

## TAX WARNING REGARDING SUPERANNUATION FUNDS AS UNITHOLDERS

Some orders received by NTAA Corporate for Unit Trusts or Fixed Trust have a self-managed superannuation fund (SMSF) as a unitholder.

Members should be aware that if an SMSF is a unitholder, it may breach the “in-house assets” rule of the Superannuation Industry (Supervision) Act 1993 (or SIS Act). This may potentially result in the ATO deeming the fund to be non-complying – this is disastrous, as a non-complying fund’s assets are taxed at 45%. In essence, the in-house assets rule restricts SMSFs from:

- lending or leasing more than 5% of the fund’s total assets to a related party of the fund; and
- investing more than 5% of the fund’s assets in a related party

There are some exceptions (such as investing in a non-g geared trust), however members need to be aware of these in-house asset restrictions, and advise clients accordingly. The ATO takes this issue very seriously and is currently auditing funds to ensure they comply with the investment rules.

The link below takes you to a document on the ATO’s website that sets out the in-house assets rule that applies to SMSFs and also some transitional rules that end on 30 June 2009:

<http://www.ato.gov.au/superprofessionals/content.asp?doc=/content/00124905.htm>

The next link also takes you to the ATO website and provides general information about the SMSF investment restrictions (you will need to scroll down for information about in-house assets):

<http://www.ato.gov.au/super/content.asp?doc=/content/47067.htm&page=4>

If you or your clients require more tax advice then you can call the NTAA Tax Team on 1800 808 105 or contact your own solicitor.

*Disclaimer: This is a general warning to members of the NTAA about potential tax or SMSF investment problems only and does not constitute the provision of legal advice.*