

**FW: Taxation advice - For your information -
Reference: XXXXXXXXXXXXXXXX
[SEC=UNCLASSIFIED]**

From: XXXXXXXXXXXXXXXX <XXXXXXXXXX@ato.gov.au>

Sent: Thursday, 26 April 2018 3:48 PM

To: XXXXXXXXXXXXXXXX

Subject: Taxation advice - For your information - Reference: XXXXXXXXXXXXXXXX

We use hyperlinks to give you more information. If you don't want to click hyperlinks, you can search for the information on the **ATO website**.

Taxation advice - For your information

Reference Number: XXXXXXXXXXXXXXXX

Hello XXXX

As per our conversation, we offer the following advice in relation to the private ruling application lodged on behalf of XXXXXXXX and issue with the Self-Managed Superannuation Fund in relation to the asset protection plan:

As discussed during our telephone conversation, I have sought advice from the Superannuation area of the Australian Taxation Office in relation to the Self-Managed Superannuation Fund (SMSF) issues contained in the Asset Protection Plan provided with the private ruling application for your client:

Their concerns in relation to the arrangement for Superannuation purposes are as follows:

- If the Vestey Trust is an unrelated party of the trustee/members of the SMSF then the main concern from a superannuation perspective would be that the SMSF would not meet the requirement under paragraph 52(2)(g) of the *Superannuation Industry (Supervision) Act 1993* (SISA) and 4.09A of the *Superannuation Industry (Supervision) Regulations 1994* (SISR). This requirement being that a SMSF trustee also has a responsibility to keep the money and other assets of their SMSF separate from any money and assets of other entities;
- Based on the information provided, it is not clear what is meant by mortgage the “Fund’s assets” to the Vestey Trust which may suggest that they would be placing some sort of charge over the Fund’s assets which would breach regulation 13.14 of the SISR;
- If the Vestey Trust was set up as a related trust as per the definition of subsection 10(1) of the SISA, then the mortgaging of the Fund’s assets to a possible related party might amount to a breach of the in-house asset rules in Part 8 of the SISA; and
- Concerns are that the arrangement breaches the sole purpose test in section 62 as the Fund is being maintained for the purpose of asset protection by sheltering some of its assets in a separate trust and not for the purpose of investment and the provisions or retirement benefits for its members.

If you require further advice in relation to the taxation implications of the SMSF in relation to the Asset Protection Plan, a specific advice form can be lodged with us.

SMSF specific advice is a written explanation of the Commissioner's view on how the (super) laws apply, or would apply, to your SMSF in relation to a specific transaction or arrangement. 'Superannuation laws' in relation to SMSF specific advice are the *Superannuation Industry (Supervision) Act 1993* (SISA) and *Superannuation Industry (Supervision) Regulations 1994* (SISR).

Review information about the SMSF specific advice at the following link:
[Request for self-managed superannuation fund specific advice](#)

You can rely on this advice to provide you with protection from interest and penalties in the way explained below.

If the advice is incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the advice in good faith.

Even if you don't have to pay a penalty or interest, you still have to pay the correct amount of tax.

**If you have any questions, you can phone us
on**

13 28 69

Between 8.00am-3.00pm AEDT, Monday to Friday. Ask for Diana McIntyre on extension **87596** or call direct on **0260587596**.

Don't get scammed

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