SuperGuardian™

Superannuation administration made simple!

Chartered Accountants

SuperGuardian in the Press

The Australian Financial Review
www.afr.com • Wednesday 1 November 2006

Portfolio

Punishing tax bills for those who break the rules

DIY super

John Wasiliev

Do-it-yourself super fund investors have been warned to take extra care when making investments like holiday rental properties, works of art and business loans.

Adelaide-based DIY super administrator SuperGuardian has noticed what appears to be an increase in problem situations where these investments are involved in related-party transactions. This has prompted a warning about possible traps in such transactions.

"The term 'related party' is broad and many trustees are not aware of just how broad," says SuperGuardian technical adviser Ed Bernard.

In the context of superannuation investing, a related party includes relatives, business partners, companies and unit trusts controlled by members or people related to members and any company that provides support for a super fund.

There are regulations that restrict DIY super funds from providing extra benefits to members or related parties of members. These rules are designed to encourage funds to adopt an independent approach to investing where there are no biases like using super savings to support a family business that may be struggling or to focus on investments that a member can also enjoy, like works of art or a holiday property.

Related party rules go hand in hand with so called "in-house asset" rules. In-house assets are investments where there is some connection to a member or a related party of a member, explains Bernard.

Under super rules, a fund's in-house assets must never be greater than 5 per cent of the total market value of all the fund assets. If this limit is exceeded at any time, it must be corrected or the fund risks being declared non-complying and faces the prospect of being taxed at 47 per cent.

Bernard says if there is any sort of connection between a member of a super fund and any fund investment, no matter how remote, there is a chance an asset may be considered an in-house asset.

There are, however, certain exclusions and transitional arrangements, and trustees must be aware of these. For example, any investment in a related unit trust of a super fund will not be considered an in-house asset if the units in the trust were bought before August 11, 1999. On this date, the definition of in-house assets was extended.

The major exclusion is an investment in business real property, which can include the business premises from which a family-owned business is being run. Such investments will generally never be considered an in-house asset even if the property is leased to a related party of the fund.