

SMSF Funding of Improvements and Replacements Clarified- ATO's Liberal Approach and the Creation of Certainty.

The ATO recently released its Draft Self Managed Superannuation Fund Ruling SMSFR 2011/D1 explaining key concepts relevant to the application of the limited recourse borrowing arrangements (LRBA).

Improving an Asset

The superannuation laws provide that money borrowed under an LRBA can only be used to buy and maintain, or repair an asset, not improve it.

However, the ATO in adopting a liberal approach has confirmed that substantial repairs and maintenance would come under the umbrella of repairing and not improving an asset. For example, renovating a property that clearly needed renovation at the time of purchase such as restoring a fire damaged kitchen would be classified as a repair. Repairs would also include such things as repainting and replacing a damaged roof.

Too Much Improvement

Significant improvements such as extending a kitchen, adding a second storey to a property, adding a swimming pool, or adding a garage are permissible provided that the property's fundamental character is not changed to the extent of creating a new asset. The improvements may not be funded by LRBA but the SMSF may use its own cash to finance the improvements.

Examples of where an improvement is not permissible, where the asset improves to the extent that it becomes a different asset, is replacing a four bedroom house destroyed by fire with three strata units.

Same or Different Assets - 'Off the Plan' Purchases.

The Trustees of an SMSF can pay a deposit to secure the purchase of a property 'off the plan' which is not subject to an LRBA. Once the apartment is completed the trustees can then enter into an LRBA to facilitate the purchase of a single acquirable asset.

If an SMSF owns a block of land and then enters into an LRBA to construct a house this would breach the superannuation law requirements of a single acquirable asset.

Greater Certainty

This greater certainty of SMSF borrowing requirements provides confidence and adds to the attractiveness of SMSF purchasing properties as a safe shelter from the current sharemarket volatility.

Michael Sing Lawyers are specialists in the area of SMSF lending and purchases and can provide your clients with expert advice and service.

Given these amendments, this is an opportune time to contact Michael Sing Lawyers to seek advice about how this will affect your SMSF clients. For assistance with all your SMSF and property needs and enquiries, email Donna Yalg at dyalg@msslawyers.com.au or call Donna on (07) 3226 9034 or visit our website www.msslawyers.com.au.



Gold Coast Office

9 Ouyan St
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726
T +61 7 5597 8888
F +61 7 5597 8899

Brisbane Office

Level 10, 410 Queen Street
Brisbane QLD 4000
PO Box 3246 Brisbane QLD 4001
T +61 7 3229 6099
F +61 7 3226 9001