

# M&CO Newsflash

## Thinking of buying a holiday house or an apartment with your SMSF? Why not!

During the forthcoming end of year holiday, you may be thinking about how best to acquire your retirement home. The Australian Taxation Office (ATO) has just published some practical examples to illustrate its recent SMSF guidelines in that area: S.62 of the SIS Act requires trustees of a SMSF to ensure it complies with the 'sole purpose test'. In some circumstances a SMSF may be legally providing other benefits to members or related parties.

SMSF2008/2 Example 1 – Benefit inherent & merely incidental in an investment: SMSF invests in holiday apartments through a property syndicate, (widely held trust) and apartments are owned /managed by the trust. Income pooled and allocated on a pro-rata basis to investors. No particular investor has a right to a specified holiday apartment. All investors in the property syndicate pay normal market rates when staying at the apartments but, subject to availability maybe able to upgrade their accommodation at no extra cost. Investors can not dispose of this right. Members of the SMSF stay at the apartments and have their accommodation upgraded. This benefit is incidental to the SMSF's investment. The trustee/s do not contravene the sole purpose test as there is nothing to suggest that it influenced the trustee's decision in making the investment. It's an inherent feature of investing in the apartments for all investors and a relatively insignificant benefit.

### The Swiss Chalet Case

In contrast Case 43-95 (the Swiss Chalet Case) there was a pattern of investing in assets that provided other benefits of a substantial nature to members of the fund.

The Administrative Appeals Tribunal found an ulterior purpose for the maintenance of the fund as the fund's assets included shares in a private company, the only asset of which were shares in a golf club and units in a family trust, the only asset of which was a chalet in Switzerland. The Tribunal was satisfied that the fund failed the sole purpose test

because the managing director of the fund's trustee company had a second purpose: to make fund's assets available for his & family/ friends use.

Example 2 – Separately negotiated benefit more than incidental: An SMSF invests in a non related company that owns holiday apartments at a popular tourist spot. Members of the SMSF holiday in this area every year and prior to investing owned a separate holiday house nearby. The trustee, negotiated for SMSF members to stay at the apartments for free. This is not a standard feature of the investment. In return, the SMSF was required to accept a reduction in dividends payable by the company. The separate negotiation of benefit, which materially affects the return on the SMSF's investment, demonstrates that the benefit is purposeful and not incidental. The SMSF is being maintained for providing benefits other than those specified by S.62 and therefore indicate a contravention of the sole purpose test.

Example 3 – Maintenance of asset merely an incidental benefit: In line with their SMSF investment strategy, the trustee/s decides to invest in a house near a beach in North Qld. Research shows capital growth and rental demand in the area will be strong in the future due to infrastructure and tourism developments. The house is managed by a local firm and made available third parties for short term holiday accommodation. The managers provide the trustee with regular reports detailing items required maintenance and repair. The SMSF trustees visit the house for a few days in off-peak periods to undertake maintenance and repairs. While staying at the beach house the members pay the normal commercial rates to the management firm for staying at the house. The fact do not indicate a breach of the sole purpose test.  
**Acknowledgement: NTAA Tax Adviser's Voice Sept 2008.**

Please do call or email if you think the above strategies may be relevant to your situation. Have a well deserved break & thanks again for your support

**JDM & Team, Brisbane**

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**T** 61 7 3831 6088 | **F** 61 7 3831 2444 | **E** info@mcofinancial.com | **W** www.mcofinancial.com