



Artwork in a super fund ?

Please note that additional exemptions may apply to allow certain investments that are now prohibited provided they were made prior to 11 August, 1999. The comments made here are of a general nature only. You should not make any investment decision solely on the contents of this document and should refer to your financial adviser prior to proceeding with any investment.

There is nothing wrong with a trustee **purchasing** artwork as an investment for a Self Managed Superannuation Fund (SMSF) or Small APRA Fund (SAF), as long as the trustee doesn't purchase the investment from a related party of the superannuation fund. Also, the trustee needs to ensure that the investment is in line with the current investment strategy of the fund.

While **purchasing** the investment is generally not a problem for the SMSF or SAF, **storing** the investment could provide some problems, as this is a grey area of law.

Sole Purpose Test

If an investment provides some personal benefit, the trustee will need to consider whether that personal benefit is consistent with the 'sole purpose test'.

As a general rule, the sole purpose test provides that the superannuation fund needs to be run **exclusively for genuine retirement purposes**. There are a limited number of other purposes that are allowed, such as providing against total and permanent disability, but the pleasure of looking at art is not among them.

The Administrative Appeals Tribunal has indicated in previous decisions that it will look to whether the trustee has a secondary purpose to make the assets available for their own use and for the use of family and friends in determining if the investment is consistent with the sole purpose test.

Where the trustee stores artwork on their wall at home they may be considered to be deriving **personal use** or **enjoyment** from the asset. It is not the storing of the artwork on the wall that is the issue, it is the trustee deriving personal use or enjoyment from the asset, such as looking at it.

To avoid any doubt, the trustee may need to put it into storage or even place it on loan to an art gallery in return for the gallery providing storage.

Could the trustee look at the artwork in the gallery? Probably not!

Investment Strategy

All funds must have an investment strategy and regularly monitor that strategy. The trustees need to be able to demonstrate that they have sufficiently researched the investment potential of any investments to be satisfied that they make worthwhile investments for the fund.

The investment strategy document should detail out the rationale for selecting these investments. In the case of Artwork, you would need to be able to demonstrate why the particular artwork was a valid investment for the fund – past capital growth, rental opportunities, demand etc. Just liking the artwork is not sufficient.

Artworks can be rented out to businesses provided the leases are on commercial terms and the rent is actually paid. There can be no loan over the artwork and the artwork cannot be used as security for any other purposes.

Risk Management

Trustees need to be able to demonstrate from a custodian viewpoint that they are taking adequate precautions to protect any artwork held by the fund – it should be kept in a secure location and be stored to minimise damage. The artworks must be adequately insured (by the fund). All these procedures need to be minuted.

Things to consider prior to making any investment

- The artwork must be seen as an investment
- The Trustees must show diligence when purchasing
- Must be an arms length transaction
- You must not obtain any personal benefit
- Must fit into the Super Fund's investment strategy
- Must be noted on your insurance policy as separate items
- Whilst there is no set percentage of dollar assets, unless you were an art expert I doubt the Tax Office would accept 100% invested in artworks

Further information

- An updated fact sheet can be found on the Tax Office web site (www.ato.gov.au/super) entitled *Investment Strategy and Investment Restrictions* which outlines the ATO's view of appropriate and inappropriate investments. The following has been extracted from this publication in relation to Art:

"SISA attaches certain requirements that trustees must consider when developing and implementing an investment strategy but does not prescribe the types of investments. Fund investments should be made with the fundamental objective of providing for the members' retirement. **Trustees should seek expert advice on the potential income, capital growth and liquidity of the asset before acquiring any non-traditional asset including art.** Trustees should consider the costs associated with the storage and insurance of the art. Also, where a fund acquires an asset which is utilised by the member at no cost, a breach of the sole purpose test may have occurred. An example would be if the art is housed in the business premises or residence of a member at no cost to the member. These arrangements may breach other requirements of the SISA including the in-house asset provisions and the requirement to deal at arms length."

- Speak to your financial adviser

Other unusual investments that can potentially be used in a super fund

- Boat Mooring
- Frozen Embryos
- Coca-Cola original bottles
- 1st edition French novels from 1800s
- Racehorse sires

*smartsuper is a specialist SMSF and SAF fund administrator