

 **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you will need to ensure that the relevant provisions referred to in the decision have not been amended or repealed.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

Has a contravention of section 34 of the *Superannuation Industry (Supervision) Act 1993* (SISA) occurred where a Self Managed Superannuation Fund (SMSF) shares a bank account with related unit trusts?

Decision

Yes, an SMSF must open and maintain its own bank account, as it is required to keep its assets and money separate from that of other entities.

Facts

The trustees of the SMSF are members of a family.

The fund has a standard employer-sponsor and all the trustees work for the standard employer-sponsor in various capacities.

There are several unit trusts owned and operated by the SMSF and/or the trustees.

The trustees have stated that, for administrative simplicity and cost savings, unit trusts jointly owned by the SMSF and trustees as well as unit trusts owned solely by the SMSF all operate using the one bank account. The account is held in the name of the SMSF.

Reasons for Decision

Subsection 31(1) of the SISA provides for the regulations to prescribe standards applicable to the operation of regulated superannuation funds (which includes a complying SMSF) and to trustees of those funds. Subsection 34(1) of the SISA requires each trustee of a superannuation entity to ensure that the operating standards are

complied with at all times. A failure to do this is considered to be an offence under subsection 34(2) of SISA.

Regulation 4.09A of the *Superannuation Industry (Supervision) Regulations 1994* (SISR) states that for the purposes of subsection 31(1) of the SISA, a trustee of an SMSF must keep the money and other assets of the fund separate from any money and assets respectively:

- (a) that are held by the trustee personally, or
- (b) that are money or assets of a standard employer- sponsor, or an associate of a standard employer-sponsor, of the fund.

The unit trusts are associates of the standard employer-sponsor of the fund in accordance with section 12 of the SISA. Keeping all of the unit trusts' money in the SMSF's bank account, including those trusts jointly owned by the SMSF, is not in line with the requirements of regulation 4.09A of the SISR and therefore constitutes a contravention under subsection 34(1) of the SISA.

Note: *While this ATO ID looks specifically at bank accounts, the principles of regulation 4.09A of the SISR apply to all types of assets, including shares, units in a trust and other property.*

Date of decision: 11 February 2014

Legislative References:

Superannuation Industry (Supervision) Act 1993

section 12

section 31

subsection 31(1)

section 34

subsection 34(1)

subsection 34(2)

Superannuation Industry (Supervision) Regulations 1994

Regulation 4.09A

Other References

Factsheet: Self-managed super funds - key messages for trustees

Booklet: Setting up a self-managed super fund

Booklet: Running a self-managed super fund

Keywords

Self managed superannuation funds

SIS standards

SMSF investments

Date of publication: 21 February 2014

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).
