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SMSF STRATEGIES SPECIALIST SMSF ADVISER TRAINING

Module 6 – Sole Purpose Test and Acquiring



MODULE 6 OVERVIEW

- ❖ SIS Compliance
- ❖ SMSF Trust Deeds
- ❖ Sole Purpose Test
- ❖ Acquisition of Assets from Related Parties
- ❖ SIS Regulation 13.22 Trust



PREVIEW OF MODULE 6

QUIZ QUESTIONS (MULTIPLE CHOICE ANSWERS)

- ❖ What is a complying super fund ...
- ❖ Which is not a benefit to which section 62 applies?
- ❖ A SMSF Trustee wants to carry on a property development business in the fund - your advice is ...
- ❖ A Trustee of a SMSF can acquire residential property from a related party to the fund if ...
- ❖ Which is true in relation to a SIS Regulation 13.22C trust?

SIS COMPLIANCE – MANY RULES

- Compliance with SMSF rules
 - Sole Purpose Test
 - Trust Deed Compliance
 - Acquisition of Assets
 - In-house Assets Test
 - Arms Length Investments
 - Giving a charge over Assets
 - Investment Strategy
 - Risk Management Strategy
 - Adviser Legal Action
- A complying super fund is a regulated resident fund that does not breach any rules or regulations



A STRICT SOLE PURPOSE TEST

All superannuation funds must be maintained for the sole purpose of providing retirement benefits to members or death benefits to their beneficiaries (s. 62)

- Includes incapacity, termination benefits, retirement, death benefits



Examples of a breach:

- Allowing a member to live in a beach house owned by the fund
- Allowing the assets of the fund to be used as security for a loan made to a member or a related party
- Paying 100% to an advisor, where part of the advice related to a member's non-super investments 😊

Restricted assets – special rules:

- Artwork, jewelry, wine, spirits, memberships
- Collectibles Mar 2012 \$731M – June 2015 \$389M



CARRYING ON A BUSINESS IS OK

- Classic examples – share trading; property development

QUICK CHECKLIST

- 1. Will any specific SIS provisions be breached?
 - 2. Could income be taxed as non-arm's length income?
 - 3. Has the sole purpose test been considered?
 - 4. Is the business really a hobby?
 - 5. What would an arm's length reasonable trustee do?
 - 6. Smell test...
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- In theory ANY business but the bottom line: the ATO is watching



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IN THEORY, ANY BUSINESS

- WHY DO IT?
- Access to capital and
- Concessional tax treatments
- This all sounds attractive – BUT:

So:

- not a pastime or hobby
- check the trust deed
- comply with the sole purpose test
- comply with the Investment Strategy, including risk profile
- commercial approach to relationships with other trading entities
- when employing family members – arms length salary and conditions
- quarantine assets from private use

“Thou shall not obtain personal advantage or enjoyment from the activities of the SMSF until you retire or die (at which point it becomes redundant!)”

ACQUISITION OF ASSETS FROM RELATED PARTIES

- Direct or indirect purchase of an asset from a member or related party or where the member or related party makes an “in-specie” contribution into the fund on behalf of a member.
- The trustee of the fund MUST NOT acquire an asset from a member, employer-sponsor or related party of the fund (s. 66(1), SISA).
- There are some exceptions . . .

EXCEPTIONS

Exceptions:

- listed securities
- business real property
- residential property that is part of the trading stock of a property developer
- in-house assets (max 5% rule) – e.g., plant & equipment, receivables
- investments in a widely held trust – e.g., retail fund, private equity fund
- deposits with an Australian deposit-taking institution (ADI)
- property held by SMSF and related party as tenants in common
- units in a unit trust or shares in a company (Reg 13.22C, SISR)
 - *s.66(2A) related trust that can be transferred to a member*



There are strong anti-avoidance measures!

- sole purpose test
- market value



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QUIZ TIME

- Go online
- Take the Module 6 Assessment
- Ask us if you have any queries
- You will have TWO opportunities to take the quiz

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