

TAX TALKS

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19 | Sole Purpose Test

The sole purpose test is one of the cornerstones of Australia's superannuation regulations. These regulations don't tell super funds how to invest. Instead they set a framework with the sole purpose test at its core. According to the ATO the sole purpose test is most commonly breached regulation.

Sole Purpose Test

The sole purpose test doesn't just apply to SMSFs but to all regulated superannuation funds.

Legal Framework

The sole purpose test is set out in subsection 62(1) of the SIS Act 1993. It requires each trustee of a self managed superannuation fund (SMSF) to maintain the SMSF solely for the purposes specified in that subsection. S 62 is a civil penalty provision and eligible for administrative penalties.

SMSFR 2008/2 is the ATO's current ruling on the sole purpose test. Its title is *Self Managed Superannuation Funds: the application of the sole purpose test in section 62 of the Superannuation Industry (Supervision) Act 1993 to the provision of benefits other than retirement, employment termination or death benefits*. SMSFRs are not binding on the ATO.

Sole Purpose

Sole purpose comprises core and ancillary purposes. An SMSF must pursue at least one core purpose, but can also pursue an ancillary purpose in addition to a core purpose.

Core Purpose

A core purpose is the provision of

1. retirement benefits
2. benefits after reaching an age specified in the regulations (such as preservation age) and/or
3. death benefits

A fund must pursue at least one core purpose.

Ancillary Purposes

In addition to a core purpose, a fund can also provide

1. benefits after termination of employment

2. benefits after leaving work due to ill-health
3. other benefits approved by the regulator

Breach

Complying with the sole purpose test requires an “exclusivity of purpose”, above what would be a “dominant or principal purpose”.

The ATO states in SMSFR 2008/2 that “a survey of all of the events and circumstances relating to the SMSF’s maintenance” is to determine if there has been a breach of s62.

Factors that may indicate a breach of the sole purpose test include whether the trustees sought the benefit, the benefit influenced the trustees’ decision or the fund incurs a cost to provide the benefit.

Factors that may indicate that the sole purpose test was not breached would include that the benefit is

- inherent or unavoidable
- remote, isolated or insignificant
- on an arm’s length commercial basis

Beyond Retirement

The sole purpose test applies beyond the retirement of a member. Even in retirement phase the fund must still focus on providing retirement benefits into the future. The trustee is only to pay benefits in an approved form, such as a pension or lump sum.

Collectables and Personal Use

Collectables and personal-use items are an issue due to the likelihood of providing a prohibited benefit. The collectables rules in [s62A](#) and SIS regulation [13.18AA](#) clarify this further.

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