


***SMSFR 2008/2A1 - Addendum - Self Managed Superannuation Funds: the application of the sole purpose test in section 62 of the Superannuation Industry (Supervision) Act 1993 to the provision of benefits other than retirement, employment termination or death benefits***

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## Addendum

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### Self Managed Superannuation Funds Ruling

Self Managed Superannuation Funds: the application of the sole purpose test in section 62 of the *Superannuation Industry (Supervision) Act 1993* to the provision of benefits other than retirement, employment termination or death benefits

This Addendum updates Self Managed Superannuation Funds Ruling SMSFR 2008/2 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 67(4A) of the *Superannuation Industry (Supervision) Act 1993* (effective 7 July 2010); insertion of section 62A of the *Superannuation Industry (Supervision) Act 1993* (effective 1 July 2011); insertion of section 67A and section 67B of the *Superannuation Industry (Supervision) Act 1993* (effective 7 July 2010); and insertion of regulation 13.18AA of the *Superannuation Industry (Supervision) Regulations 1994* (effective 1 July 2011).

#### SMSFR 2008/2 is amended as follows:

##### 1. Paragraph 15

After the paragraph, insert:

15A. Further, in addition to the sole purpose test in section 62, 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.<sup>9A</sup> 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>9B</sup>

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<sup>9A</sup> These rules are not the subject of this Ruling, see paragraph 2 above.

<sup>9B</sup> See subregulations 13.18AA(9) and 13.18AA(10) of the SISR.

# SMSFR 2008/2

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## 2. Paragraph 22

Omit from second sentence after the acronym SISA 'of'; substitute 'or'.

## 3. Footnote 17

Omit 'Taxpayer Alert TA 2008/12 –'Non-cash contributions to superannuation funds'; substitute 'Taxation Ruling TR 2010/1 *Income tax: superannuation contributions*'

## 4. Paragraph 37

Omit from the last sentence '*the*'.

## 5. Paragraph 43

Insert after 'person' in the second sentence '*is not a related party of the SMSF and*'.

## 6. Paragraph 45

Insert footnote at the end of the paragraph:

<sup>18A</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. Specifically, paragraph 13.18AA(1)(l) of the SISR lists 'memberships of sporting or social clubs'. 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).

## 7. Paragraph 52

(a) Omit from first sentence 'Examples 7 to'; substitute 'Examples 7, 8, 10 and'

(b) After the paragraph insert:

52A. Further, in addition to the sole purpose test in section 62, section 62A and regulation 13.18AA of the SISR prescribe rules in relation to trustees of SMSFs making, holding and realising investments involving specified collectables or personal use assets.<sup>21A</sup> Contravention of these rules may result in an offence and be subject to penalty.

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<sup>21A</sup> Refer to section 62A and regulation 13.18AA of the SISR for a listing of investments which are 'collectables and personal use assets'. These rules apply with effect from 1 July 2011 (other than in relation to such investments held by the SMSF on 30 June 2011 where the rules apply from 1 July 2016).

**8. Paragraph 53**

Omit from the second sentence '*asset in a portfolio of*'; substitute '*investment as*'.

**9. Footnote 22**

Omit the footnote; substitute:

<sup>22</sup> Trustees also need to consider the operation of the collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR, the in-house asset rules in Part 8 and the arm's length rules in section 109.

**10. Footnote 23**

Omit the footnote; substitute:

<sup>23</sup> Trustees also need to consider the operation of the collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR, the in-house asset rules in Part 8 and the arm's length rules in section 109.

**11. Paragraph 62**

Omit the paragraph and associated heading.

**12. Paragraph 63**

Omit the paragraph.

**13. Footnote 25**

Omit the footnote; substitute:

<sup>25</sup> Unlike Example 8, issues relating to the in-house asset rules do not arise because the painting is not used by a related party. Note additionally that 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. Trustees who make investments in these assets must consider whether these provisions have application.

**14. Footnote 26**

Omit the footnote; substitute:

<sup>26</sup> Trustees also need to consider the operation of the collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR, the in-house asset rules in Part 8 and the arm's length rules in section 109.

# SMSFR 2008/2

## 15. Paragraph 76

Insert footnote at the end of the second sentence:

<sup>30A</sup> Trustees also need to consider the operation of the collectables and personal use assets rules in section 62A and regulation 13.18AA of the SISR.

## 16. Footnote 33

- (a) Omit 'subsection 67(4A)'; substitute 'section 67A'
- (b) Insert at the end of the footnote:

'Note that sections 67A and 67B replace former subsection 67(4A) which applies to certain limited recourse borrowing arrangements entered into before 7 July 2010.'

## 17. Paragraph 97

- (a) Omit from the first sentence 'which'; substitute '. Specific rules apply in relation to SMSF investments involving specified collectables and personal use assets. Other SISA rules'.
- (b) Insert as first dot point:
  - an SMSF trustee may commit an offence if the rules prescribed in relation to making, holding and realising investments involving specified collectables and personal use assets are contravened – section 62A and regulation 13.18AA of the SISR;

## 18. Paragraph 126

- (a) Omit from the last sentence 'Examples 7 to'; substitute 'Examples 7, 8, 10 and'
- (b) Insert after the paragraph:

126A. SMSF trustees investing in collectables and other boutique assets, also need to comply with the rules prescribed by section 62A and regulation 13.18AA of the SISR when making, holding and realising investments involving specified collectables and personal use assets.

## 19. Footnotes 62 and 63

Omit the footnotes.

## 20. Paragraph 137

Omit:

*Example 9 – use of work of art by a related party at market value: merely an incidental benefit*

## 21. Legislative references

Insert:

- SISA 1993 62A
- SISA 1993 67A
- SISA 1993 67B
- SISR 1994 13.18AA

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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