

TD 2016/16A1 - Addendum - Income tax: will the ordinary or statutory income of a self-managed superannuation fund be non-arm's length income under subsection 295-550(1) of the Income Tax Assessment Act 1997 (ITAA 1997) when the parties to a scheme have entered into a limited recourse borrowing arrangement on terms which are not at arm's length?

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Addendum

Taxation Determination

Income tax: will the ordinary or statutory income of a self-managed superannuation fund be non-arm's length income under subsection 295-550(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) when the parties to a scheme have entered into a limited recourse borrowing arrangement on terms which are not at arm's length?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2016/16 to reflect the recent law change preventing self-managed superannuation funds from using a limited recourse borrowing arrangement to acquire real property unless that real property is business real property. This change applies to limited recourse borrowing arrangements entered into on or after 10 August 2026.

TD 2016/16 is amended as follows:

1. Title

Omit '(ITAA 1997)'.

2. Preamble

Omit 'appendixes'; substitute 'appendix'.

3. Table of Contents

Insert Table of Contents:

Table of Contents	Paragraph
Ruling	1
<u>Example: SMSF acquired business real property financed by an LRBA for rental income</u>	6
Date of effect	12
Appendix – Explanation	13

4. Paragraph 1

Omit the wording of footnote 1; substitute:

Paragraph 295-550(1)(a) of the *Income Tax Assessment Act 1997*. This Determination does not consider the amendments to subsections 295-550(1)(b) and (c) (2024 amendments) made under Schedule 7 to the *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024*. The 2024 amendments apply in relation to income derived and a loss, outgoing or expenditure that is incurred (or not incurred but might have expected to be incurred) in the 2018–19 income year and later income years. Refer to Law Companion Ruling LCR 2021/2 *Non-arm's length income - expenditure incurred under a non-arm's length arrangement* for further guidance on the application of these amendments.

5. Paragraph 2

Omit the wording of the paragraph; substitute:

In answering this question, it is necessary to identify both the steps of the relevant scheme and the parties that deal with each other under those steps of the scheme. Having identified the steps and parties to the scheme, paragraph 295-550(1)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997) requires a determination of the amount of ordinary or statutory income that the SMSF might have been expected to derive if the same parties to the scheme had been dealing with each other on an arm's length basis under each identified step of the scheme.

6. Paragraph 6

- (a) In the heading, omit '**a commercial**'; substitute '**business**'.
- (b) Omit the first dot point; substitute:
 - *an SMSF acquired business real property from a third party at market value of \$1 million on 1 July 2015;*
- (c) Omit '*SISA*'; substitute '*Superannuation Industry (Supervision) Act 1993*'.
- (d) Omit '*commercial*'; substitute '*business*'.

7. Paragraph 7

Omit the wording of the paragraph, including the table; substitute:

Table 1 of this Determination outlines the terms of the LRBA under the scheme where the parties were not acting at arm's length (the 'Current LRBA') compared with the terms under the hypothetical borrowing arrangement (for the purposes of this example, the terms adopted are consistent with Practical Compliance Guideline PCG 2016/5 Income tax – arm's length terms for limited recourse borrowing arrangements established by self-managed superannuation funds) to acquire the business real property:

Table 1: Comparing current and hypothetical borrowing arrangements

Terms	Current LRBA	Hypothetical borrowing arrangement
Amount borrowed	\$1 million	\$700,000

Amount sourced from fund capital	\$0	\$300,000
Interest rate	0%	Variable, 5.75% per annum for the 2015–16 year ²
Term of the loan	25 years	15 years
Loan to Market Value ratio	100%	70%
Security	Mortgage in favour of the Lenders is registered in respect of the asset	Mortgage in favour of the Lenders is registered in respect of the asset
Personal guarantee	No personal guarantees or other security are given to the lenders in relation to repayment of the loan	Not required
Nature and frequency of repayments	No repayment is required until the end of the term of the loan – \$0 monthly repayments	Monthly repayments of both principal and interest – approximately \$5,800 per month at 5.75% per annum for the 2015–16 year

8. Paragraph 8

- (a) After '*a loan to*', insert '*market*'.
- (b) Omit 'p.a.'; substitute 'per annum'.

9. Paragraph 10

Omit all instances of '*commercial*'; substitute '*business*'.

10. Paragraph 11

In footnote 3, omit 'Practical Compliance Guideline'.

11. Paragraph 12

Omit the wording of the paragraph; substitute:

This Determination applies to income years commencing both before and after its date of issue.

12. Paragraph 13

In the heading, omit '1'.

13. Paragraph 14

Omit the alpha points, replace with dot points.

14. Paragraph 15

- (a) In footnote 4, omit 'Practical Compliance Guideline'.
- (b) In footnote 4, omit 'Safe Harbour'; substitute 'safe harbour'.

15. Paragraph 16

Omit both instances of paragraph 295-550(1)(b); substitute 'paragraph 295-550(1)(a)'.

16. Paragraph 18

In footnote 5, omit 'Safe Harbour'; substitute 'safe harbour'.

17. Paragraph 19

- (a) Omit the wording of the final dot point; substitute:
 - any legislative or regulatory impediments that might prevent the SMSF from acquiring the asset under the hypothetical borrowing arrangement. This includes covenants under section 52B of the *Superannuation Industry (Supervision) Act 1993* that are required to be included in an SMSF's governing rules.⁶
- (b) After 'SMSF's governing rules.', insert new footnote 6:

⁶ *Treasury Laws Amendment (Tax Reform No. 1) Act 2026* introduced a restriction that LRBAs entered into on or after 10 August 2026 for real property acquired on or after this time must be for business real property. Existing LRBAs entered into before 10 August 2026 are not impacted.

18. Paragraph 20

Omit 'purchase and/or obtaining finance under the LRBA'; substitute 'purchase, obtaining finance under the LRBA, or both'.

This Addendum applies:

- for changes to the rules for limited recourse borrowing arrangements introduced by *Treasury Laws Amendment (Tax Reform No. 1) Act 2026* – from 10 August 2026
- for other currency updates, that do not affect the substantive application of the Ruling, before and after issue.

ATO references

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