

In-house Assets

Summary

In-house assets are generally investments in, loans to or leases of fund assets with related parties.

The purpose of the in-house asset rules is to limit risk and help to protect and enhance retirement benefits. They do this by restricting certain transactions with related parties to less than 5% of the fund's total assets.

It is important that trustees understand what types of investments constitute an in-house asset and what investments are excluded from the in-house asset rules. Failure to do so could lead to a fund become non-complying and losing its tax concessions.

What is an in-house asset?

An in-house asset of a superannuation fund is:

- a loan to, or an investment in, a related party of the fund
- an investment in a related trust of the fund
- an asset of the fund subject to a lease or lease arrangement between the trustee of the fund and a related party

SMSFs can acquire an in-house asset provided the acquisition is at market value and if the asset is acquired the fund does not exceed the 5% limit. If the 5% limit is exceeded because of the changes in the value of the funds assets the trustee must take steps to reduce the excess before the end of the next financial year or risk losing its complying fund status.

Exceptions

There are number of exceptions to the general in-house asset rule. These include:

- a life insurance policy issued by a life insurance company (other than a policy acquired from a member of the fund or from a relative of a member)
- a deposit with an bank or building society
- business real property subject to a lease arrangement with a related party
- an investment in a widely held unit trust

A widely held unit trust is a trust where unitholders have fixed entitlements to all of the income and capital of the trust, and no fewer than 20 entities have fixed entitlements to 75% or more of the income or capital of the trust. A common example of a widely held unit trust is a managed fund.

Investment in related trusts

A further exception to the in-house asset rule applies to the investment by a SMSF in a related trust (or company) provided the following requirements are met at the time the asset is acquired:

- the trust does not lease assets to a related party with the exception of business real property
- there are no borrowings over the assets
- the trust does not invest or loan money to other entities (other than an approved deposit taking institution)
- the trust does not own assets that were acquired from a related party after 11 August 1999, other than business real property
- the trust does not own assets that were at any time assets of a related party in the last 3 years (excluding assets acquired before 11 August 1999)
- the trust does not conduct a business
- all transactions are conducted on an arm's length basis

11 August 1999 investments, loans and leases

The in-house asset rules underwent significant legislative change in 1999. As a result, many investments made from 11 August 1999 that were not in-house assets as defined under the previous rules were now caught up under the new rules. This meant that as a general rule any investments, loans or leases made on or after 11 August 1999 that came within the new rules were included in the measurement of the fund's in-house assets.

Where superannuation funds had certain investments, loans or leases as at 11 August 1999 transitional rules were introduced.

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