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ATO Crackdown on perks from Self Managed Super Funds

Be wary of the investment decisions you make in your Self Managed Superannuation Fund (SMSF). If any members of the fund receive any perks from fund investments such as discount cards, cheap or upgraded holiday accommodation, or memberships, the Tax Office may look more closely at you.

Here's an example of what the ATO are targeting:

The trustee of an SMSF invests in a block of holiday apartments at a popular tourist destination. The members of the SMSF holiday in this area every year and prior to making the investment owned a separate holiday house nearby.

The trustee, when undertaking the investment, additionally negotiated for members of the SMSF to be able to stay at the apartments for free. This is not a standard feature of the investment. The members of the SMSF sell their holiday house immediately after the SMSF makes the holiday apartment investment.

It's fairly clear that because of the separate negotiation for the free accommodation for members of the fund, the benefit provided by the SMSF's investment in the holiday apartments was an intentional part of the investment decision. Because of this benefit, the SMSF has made an investment that is not for the sole purpose of providing retirement or death benefits for or in relation to its members. As a result, the fund breaches the sole purpose test.

But what if as part of a portfolio of property investments and in line with the SMSF's investment strategy, the trustee invests in a number of holiday apartments through a property syndicate. All investors in the property syndicate pay normal market rates when staying at the apartments but, subject to availability on the day of arrival, may be able to upgrade their accommodation at no extra cost. The SMSF cannot dispose of this right to its financial advantage. Two members of the SMSF stay at the apartments and their accommodation is upgraded.

In this situation, the fund has not breached the sole purpose test as the benefit provided to the members is clearly incidental.

What is clear is the importance of Trustees having a documented investment strategy for their fund and ensuring that they work within its boundaries. Trustees need to be able to prove that the investment decisions they make are in line with the strategy and that the investment was made for sound reasons.

It is hardly surprising that the Tax Office is looking closely at SMSFs. In the June 2007 quarter alone, almost 20,000 new funds were established; mostly by those seeking to take maximum advantage of the new super rules. In total over the last financial year, approximately 42,000 funds were established.

With such a huge amount of money invested in SMSFs, it's easy to see why it is such a focus and no one should be surprised if the Tax Office makes an example of those who deliberately flaunt the rules.

If you need assistance understanding the rules governing SMSF's, please contact us today.

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