



## **Borrowing in a SMSF**

There has been lots of coverage lately about the changes to the borrowing rules for Self Managed Superannuation Funds (SMSF).

Until about two years ago it was almost impossible for a SMSF to borrow money, and even if it could it was only a relatively small amount. Recent changes have made borrowing to invest in a SMSF a very viable option.

The trouble is there are numerous entities promoting such an option – we even saw someone down at a local shopping centre suggesting to retail therapy participants that they move their super into a SMSF and borrow to buy property.

It is this sort of activity that can lead to the ATO tightening the rules and making it difficult for those who are genuinely interested in this strategy.

If you are thinking about this strategy you need to get the right advice as there are rules that you need to adhere to. And it need not cost a small fortune, especially if you are already running your own SMSF.

The process is not as difficult as you may think. There are four parties to the loan:

- the Lender loaning the money to the Super Fund;
- the Super Fund itself;
- the Vendor selling the property to the Super Fund;
- and the Bare Trustee (otherwise known as the Custodian Trustee) who will hold the Property on trust for the Super Fund.

Both related parties and unrelated parties can lend money to the SMSF however if it is a related party the loan must be on commercial terms. In particular, the SMSF Trustee must be able to demonstrate that the SMSF is not paying in excess of a commercial rate of interest to the related party.

A Super Fund can purchase any asset that it would otherwise be able to purchase under the SIS legislation and regulations. However it must be a single asset or collection of identical assets, and the loan money cannot be used to improve an asset.

The main thing to consider is that running a SMSF means that you will be the trustee and are therefore ultimately responsible. So provided you are up for it and you already have a reasonable superannuation balance, borrowing in a SMSF for investment purposes could be good for you.

Below there is a short Q & A that covers a few of the issues. However, if you are thinking about this strategy please come and see us first as we can make sure you do it right and save some heartache and money in the process.

## Q & A

Question	Answer
Can a SMSF make capital improvements to an asset held under a borrowing arrangement?	No, trustees will not be able to borrow to improve an asset and there will be very specific limitations on replacement assets.
Can a SMSF refinance a limited recourse loan?	Yes, if done solely to replace a previous loan.
Can a SMSF purchase more than one property using a borrowing arrangement?	No, the borrowing is permitted only over a single asset or collection of identical assets.
Can a SMSF use a borrowing arrangement to build a house on vacant land owned by the SMSF?	No, this would create a charge over an existing asset of the fund.
What is the limit to the recourse the lender has?	Recourse is limited to the asset acquired as part of the borrowing providing the fund's other assets are not affected. Other parties are unable to provide guarantees.
Can a SMSF purchase a diversified portfolio of direct shares using a borrowing arrangement?	No, the borrowing is permitted only over a single asset or collection of identical assets.
Can the asset be charged?	Only to the extent of the loan
Can the asset be replaced?	Very limited to shares or units on a like for like basis with identical shares