

SMSFs and Collectibles

Fact Sheet, July 2023

SMSFs can provide greater freedom and flexibility for Trustees to invest in a wider range of assets than traditional industry or retail funds. However, there is another layer of compliance to consider when investing in assets such as collectibles. The SIS legislation (SIS Act 1993) outlines a series of requirements and restrictions to ensure that retirement remains the sole purpose of the fund and the investment complies with the in-house asset and arm's length investment requirements of the SIS Act and SIS Regulations.

The auditor must also be satisfied that the SMSF is compliant with the SIS Act and Regulations, and that the collectibles do not lend themselves enjoyment by the members prior to a member's condition of release. The Trustee's underlying reason for the investment in the Fund should also be consistent with the SMSF's investment strategy addressing both the risk, return and liquidity along with cash flow requirements.

What are collectables and personal use assets?

Section 62A of the SISA provides that the regulations may make rules in relation to trustees of SMSFs making, holding and realising investments involving collectables and personal use assets. Sub-regulation 13.18AA(1) of the Superannuation Industry (Supervision) Regulations 1994 (SISR), specifies the assets that are taken to be collectables or personal use assets as:

- + Artwork
- + Jewellery
- + Antiques
- + Artefacts
- + Coins, medallions or bank notes
- + Postage stamps or first day covers
- + Rare folios, manuscripts or books
- + Memorabilia
- + Wine or spirits
- + Motor vehicles
- + Recreational boats
- + Memberships of sporting or social clubs.

What is meant by artwork, coins, spirits and motor vehicles?

Artwork is defined in subsection 995-1(1) of the ITAA 1997 as a painting, sculpture, drawing, engraving or photograph, a reproduction of such a thing; or property of a similar description or use.

Coins and bank notes are collectables if their value exceeds their face value. Spirits includes, but is not limited to, whiskey, gin, vodka, tequila, brandy and rum. Motor vehicles include, but are not limited to, motor cars and motorcycles.

Conditions:

- + Collectables and personal use assets of an SMSF must not be leased to, stored in the private residence of, or used by, a related party of the fund. A related party of the fund includes a member, and:
 - + A parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the member or of the member's spouse
 - + The spouse of the member or the spouse of any individual listed above.
 - + Trustees of an SMSF must make a written record of the reasons for the decisions for storing the collectables and personal use assets in a particular place and keep the record for 10 years
 - + Trustees must insure the collectables and personal use assets (other than a membership of a sporting or social club) in the name of the SMSF within 7 days of the day the fund acquired the item.
 - + The transfer of ownership of collectables and personal use assets to a related party of the SMSF must be done at market value as determined by a qualified independent valuer.

What is meant by "Qualified independent valuer"?

A valuer will be qualified either through holding formal valuation qualifications or by being considered to have specific knowledge, experience and judgment by their particular professional community.

This is best demonstrated by being a current member of a relevant professional body or trade association such as:

- + Australian Antique and Art Dealers Association
- + Auctioneers and Valuers Association of Australia
- + National Council of Jewellery Valuers.

A valuer is independent if they are independent of the interests of the fund. This means that the valuer should not be a trustee or director of a corporate trustee or member of the fund or a related party of the fund (for example, an investment partner).

Penalty

A breach of any of the above conditions is a strict liability offence of 10 penalty units. A penalty unit is currently \$222. Breaches may also be a factor considered by the Commissioner when deciding whether to make the SMSF non-complying and/or disqualifying an individual from acting as a trustee of the fund. The Commissioner may also give a trustee direction to rectify a breach.

Audit tips

- + Sight the collectable at its storage location or if this is not possible sight documents such as contracts or agreements to ensure the item meets the investment conditions and is not leased to a related party of the SMSF; stored in the private residence of; or used by a related party of the SMSF. A relative of a member means the following a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the member or of the member's spouse .The spouse of the member or the spouse of any individual previously listed is also a relative.
- + Check that the decision for storing the collectables and personal use assets has been recorded in writing, either in hard copy or electronically. For example, documented in the minutes of a meeting of the trustees.
- + Sight the insurance policy to verify that the collectable or personal use asset is insured in the name of the SMSF and that it was insured within 7 days of its acquisition.
- + If the collectable or personal use asset has been disposed of to a related party of the SMSF, ensure that the item was disposed of at a market price determined by a qualified independent valuer. Do this by sighting evidence of the valuation and verifying the independence and qualifications of the valuer.
- + Examine bank statements for receipts of proceeds.

For further information or advice on how Accru can help secure your future, contact your local Accru advisor.

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