

SOLE PURPOSE TEST

Your SMSF needs to meet the sole purpose test. This means your fund needs to be maintained for the sole purpose of providing retirement benefits to your members, or to their dependants if a member dies before retirement. As a trustee, you need to maintain your SMSF so that it complies with the sole purpose test at all times while your SMSF exists, including when investing fund assets and paying benefits upon retirement of members. Your fund needs to comply with the sole purpose test to be eligible for the tax concessions available to a complying super fund. The sole purpose test is divided into core and ancillary purposes. Your fund needs to be maintained solely for either of the following:

- ✓ one or more core purposes
- ✓ one or more core purposes and one or more ancillary purposes

Core purpose

Generally, core purposes are the provision of benefits for each member of your fund, on or after the:

- ✓ member's retirement from gainful employment
- ✓ members reaching the prescribed age
- ✓ member's death, if the death occurred before they retired from gainful employment or before they attained a prescribed age, where the benefits are provided to their dependants or legal personal representative.

Ancillary purpose

Generally, ancillary purposes are the provision of benefits for members in the following circumstances:

- ✓ termination of a member's employment with an employer who made contributions to your fund for that member
- ✓ stopping employment due to physical or mental ill health
- ✓ death of a member after retirement, or after reaching the prescribed age where the benefits are paid to their dependants or legal representative
- ✓ other ancillary purposes approved in writing by the regulator.

This purpose lets an SMSF provide benefits where there is financial hardship or compassionate grounds, subject to the super laws, the governing rules of your fund and the approval of the Australian Prudential Regulation Authority (APRA).

Contravening the sole purpose test

One of the main ways the ATO will work out if an SMSF has contravened the sole purpose test is to look at the character and purpose of the fund's investments. For example, if you or any party directly or indirectly obtain a financial benefit when making investment decisions and arrangements (other than increasing the return to your fund), it is likely your fund will not meet the sole purpose test.

Working out the purpose for which an SMSF is being maintained requires looking at all of the events and circumstances relating to the SMSF's maintenance.

When investing in collectables such as art or wine, you need to take care to make sure that SMSF members are not granted use of or access to the assets of the SMSF in contravention of the sole purpose test. The most common breaches of the sole purpose test are:

- ✓ investments that offer a pre-retirement benefit to a member or associate
- ✓ providing financial help or a pre-retirement benefit to someone at a financial detriment to your fund.

SOLE PURPOSE TEST (CONTINUED)

Penalties for contravening the sole purpose test

Contravening the sole purpose test is very serious and may lead to trustees facing civil and criminal penalties. It can result in a fine of up to 2000 penalty units and/or five years imprisonment for individual trustees, and may result in your fund losing its complying status. Higher penalties apply to corporate trustees. The value of a penalty unit is currently \$110.

Disclaimer

All representations and information in this document are made in good faith and are of a general rule – they do not purport to be specific investment advice. Information in this document is up to date at the time of production (August 2010). Individual needs or other considerations have not been taken into account, thus information contained herein should not be relied upon as a substitute for detailed advice.