

# **SMSFR 2008/1A1 - Addendum - Self Managed Superannuation Funds: giving financial assistance using the resources of a self managed superannuation fund to a member or relative of a member that is prohibited for the purposes of paragraph 65(1)(b) of the Superannuation Industry (Supervision) Act 1993**

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## Addendum

### **Self Managed Superannuation Funds Ruling**

**Self Managed Superannuation Funds: giving financial assistance using the resources of a self managed superannuation fund to a member or relative of a member that is prohibited for the purposes of paragraph 65(1)(b) of the *Superannuation Industry (Supervision) Act 1993***

This Addendum updates Self Managed Superannuation Funds Ruling SMSFR 2008/1 to reflect relevant legislative changes effected since the Ruling's publication and to correct some minor typographical errors. More specifically, the legislative amendments are the: repeal of subsection 65(6) of the *Superannuation Industry (Supervision) Act 1993* (SISA) (effective 1 July 2008); insertion of the definition of '**relative**' into subsection 10(1) of the SISA (effective 1 July 2008); insertion of section 62A of the SISA (effective 1 July 2011); and insertion of regulation 13.18AA of Superannuation Industry (Supervision) Regulations 1994 (effective 1 July 2011).

#### **SMSFR 2008/1 is amended as follows:**

##### **1. Paragraph 17**

Insert after second dot point:

- investment in collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR;<sup>23A</sup>

<sup>23A</sup> Section 62A and regulation 13.18AA of the SISR impose rules on SMSF trustees making, holding and realising investments involving specified collectables or personal use assets. These rules apply with effect from 1 July 2011 (other than in relation to such investments held by the SMSF trustees on 30 June 2011 where the rules apply from 1 July 2016).

**SMSFR 2008/1****2. Paragraph 28**

Omit row 1 from table:

1 (paragraphs 89 and 90)	An SMSF trustee gives a gift to a relative of a member of the SMSF.	Yes	Section 62 SISA Part 6 SISR
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Substitute:

1 (paragraphs 89 and 90)	An SMSF trustee gives a gift to a relative of a member of the SMSF.	Yes	Section 62 SISA Part 6 SISR  Section 62A SISA and regulation 13.18AA SISR <sup>28A</sup>
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Omit row 13 from table:

13 (paragraphs 167 and 168)	An SMSF trustee purchases works of art based on an independent favourable appraisal from an expert. The works of art are leased to an art gallery owned by a member (sole trader) and to other third parties.	No	Section 52 SISA and regulation 4.09 SISR  Section 62 SISA Part 8 SISA
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Substitute:

13 (paragraphs 167 and 168)	An SMSF trustee purchases works of art based on an independent favourable appraisal from an expert. The works of art are leased to an art gallery owned by a member (sole trader) and to other third parties.	No	Section 52 SISA and regulation 4.09 SISR  Section 62 SISA  Section 62A SISA and regulation 13.18AA SISR <sup>28B</sup>  Part 8 SISA
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<sup>28A</sup> Section 62A and regulation 13.18AA of the SISR impose rules on SMSF trustees making, holding and realising investments involving specified collectables or personal use assets. These rules apply with effect from 1 July 2011 (other than in relation to such investments held by the SMSF trustees on 30 June 2011 where the rules apply from 1 July 2016).

<sup>28B</sup> Section 62A and regulation 13.18AA of the SISR impose rules on SMSF trustees making, holding and realising investments involving specified collectables or personal use assets. These rules apply with effect from 1 July 2011 (other than in relation to such investments held by the SMSF trustees on 30 June 2011 where the rules apply from 1 July 2016). Consequently, an SMSF trustee may commit an offence if a 'related party' uses or leases the artwork.

**3. Paragraph 34**

- (a) Omit 'meaning of member'; substitute 'meaning of member'<sup>37A</sup>.
- (b) Italicise the word '**member**' occurring in the quotation of the legislation.

**4. Paragraph 35**

Omit the paragraph; substitute:

35. The term 'relative' takes its meaning from subsection 10(1),<sup>37B</sup> which states that:

***relative*** of an individual means the following:

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the individual or of his or her spouse;
- (b) a spouse of the individual or of any other individual referred to in paragraph relationships for the purposes of paragraph (a) of the definition of ***relative***.

