



### ***New Legislation – Collectables and Personal Use Assets***

*On 18 May 2011, the Assistant Treasurer Released an Exposure Draft outlining Regulations with respect to the investment by Self-Managed Superannuation Funds in Collectables and Personal Use Assets. These new provisions (if they receive Royal Assent) would apply from 1 July 2011, with some transitional rules available.*



In response to the Cooper Review, the Government announced a new initiative, "Stronger Super". The intentions of Stronger Super was to deliver better outcomes to superannuation fund members and ensure the integrity of superannuation in Australia is maintained going forward.

With respect to SMSFs, the Government rejected the Cooper Review recommendation that SMSFs be prohibited from investing in Collectables and Personal Use Assets ("CPUA"), as it would restrict investment choice for SMSF trustees. However, they did pledge to tighten the legislative standards for such investments to ensure that SMSF members do not receive a current day benefit with respect to such investments. We outline below key features of the proposed legislation:

#### **Scope**

The legislation would apply to investments in the following assets, considered to be CPUA:

- Artwork;
- Jewellery;
- Antiques;
- Artefacts;
- Wine;
- Recreational Boats;
- Coins or Medallions;
- Postage Stamps or First Day Covers;
- Rare Folios, Manuscripts or Books;
- Memorabilia;
- Cars;
- Memberships of Sporting Clubs or Social Clubs.

Please note, the legislation is not seeking to prevent SMSFs from investing in the above assets, however they seek to ensure that members / related parties of the fund are not receiving a benefit from the asset prior to retirement (for example, the appreciation for artwork hanging on the wall of their residence), albeit that the member may be paying market rent.

## Restrictions

The following would apply with respect to investments by SMSFs in CPUTA from 1 July 2011:

- The SMSF trustee would be prohibited from leasing any of the above assets to a related party;
- The CPUTA must not be stored (that is, not displayed but still kept on the premises) in the residence of the related party;
- The decision made by the SMSF trustee with respect to the storage of the asset must be properly documented, with such documentation retained for 10 years;
- The CPUTA must be insured appropriately in the name of the superannuation fund;
- The CPUTA must not be used by the SMSF members with respect to jewellery, cars, boats or sporting or social club memberships;
- If the CPUTA is purchased by a related party from the SMSF, a valuation by a qualified independent valuer must be sought with respect to the asset.

All of the above are strict liability offences carrying a fine of 10 penalty units, and would likely breach other provisions within the superannuation legislation.

## Transitional Rules

The above restrictions apply from 1 July 2011, however for funds that have existing CPUTA as at that date, the above rules do not apply for the period from 1 July 2011 through to 1 July 2016. This means that until 1 July 2016 in most circumstances where a fund has already invested in CPUTA (generally artwork):

- The SMSF is able to retain a lease with respect to CPUTA with a related party of the fund;
- CPUTA is able to be stored (that is, not displayed but still kept on the premises) in the residence of the related party.

It is important to note that with respect to a lease of CPUTA to a related party, there should be a formal lease agreement in place and the lease payments should be at market rates.

## Implications

The provisions above have substantial implications for existing Collectable and Personal Use Assets from 1 July 2016, and will substantially impact the investment in such assets from 1 July 2011. Although a fund is not prohibited from investing in such assets, the intention is to ensure that related parties are not receiving a benefit from those investments prior to retirement.

## Action Required

At this stage, if you have CPUTA within your SMSF, no further action is required in this regard. However, it is prudent to review such investments and ensure that the rules with respect to SMSFs transacting with related parties is adhered to (for example, market rent being paid if a painting owned by the fund is leased to a related party). If your intention is to purchase such an asset in the very short-term (that is, the next few months), perhaps consider the timing and whether such an acquisition can be made prior to 1 July 2011 to ensure that the transitional rules apply.

In the 2015/2016 financial year, a thorough review of such investments will be required, to ensure that the new rules are adhered to and no breaches will result.

**If you have any queries, or would like advice in relation to any matters relating to any of the above, please contact either Jemma Sanderson, Michelle Saunders or Marissa Bechta on (08) 6311 6900.**

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