

SMSFD 2008/2 - 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 its assets at historical cost (purchase price)?

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Self Managed Superannuation Funds Determination

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 its assets at historical cost (purchase price)?

Preamble

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),¹ trustees of an SMSF must value all of the SMSF's assets, including, for example, shares in a related company or units in a related unit trust, at market value.

Funds to which this Determination applies

2. This Determination applies to SMSFs² and former SMSFs.³ References in the Determination to SMSFs include former SMSFs unless otherwise indicated.

¹ All legislative references in this Determination are to the SISA unless otherwise indicated.

² As defined in section 17A.

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

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Date of effect

3. This Determination applies 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.

Commissioner of Taxation

16 April 2008

Appendix 1 – Explanation

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

Background

4. Assets held by an SMSF may be in-house assets of the SMSF under subsection 71(1).⁴ For example, shares in a related company or units in a related unit trust held by an SMSF are in-house assets of the SMSF unless an exception applies to exclude the shares or units from being in-house assets of the SMSF.⁵

5. The valuation of in-house assets 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 in-house assets is also relevant to section 82, which requires trustees to dispose of in-house assets if, at the end of a year of income, the market value ratio of the SMSF's in-house assets exceeds the 5% limit.

Explanation

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

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

7. Subsection 10(1) defines 'value' to mean market value. An SMSF is therefore required to value all assets of the SMSF at market value (denominator) whether in-house assets or not. A subset of all assets valued at market value is those assets that are in-house assets of the SMSF (numerator).

8. 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 seller⁶ 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; and
- (c) the buyer and the seller acted knowledgeably and prudentially in relation to the sale.

⁴ 'In-house assets' are, subject to specific exceptions, 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.

⁵ 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).

⁶ To determine a market value for an asset does not require that there is an actual willing buyer and an actual willing seller for the asset. Market value may be determined on the basis of a hypothetical willing buyer and a hypothetical willing seller.

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9. If, for example, an SMSF held shares in a related company or units in a related unit trust, those assets are in-house assets of the SMSF (assuming that no exception applies to exclude the shares or units from being in-house assets). The SMSF is required to value the shares and units (along with all other assets held by the SMSF) at market value.

10. At the time of acquiring such shares or units, the cost of the shares or units will typically be equivalent to the market value of the shares or units.⁷ At some later point in time the market value of the shares or units is less likely to be equivalent to the historical cost (purchase price) of the shares or units. In any case, it is nonetheless necessary to undertake a market valuation of the shares or units.

11. To determine the market value of assets held by an SMSF, 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.⁸

⁷ An SMSF trustee or investment manager must comply with the arm's length requirements when making an investment – section 109.

⁸ See also ATO Superannuation Circular 2003/1 Self Managed Superannuation Funds, in particular paragraphs 11 to 18.

References

Previous draft:

SMSFD 2007/D3

- SISA 1993 71(1)(h)

- SISA 1993 71(1A)

- SISA 1993 75

Subject references:

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

- 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(1)

Other references:

- ATO Superannuation Circular 2003/1 Self Managed Superannuation Funds

ATO references

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