Note: Subsection (5) may be relevant to determining relationships for the purposes of paragraph (a) of the definition of ***relative***.

35A. For the purpose of determining the meaning of the term relative, subsection 10(1) also provides the meaning of the terms 'adopted child', 'child' and 'spouse'.

**5. Paragraph 39**

Omit from the third sentence 'On the other hand, paragraph'; substitute 'Paragraph'

**6. Paragraph 41**

Omit from the quotation 'things such'; substitute 'such things'.

**7. Paragraph 48**

Insert a comma after '... it is correct to say that' in the first quotation.

**8. Footnote 72**

Omit the footnote; substitute:

<sup>72</sup> See subsection 10(1) and subsection 10(3).

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<sup>37A</sup> As affected by section 15B, see subsection 10(1).

<sup>37B</sup> The definition of 'relative' was inserted in subsection 10(1) effective 1 July 2008. Prior to this time, the term was defined in the repealed subsection 65(6).

## 9. Footnote 73

Omit the footnote; substitute:

<sup>73</sup> See subsection 10(1) and subsection 10(5).

## 10. Paragraph 77

Omit from the quote 'Explanatory Memorandum'; substitute 'explanatory memorandum'.

## 11. Paragraph 88

Omit from the quote 'overvalue'; substitute 'undervalue'.

## 12. Paragraph 91

Omit the paragraph; substitute:

91. Other relevant considerations include: the sole purpose test in section 62, the investment in collectables and personal use assets rules in section 62A, regulation 13.18AA of the SISR;<sup>96A</sup> and the payment standards in Part 6 of the SISR.

## 13. Paragraph 99

After 'owns'; insert 'a'.

## 14. Paragraph 139

Insert after second dot point

- investment in collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR;<sup>111A</sup>

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<sup>96A</sup> Section 62A and regulation 13.18AA of the SISR impose rules on SMSF trustees making, holding and realising investments involving specified collectables or personal use assets. These rules apply with effect from 1 July 2011 (other than in relation to such investments held by the SMSF trustees on 30 June 2011 where the rules apply from 1 July 2016).

<sup>111A</sup> Section 62A and regulation 13.18AA of the SISR impose rules on SMSF trustees making, holding and realising investments involving specified collectables or personal use assets. These rules apply with effect from 1 July 2011 (other than in relation to such investments held by the SMSF trustees on 30 June 2011 where the rules apply from 1 July 2016).

**15. Footnote 115**

Omit the footnote; substitute

<sup>115</sup> Trustees and investment managers also need to consider the sole purpose test in section 62; the in-house asset rules in Part 8 including the 5% limit on the market value ratio of the SMSF's in-house assets; the investment in collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR and the arm's length requirements in section 109.

**16. Footnote 127**

After 'the sole purpose test in section 62; 'insert 'the investment in collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR;.'

**17. Paragraph 168**

After the paragraph insert

168A *Whilst this arrangement does not contravene paragraph 65(1)(b), depending upon the timing of when the artwork was held by the fund and leased, Jeremy as trustee of the SMSF may be committing an offence pursuant to section 62A and regulation 13.18AA of the SISA where he, in his capacity as a sole trader and a related party of the SMSF, uses or leases the artwork.*<sup>127A</sup>

**18. Related Rulings/Determinations**

Insert '; SMSFR 2009/1; SMSFR 2009/4; SMSFR 2010/1'.

**19. Legislative references**

Insert:

- SISA 10(5)
- SISA 62A
- SISR 13.18AA

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<sup>127A</sup> Refer to subregulations 13.18AA(9) and 13.18AA(10) of the SISR. Section 62A and regulation 13.18AA of the SISR impose rules on SMSF trustees making, holding and realising investments involving specified collectables or personal use assets. These rules apply with effect from 1 July 2011 (other than in relation to such investments held by the SMSF trustees on 30 June 2011 where the rules apply from 1 July 2016). The term 'related party' has the meaning given in subsection 10(1).

# **SMSFR 2008/1**

This Addendum applies on and from 1 July 2011.

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## **Commissioner of Taxation**

21 November 2012

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ATO references

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