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Ruling Compendium – SMSFD 2010/1

This is a compendium of responses to the issues raised by external parties to draft SMSFD 2009/D1 – Self Managed Superannuation Funds: can a trustee of a self managed superannuation fund purchase a trauma insurance policy in respect of a member and still satisfy the sole purpose test in section 62 of the *Superannuation Industry (Supervision) Act 1993*?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1	<i>Paragraphs 20 & 21 – Beneficiary of the policy is a person other than a trustee of the SMSF.</i> The determination should refer to the identity of the 'policy owner' rather than the 'beneficiary' of the policy since the benefit would normally be paid to the policy owner, therefore the policy owner would be the beneficiary. The language of 'beneficial ownership' of a policy would be appropriate in a situation where the trauma policy is held by the trustee of a separate trust and a trustee of an SMSF is the beneficial owner of a policy under the terms of that trust. If the SMSF is paying the premium, then it should be identified as the policy owner. If it is not the policy owner, then there is a breach of the sole purpose test. The trustee of the SMSF can't apply funds of the SMSF to make a third party the legal and beneficial owner of an asset acquired with the funds.	<i>Wording changed to avoid confusion. Footnotes 12 and 14 have been included to confirm that the trustee is the policy owner.</i> The phrase "beneficiary of the policy" was used in the draft determination to refer to the recipient of proceeds on payment of a claim under the policy and not a beneficiary of a policy in the context of a trust relationship such as described in these comments. However, the wording has been changed to avoid confusion. The statement that an SMSF trustee breaches the sole purpose test if it applies SMSF funds to make a third party both the policy owner and the recipient of any benefits paid under that policy is consistent with the view in paragraphs 20 and 21 of both the draft and final determinations.
2	<i>Paragraph 24 – Reference to the "benefit of cheaper premiums on other policies"</i> The bundling of benefits can result in cheaper premiums (eg volume discounts; co-ownership of a policy; multiple insured events in a single policy). Please clarify that these are not the sort of benefits referred to in SMSFD 2009/1.	<i>Additional sentence included in paragraph 25 and new footnote 19.</i> The issues raised by this comment are not covered in any detail in this Determination as they are covered by the principles in SMSFR 2008/2. SMSFR 2008/2 clarifies whether the provision of additional benefits to members or related parties contravenes the sole purpose test in section 62.

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		Additional reference to SMSFR 2008/2 has been added to this Determination.
3	<i>Access to trauma insurance proceeds</i> There appears to be no way for an SMSF member to access trauma insurance proceeds on a successful claim other than by meeting a condition of release. Amending the law to allow access to the proceeds on a successful claim would encourage younger members to take out a trauma policy through a super fund.	<i>No change to the determination.</i> The determination explains that a trustee can only satisfy the sole purpose test if any benefits payable under the policy become part of the assets of the SMSF at least until such time as the relevant member satisfies a condition of release. (See paragraphs 1 and 23 of both the draft and final determinations). The determination sets out the Commissioner's view in relation to the existing law.
4	<i>Business succession arrangements</i> The draft determination may not sufficiently emphasise the potential consequences in terms of the ability to access the benefit, and may therefore inadvertently encourage trauma cover to be obtained in circumstances where accessing the insurance proceeds is problematic. Increasingly, business succession arrangements seek to cover a business owner who suffers a trauma event. Many trauma events will not necessarily trigger a condition of release. We suggest that this issue be further emphasised (perhaps with a further example) so as to avoid any suggestion that it is appropriate to use trauma insurance through superannuation as a means of funding business succession arrangements. Clarify whether the sole purpose test remains satisfied in circumstances where the business succession arrangements are specifically linked to trauma cover held through superannuation (where the beneficiary of the proceeds is the trustee of the superannuation fund).	<i>Addition of a footnote</i> Consistent with the draft Determination, paragraph 23 of the final Determination states that if a payment of a benefit under a policy does not coincide with a condition of release then the proceeds must be retained until a condition of release is satisfied. Example 2, Appendix 1 (paragraph 11 in particular) also illustrates the requirement that the proceeds are held by the SMSF until such time as the member retires or satisfies another condition of release. However, a footnote has been added to paragraph 23 referring to paragraph 19 which highlight SMSFR 2008/2 and the possible implications so far as the sole purpose test is concerned if proceeds are paid to a member or related party before a condition of release is satisfied. As to business succession arrangements the principles set out in SMSFR 2008/2 should be considered.

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5	<i>Trauma policy as an investment of the fund.</i> Clarify how the purchase of a trauma policy (including the payment of premiums by the fund) is an investment of the fund as implied by the determination.	<i>No change to the determination.</i> The focus of this Determination is on whether a trustee of an SMSF can acquire a trauma insurance policy without contravening the sole purpose test. It is not intended to provide advice on what is an investment. Please refer to Self Managed Superannuation Funds Ruling SMSFR 2009/4 for an explanation of what is an asset (paragraphs 38 to 45) or investment (paragraphs 78 to 81).
6	Discussion to be expanded to comment on particular circumstances where trauma proceeds received by the fund are payable to a reserve account and dealt with at the trustee's discretion for example, to repay an outstanding loan in relation to an instalment warrant borrowing arrangement. Would such a trauma insurance policy be "in respect of" a member as referred to in the title of the determination?	<i>Addition of footnotes</i> The use of the phrase "in respect of a member" in the title to the determination refers to a trauma insurance policy purchased by the trustee where the member is the insured person under the terms of the policy. This is illustrated by Examples 1 and 2 where the policies are purchased in respect of the particular members. Footnotes have been added to these examples to highlight that it is the member who is the person insured under the policy. It is the Trustee's role to determine, in accordance with the fund's trust deed and the fund's investment strategy, how to deal with SMSF assets and income. The issues raised in these comments and the detailed example provided are beyond the scope of this determination which considers whether the purchase of trauma insurance by an SMSF can be consistent with the sole purpose test.
7	<i>Trauma insurance premiums not deductible</i> While the deductibility of the trauma insurance premiums is outside the scope of this determination, ATO ID 2002/371 states a deduction is not available for a trauma policy premium. Suggest that it could be listed in the determination's references.	<i>No change to the determination.</i> An ATO Interpretative Decision (ATO ID) is an edited and summarised record of a Tax Office decision on an interpretative issue about the application of law to a particular set of facts. ATO IDs are not published as a form of advice.
8	The draft determination confirms a longstanding practice that trauma insurance policies are consistent with the sole purpose test in section 62 of the <i>Superannuation Industry Supervision Act 1993</i>.	<i>No change required.</i>

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Issue No.	Issue raised	Tax Office Response/Action taken
Other changes made to the ruling that are not reflected in the above responses to the issues		
9	<i>Paragraph 22 – ‘Remote from the member’ replaced with ‘does not benefit directly’</i>	<i>Wording in paragraph 22 clarified.</i> The wording in paragraph 22 has been amended to make it clearer that any benefit paid under the policy is remote in the sense that it is not paid directly to the member under the policy.