

SMSFs — Collectables

Exposure draft regulations in relation to SMSF trustees making, holding and realising investments involving collectables and personal use assets ('Collectables') were released by the Government in late May 2011. The draft provisions will form part of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) ('SISR'). Please note that the draft regulations have not yet been passed as law.

Definition of Collectables

The provisions cover: artwork, jewellery, antiques, artefacts, coins, stamps, books, memorabilia, wine, cars, boats and memberships of sporting or social clubs.

Particularly, 'artwork' is defined pursuant to the *Income Tax Assessment Act 1997* (Cth), which includes paintings, sculptures, drawings or photographs.

Restrictions

The proposed regulations have not prohibited investment in Collectables, but rather tightened the restrictions on SMSF trustees investing in those assets. Broadly, the Government wants to ensure that SMSF trustees investing in Collectables do not give rise to any present day benefits for SMSF trustees or members.

Summary of proposed restrictions on Collectables

Broadly, SMSF trustees must:

- not lease a Collectable to a related party of the SMSF;
- not store a Collectable in a private residence of a related party of the SMSF;
- make a written record of the decisions in relation to the storage of Collectables held by the SMSF;
- have the Collectable insured in the SMSF's name within the first seven days of acquiring it;
- ensure that Collectables are not used by a related party of the SMSF; and
- ensure that if a Collectable is being sold to a related party, that the Collectable is sold at its market value, which is calculated by a qualified independent valuer.

Planning and other issues

Transitional provisions

The draft regulations are proposed to apply from 1 July 2011. However, the new regulations will not apply until 1 July 2016 for Collectables held by SMSF trustees as at 30 June 2011.

For those SMSF trustees that already hold Collectables, there should be no immediate action necessary provided that all superannuation compliance requirements continue to be satisfied up to that time.

However, many SMSF trustees may feel pressured into disposing of their 'pre July 2011' Collectables before 1 July 2016.

While the above proposals do not preclude SMSF trustees acquiring Collectables after 30 June 2011, it does restrict investment in them.

Storage

Under the proposed restrictions, a Collectable must not be stored in a private residence of a related party. Storage at a related party's non-private premises (such as an office) is not expressly excluded. This, however, creates uncertainty as to whether a use or lease arrangement would arise as a result.

Other compliance requirements

We note that those SMSF trustees that own Collectables have a number of other requirements to comply with, such as the sole purpose test, in-house asset rules, arm's length dealings and financial assistance tests. Regardless of the regulations outlined above, the SMSF trustee should still consider these compliance requirements when investing in and holding Collectables.

The consequences of contravening these requirements could result in the fund becoming non-complying. This could be more severe than the penalties for not complying with the proposed regulations.

Penalties for non-compliance

If an SMSF trustee contravenes any of the proposed restrictions, they will be liable to pay a fine of 10 penalty units (\$1,100) for each contravention. This could prove costly if penalties were applied to a number of contraventions for a variety of different Collectables.

Pension minimum payments

The first of many proposed May 2011 budget updates for SMSFs has now become law.

Amendments to the SISR that will amend minimum pension payments from 1 July 2011 are now law.

New minimum payments

The minimum payments for the 2011-12 financial year are as follows:

- Account-based pension ('ABP') and transition to retirement income stream ('TRIS') — 75% of regular minimum payment per the SISR.
- Allocated pension ('AP') and transition to retirement allocated pension ('TRAP') — 75% of regular minimum payment per the SISR.
- Market linked pension ('MLP') also known as a term allocated pension ('TAP') — 67.5% of amount calculated in Clause 1, Schedule 6 of the SISR. (The figure 67.5% represents 75% of the usual minimum required payment.)

Importance of minimum payments

The ATO have recently flagged that an SMSF may lose the exemption on pension assets where the minimum payment has not been paid during a financial year.

In the current financial year, the minimum payments are still 50% of those prescribed in the SISR. In the 2011-12 financial year, the minimum payments will increase to 75%. It is proposed that in the 2012-13 financial year, minimum payments will return to their normal rates.

As such, SMSF trustees should carefully plan for these payments leading up to 30 June each year.

Annual Update Service

DBA Lawyers' Annual Update Service is a web-delivery service that allows SMSFs, which already have a DBA deed as their governing rules, to update that deed on 1 July 2011 at a fraction of our usual cost — \$137.50 (via direct debit).

Subscribers to the Annual Update Service can access DBA Lawyers' latest SMSF deed from 1 July 2011.

The latest changes for the July 2011 release include the following:

- Budget announcements impacting superannuation including the increased flexibility of returning excess contributions and increase of minimum pension payments.
- Changes to the limited recourse borrowing provisions in view of recent experiences with different financial institutions and assignments.
- Refined powers to revert a pension and integrating the same with the binding death benefit nomination ('BDBN') provisions. (There has been recent misunderstanding within the SMSF industry that reversionary pensions override a BDBN.)

Participants in the Annual Update Service for 1 July 2011 must be registered before 30 June 2011. For more information please visit <http://www.dbalawyers.com.au/annual-update-service> or call (03) 9092 9400.

DBA Network's upcoming events

Online SMSF Update — 29 July

DBA Network's next Online SMSF Update is on Friday 29 July 2011, 12pm-1.30pm (AEST).

Quarterly SMSF Seminars — August

DBA Network's next round of Quarterly SMSF Seminars will be held in seven different locations around Australia during August 2011 and will include topics on SMSF succession planning, in-house assets and a general SMSF update.

To register for these events, or for more information, visit <http://www.dbanetwork.com.au>.

For further Information please contact:

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