



New Borrowing Rules for Super Funds

The government recently introduced a bill into parliament which proposes to make some amendments to the rules governing borrowings by super funds.

Most of the proposed changes seek to clarify how the rules work. However, there are also some important changes in the bill. Interestingly, and contrary to what some commentators have been expecting, the government has not severely restricted or put an end to super fund borrowing. Some of the changes are:

- Super funds can only acquire single assets or collections of assets. This effectively means that a fund can only acquire multiple assets using a single loan facility where the assets are say shares or units in a trust and only where each share or unit is identical to each other one and has the same market value - for example, a collection of ordinary shares in BHP. A fund could not acquire ordinary shares in BHP and preference shares in BHP using the same facility. Nor could it acquire shares in multiple companies using the one facility;
- Funds cannot borrow to improve real property, but can use borrowed funds to maintain real property;
- Funds can refinance existing borrowings provided any new borrowing complies with the rules;
- The asset must be transferred to the super fund after the borrowing has been repaid, rather than being retained in a custodian trust.

Loan arrangements which are in place before the bill is passed will not be subject to the provisions of the new rules. However, if an existing borrowing is refinanced, it will be caught.

All of the restrictions regarding custodian trusts and the limited recourse nature of any borrowings are to be retained.

Additional consequential amendments are also proposed to clarify/change the tax treatment of these arrangements for CGT purposes – the super fund is to be treated as the owner of the asset from inception (avoiding any potential CGT event E5). Changes are also proposed to the Corporations Act to make limited recourse arrangements for super funds “financial products” requiring persons dealing in them to have an AFSL licence.

Please call us toll-free on 1-800-773-477 should you have any queries.