

Limited Recourse Borrowing Arrangements

What is an SMSF limited recourse borrowing arrangement?

An SMSF limited recourse borrowing arrangement typically involves an SMSF taking out a loan from a third party lender or from a related party, such as a member of the fund. The SMSF then uses the loan, together with its own available funds, to purchase a single asset (normally a residential or commercial property) that is held in a separate trust.

The SMSF trustee acquires a beneficial interest in the asset with the trustee of the separate trust being the legal owner of the asset. The SMSF trustee has a right to acquire legal ownership of the asset by making one or more payments.

Any investment income received from the asset goes to the SMSF and if the SMSF defaults on the loan, the lender's rights are limited to the asset held in the separate trust. This means there is no recourse to the other assets held in the SMSF.

What are the key benefits?

Leverage your superannuation savings

An SMSF limited recourse borrowing arrangement allows your SMSF to borrow for investment purposes. Borrowing to invest or "gearing" your superannuation savings in this manner enables your fund to acquire a beneficiary interest in an asset that your fund may not otherwise be able to afford (it could be a business premise you own or operate your business from).

Although your SMSF is not the legal owner of the asset, your SMSF acquires a beneficial interest in the purchased asset, meaning your fund is entitled to receive all of the income (such as rental income) derived from the asset.

Tax concessions

Investment income received by your SMSF, including any income received because your fund holds a beneficial interest in an asset acquired under a limited recourse borrowing arrangement, is taxed at concessional rates.

If your fund is in the accumulation phase, this means the income received from the asset will be subject to no more than 15% tax. This could result in your fund paying considerable lower rates of tax on the income received compared with owning the asset in your own name or under a company or trust structure.

Furthermore, if the income received from the acquired asset is being used to support the payment of one or more superannuation income streams from your fund, the income, including realised capital gains, is exempt from tax in your fund.

Asset protection

Generally superannuation assets are protected against creditors in the event of bankruptcy. This protection extends to assets that the superannuation fund has acquired a beneficial interest in. Therefore, structuring the acquisition of an asset under a limited recourse borrowing arrangement may provide greater asset protection benefits than may otherwise be the case.

What are the key risks?

Only certain assets can be acquired

Only assets that the SMSF trustee is not otherwise prohibited from acquiring can be purchased under a limited recourse borrowing arrangement.

Generally, this means assets that you or a related party currently own cannot be acquired under a limited recourse borrowing arrangement. However, some exceptions do apply to business premises and listed securities that you or a related party own.

It is also a requirement that the asset acquired under a limited recourse borrowing arrangement is a single asset. This generally means shares in a single company that have identical legal rights or a property that has been constructed on a single legal title.

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In some situations properties constructed across one or more legal titles can still be considered a single asset under a limited recourse borrowing arrangement but only if there is a physical object (such as a building), or there is a State Law that prevents the separate legal titles from being sold separately.

If an SMSF acquires an asset that does not meet the above rules, the SMSF trustees may be required to sell the asset at a substantial loss to the SMSF. The SMSF trustees may also be subject to monetary penalties and other sanctions for breaching the superannuation borrowing rules.

Assets acquired under a limited recourse borrowing arrangement cannot generally be replaced with a different asset. In a practical sense this means, during the life of the loan, alterations to a property cannot be made if it fundamentally changes the character of the asset.

For example, property alterations that have the effect of changing the character of a property from a residential to a commercial property during the life of the loan are not permitted. However, alterations or improvements to the property that have the effect of improving the functional efficiency of the asset, but do not change the character of the asset, are permitted provided they are not funded by borrowed funds.

Maintenance and repair costs associated with the acquired asset can be funded from borrowed funds, including a drawdown from the loan used to acquire the asset.

Cost

There may be additional costs associated with acquiring an asset under a limited recourse borrowing arrangement. For example, an SMSF borrowing arrangement requires a separate trust to be established and the drafting of separate legal instruments such as trust deeds and company constitutions.

Financial institutions may also charge for vetting your fund's trust deed, and the nature of the loan can mean a higher rate of interest.

Liquidity

Loan repayments are required to be deducted from your fund. That means your fund must always have sufficient liquidity to meet the loan repayments. Careful planning is needed to ensure contributions and the fund's investment income is sufficient to meet the loan repayments and other existing and prospective liabilities as they fall due. This is particularly important if the property is not able to be leased for any period of time, or one or more members are in the pension phase (due to the requirement for the fund to also meet minimum pension payment requirements).

Even for members in the accumulation phase, the contribution caps impose limits on the contributions that can be made on a tax concessional basis. This may limit the tax effectiveness of the limited recourse borrowing arrangement if non-concessional contributions are required to fund the loan repayments because the member's concessional contribution cap has been utilised already.

It is also important for SMSF trustees to consider the need for life insurance should one or more contributing members of the fund die. Careful drafting of the fund's trust deed is required to ensure the proceeds of a life insurance policy, in this scenario, can be used by the SMSF trustee to repay the loan.

Other factors

The ATO has become aware that certain limited recourse borrowing arrangements entered into by SMSF trustees have not been structured correctly. Some of these arrangements cannot simply be restructured or rectified and unwinding the arrangement could require that the property be sold, causing a substantial loss to the fund.

Finally, the value of a property acquired under a limited recourse borrowing arrangement cannot be used as security for other loans, meaning the value of the property, including the equity built up over time, cannot be used to purchase further properties outside the fund.