

## Pre-1999 Unit Trusts: Transitional period ends 30 June 2009

### What is a pre-99 unit trust?

A self managed superannuation fund that invested in a unit trust prior to 11 August 1999 is exempt from including that investment under in-house asset rules that exist in the *Superannuation Industry (Supervision) Act 1993*.

These unit trusts are therefore able to undertake activities such as borrowing or carrying on a business that would normally be prohibited by self managed superannuation funds.

A ten-year timeframe for the unit trusts to be cleaned up was introduced; this 10-year period ends on 30 June 2009.

Further units acquired within one of these trusts by a superannuation fund after 30 June 2009 will be considered an in-house asset which are limited to 5% of the fund - unless they are exempt under another provision of the legislation.

### What are the rules?

Since August 1999, superannuation funds are prohibited from acquiring further units in these unit trusts with the exception of the following circumstances:

- ▶ paying the remaining amount outstanding on partly paid units; and
- ▶ reinvestment of the income during the 10-year transition period; or
- ▶ where an election was made under section 71E, units could be acquired up to the amount of borrowing as at 11 August 1999.

### What needs to be done?

Some common misconceptions arise with these complex provisions:

- ▶ borrowings do not need to be repaid prior to 30 June 2009;
- ▶ the unit trust may continue to borrow or even increase its level of borrowing;
- ▶ the unit trust does not need to be wound up prior to this date.

Whilst any existing borrowings do not need to be repaid, it is important to note that after 30 June 2009, no further units may be purchased to enable the debt to be repaid. Therefore, the unit trust must ensure that its cash flow is sufficient to meet its financing costs and liabilities. Alternatively, sale of the underlying asset may be required to repay existing debt.

The ATO has released *SMSFD 2007/1* detailing time restrictions for the reinvestment of units. If you are planning to reinvest the income earned by the trust as additional units, this must be done *before* 30 June 2009. Therefore, there is no timeframe to calculate income after the year end with reinvestment occurring after balance date.

If you are considering the preparation of interim accounts in order to reinvest the year-to-date profit amount prior to 30 June, you must ensure that the deed allows an interim distribution.

### Moving forward

With only 2 months to go until the end of these transitional provisions, attention should be given to underlying unit trusts owned by superannuation funds, particularly concerning reinvestment of income. Planning for and paying attention to the cash flow of these unit trusts will be paramount.

Should you require assistance or additional information, contact

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