


***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)?***

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This document has been finalised by SMSFD 2008/2.

 There is a Compendium for this document: SMSFD 2008/2EC .



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# Draft Self Managed Superannuation Funds Determination

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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)?

## **Preamble**

*This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which provisions of the Superannuation Industry (Supervision) Act 1993, or regulations under that Act, apply to superannuation funds that the Commissioner regulates: principally self managed superannuation funds.*

*Self Managed Superannuation Funds Determinations (whether draft or final) are not legally binding on the Commissioner. However, if the Commissioner later takes the view that the law applies less favourably to you than the final version of this ruling indicates, the fact that you acted in accordance with the final version of this ruling would be a relevant factor in your favour in the Commissioner's exercise of any discretion as to what action to take in response to a breach of that law. The Commissioner may, having regard to all the circumstances, decide that it is appropriate to take no action in response to the breach.*

## **Ruling**

1. No. For the purposes of determining the market value ratio of a self managed superannuation fund's (SMSF's) in-house assets under section 75 of the *Superannuation Industry (Supervision) Act 1993* (SISA),<sup>1</sup> trustees of an SMSF must value all of the SMSF's assets, including units held in a related unit trust, at market value.

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<sup>1</sup> All legislative references in this draft Determination are to the SISA unless otherwise indicated.

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## **Date of effect**

2. It is proposed that when the final Determination is issued, the Determination will apply both before and after its date of issue. However, the Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination.

## **Funds to which this Determination applies**

3. This Determination applies to SMSFs<sup>2</sup> and former SMSFs.<sup>3</sup> References in the Determination to SMSFs include former SMSFs unless otherwise indicated.

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**Commissioner of Taxation**

19 December 2007

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<sup>2</sup> As defined in section 17A.

<sup>3</sup> A former SMSF is a fund that has ceased being an SMSF and has not appointed a registrable superannuation entity (RSE) licensee as trustee – see subsection 10(4).

## Appendix 1 – Explanation

**①** *This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached.*

### Background

4. Units held by an SMSF in a related unit trust are in-house assets<sup>4</sup> of the SMSF unless an exception applies to exclude the units.<sup>5</sup> If no exception applies, the valuation of units in a related unit trust is relevant to determining whether an SMSF complies with the in-house asset acquisition rules in section 83. An SMSF must not acquire an in-house asset if the market value ratio of the SMSF's in-house assets exceeds 5% (see subsection 83(2)), or would exceed 5% if the asset was acquired (see subsection 83(3)). The valuation of units in a related unit trust is also relevant to section 82, which requires trustees to dispose of in-house assets if, at the end of an income year, the market value ratio of the SMSF's in-house assets exceeds the 5% limit.

### Explanation

5. The general formula for working out an SMSF's market value ratio of in-house assets is set out in subsection 75(1):

$$\frac{\text{Number of whole dollars in value of in-house assets of the SMSF}}{\text{Number of whole dollars in value of all the assets of the SMSF}} \times 100$$

6. Subsection 10(1) defines 'value' to mean market value and it is therefore necessary to value units in a related unit trust at market value.

7. The term 'market value' is in turn defined in subsection 10(1) to mean, in relation to an asset, the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller<sup>6</sup> if the following assumptions were made:

- (a) the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) the sale occurred after proper marketing of the asset;
- (c) the buyer and the seller acted knowledgeably and prudentially in relation to the sale.

8. At the time of purchasing units in a related unit trust the cost of the units will typically be equivalent to the market value of the units.<sup>7</sup> At some later point in time the market value of the units may or may not be equivalent to the historical cost (purchase price) of the units. However, it is nonetheless necessary to undertake a market valuation of the units.

<sup>4</sup> 'In-house assets' are defined in section 71 and are, subject to specific exceptions, assets that are a loan to or an investment in a related party of the SMSF, or investments in a related trust or assets that are subject to a lease or lease arrangement with a related party of the SMSF.

<sup>5</sup> For example, see paragraph 71(1)(h) which excludes from the meaning of 'in-house asset' an investment in a widely held unit trust. A widely held unit trust is defined in subsection 71(1A).

<sup>6</sup> To determine a market value for units in a related unit trust does not require that there is actually a buyer or seller for the units.

<sup>7</sup> Note that an SMSF trustee or investment manager must comply with the arm's length requirements when making an investment – section 109.

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9. To determine the market value of units held by an SMSF in a related unit trust, a trustee of an SMSF can choose to obtain a valuation from a qualified valuer or compute their own valuation based on reasonably objective and supportable data.<sup>8</sup>

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<sup>8</sup> See also ATO Superannuation Circular 2003/1 Self Managed Superannuation Funds.

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## **Appendix 2 – Your comments**

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10. We invite you to comment on this draft Determination. Please forward your comments to the contact officer by the due date. (Note: the Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel or relevant Tax officers. The Tax Office may use a version (names and identifying information removed) of the compendium in providing responses to persons providing comments. Please advise if you do not want your comments included in the latter version of the compendium.)

<b>Due date:</b>	<b>1 February 2008</b>
<b>Contact officer:</b>	<b>Melissa Harrison</b>
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## References

*Previous draft:*

Not previously issued as a draft

*Subject references:*

- in-house assets
- self managed superannuation funds
- superannuation

- SISA 1993 71(1A)
- SISA 1993 75
- SISA 1993 75(1)
- SISA 1993 82
- SISA 1993 83
- SISA 1993 83(2)
- SISA 1993 83(3)
- SISA 1993 109

*Legislative references:*

- SISA 1993 10(1)
- SISA 1993 10(4)
- SISA 1993 17A
- SISA 1993 71
- SISA 1993 71(1)(h)

*Other references:*

- ATO Superannuation Circular 2003/1 Self Managed Superannuation Funds

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ATO references

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