

SMSFD 2008/2EC - Compendium

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Ruling Compendium – for Rulings and Determinations

A compendium of responses to the issues raised by external parties to SMSFD 2007/D3 Self Managed Superannuation Funds: when calculating the market value ratio of in-house assets for the purposes of section 75 of the *Superannuation Industry (Supervision) Act 1993* is it permissible for a self managed superannuation fund to value units held in a related unit trust at historical cost (purchase price)?

Please note that the title to the Determination has changed since its issue as a draft to refer to 'its assets' instead of 'units held in a related unit trust'.

Summary of issues raised and responses

Issue No.	Entity/s commenting	Issue raised <small>Paragraph references are to SMSFD 2007/D3</small>	Response <small>Paragraph references are to SMSFD 2008/xx</small>
1.	Entity 1	<p><i>Paragraph 9 – reasonable person test</i></p> <p>Para 9 - "own valuation based on reasonably objective and supportable data" - would this involve the application of a "reasonable person" test?</p>	<p><i>No change</i></p> <p>The phrase in paragraph 11 of the Determination requires that the data relied upon by a person in making a valuation is reasonably objective and supportable. In demonstrating that data did, or did not, meet this standard it would be appropriate to have regard to whether a reasonable person looking at all the circumstances would come to the conclusion that the data is objective and supportable.</p> <p>However, in determining the market value of assets, such as units in a unit trust, SMSF trustees need to take into account general valuation principles. The Determination refers the reader (see footnote 8) to ATO Superannuation Circular 2003/1 Self Managed Superannuation Funds (the Circular) where these are set out.</p> <p>Paragraph 16 of the Circular requires that 'trustees must be able to demonstrate that the valuation has been arrived at using a reasonable process'. Generally, a valuation can be considered as such where it:</p> <ul style="list-style-type: none"> • takes into account all relevant factors and considerations likely to affect the value of the asset; • has been undertaken in good faith; • results from a rational and reasoned process; and • is capable of explanation to a third party. <p>Paragraph 17 of the Circular gives examples of relevant factors and considerations when valuing property assets.</p> <p>In addition, by way of further guidance to determine market value for tax purposes generally, the Tax Office is developing a market valuation guide.</p>

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2.	Entity 1	<p><i>Application of Determination</i></p> <p>Can you confirm that this ruling only applies to related in house unit trusts and not related private companies which meet the definition of part 8 associate?</p>	<p><i>Change to scope of the Determination</i></p> <p>Although the draft Determination specifically addresses valuation of units in a unit trust, paragraph 1 of the draft Determination states that trustees of an SMSF must value <i>all of the SMSF's assets</i>, (emphasis added) including units held in a related unit trust, at market value.</p> <p>Therefore the market value ratio in subsection 75(1) applies to all in-house assets as defined by section 71 of the <i>Superannuation Industry (Supervision) Act 1993</i>.</p> <p>To avoid any suggestion that there is a different answer for shares in a related company, the final Determination now applies to all assets, including for example, shares or units held in a related company or unit trust respectively.</p>
3.	Entity 2	<p><i>Revaluations of units made by Trustees of the unit trust</i></p> <p>By way of comment, I would like to raise the issue of unrelated trustees. I believe it is not possible for the trustees of an SMSF to compel the trustees of a unit trust to provide asset revaluations. This is not possible regardless of whether the trustees are one and the same, but would be further complicated if there were different trustees, and different accountants doing the work.</p> <p>Is it suggested that the SMSF trustees somehow be required to ascertain the precise investments of the unit trust and perform a revaluation?</p>	<p><i>No Change</i></p> <p>The Determination does not suggest that to value units in a unit trust an SMSF trustee must compel a trustee of another trust to undertake asset revaluations. How the market value of an asset is determined necessarily depends on the asset and the particular circumstances.</p> <p>See issue 1 above where we explain the general valuation principles as set out in ATO Superannuation Circular 2003/1 Self Managed Superannuation Funds (referred to in the Determination at footnote 8). Additionally, by way of further guidance to determine market value for tax purposes generally, the Tax Office is developing a market valuation guide.</p>