



Rules of investing through an SMSF

Amber Warren is a partner in the financial services team of Gadens in Sydney. Amber has extensive experience in workouts and restructures, compliance, banking and finance, superannuation and regulation.



With Australia's ageing population and the tax concessions available for superannuation savings, it is not surprising that superannuation is both highly regulated and the focus of federal government attention.

Self managed superannuation funds (SMSFs) are one area of frequent scrutiny and much debate. While investment opportunities are significant it is important to seek guidance through the myriad of regulations governing superannuation savings and taxation obligations.

In 2007, the Superannuation Industry (Supervision) Act 1993 (SIS Act) was amended to allow superannuation funds to borrow money to purchase assets.

Since that time, gearing has been a popular strategy for SMSFs looking for a secure return on investment.

It is important to note the borrowing rules for an SMSF are very strict.

Benefit to small business

An additional benefit for small business is that it is possible for an SMSF to purchase a commercial property and lease the property to a related party for market value on commercial terms.

This means that small business proprietors can accumulate superannuation wealth and at the same time provide the business with operating premises.

How does it work?

The Superannuation Industry (Supervision) Act permits an SMSF to borrow provided that:

- › the loan is used to acquire an asset.
- › the asset is held on trust for the SMSF by another entity, often referred to as a property trustee or security custodian.
- › the SMSF acquires the legal title to the

asset by repaying the loan.

- › the right of the lender and others to recover the loan in the event of default is limited to the asset.

Because of the limited recourse nature of the loan, it is customary for the bank to take additional security for the loan, including personal guarantees from the members of the SMSF.

The asset purchased by the SMSF must be a 'single acquirable asset'. The definition of a 'single acquirable asset' is one that is distinctly identifiable as a single asset. Although there are some exceptions, from a practical point of view this usually means the property must only have one title reference. The loan cannot be used to purchase multiple properties.

What if my business already owns a commercial property?

If the business already owns a commercial property, provided that the property is 'business real property', the SMSF can purchase the property from the business. 'Business real property' is property used wholly and exclusively for business purposes.

The property must be purchased by the SMSF for market value and the purchase must be on commercial terms.

Next steps

It is important to note the borrowing rules for an SMSF are very strict. Breaches of the rules can lead to significant taxation consequences.

Remember - it is essential before embarking on any SMSF investment strategy to obtain independent legal and/or financial advice.