Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Additional Estimates 15 February 2006)

Topic: **Trustees/ Sole purpose test**

AT91 **Hansard Page: E76**

Senator Sherry asked:

… is it permissible, allowable, for an individual who is a trustee of their own fund to effectively pay themselves from the investment savings proceeds of the fund as the administrator and investment manager if they do that themselves?

> ***Ms Vivian****—I will check that out, but my understanding is that, as the trustee or administrator of self-managed super funds, a part of being a self-managed super fund is that you cannot pay.*

What if the individual who is the trustee owns and operates their own administration and investment company/structure/entity? So it is legally a separate entity. It just seems to me difficult, but I have heard of this practice going on. It seems to me it would be difficult under the current SI(S) Act to argue, provided the fees were not consuming a significant proportion of the moneys under investment—I will give you an example, the admin fee and the management fee were $20,000 or $30,000 a year and the investment totalled half a million dollars in the fund—why that would not be permissible. I am not suggesting it should happen, but this issue has been brought to my attention and it does seem to me, if you use that hypothetical example in your examination in this area, that that would not be in breach of the sole purpose test and could happen.

> ***Ms Vivian****—I think that is where we would have to look at the facts of the case, and obviously you would be looking at whether the sole purpose test was in breach.*

Senator SHERRY—If you could take that on notice, anyway. It has been suggested to me that, depending on the facts of the matter, the case would not contravene the sole purpose test. Effectively, the individual, by being an administrator/manager, et cetera, of their moneys, it is de facto early access, if you like.

Answer:

A trustee of a self-managed superannuation fund (SMSF) must not receive remuneration from the fund (or any other person) for any duties or services performed by the trustee in relation to the fund in accordance with s17A of the *Superannuation Industry (Supervision) Act 1993 (SISA)*. However, the Tax Office accepts that a trustee can receive remuneration for non-trustee services provided to the fund in a separate professional capacity.

Example

A SMSF's governing rules are deemed to contain (if they do not already do so) a covenant by the trustee to the effect that the trustee will formulate and give effect to an investment strategy. As part of this strategy the trustee may decide to appoint an investment manager, to manage the day to day investments of the SMSF (SISA s 124).

A trustee could appoint, as investment manager, themselves or a separate legal entity over which they exercise ultimate control.

The investment manager must be appointed in writing, and all costs must be incurred on an arms length basis. In this situation there is unlikely to be any breach of sole purpose test, however each case would need to be examined on its own merits.

Such an arrangement would not cause any other breach of the SISA. The fees charged by the investment entity would need to be in line with a comparable external service.