

COVID-19 – Providing concessions for the LRBA in my SMSF

The economic impacts of the COVID-19 crisis are causing significant financial distress for many businesses and individuals.

If your SMSF has a related party loan and is impacted due to the financial effects of COVID-19, you may be able to provide your LRBA with relief under an agreed commercial arrangement.

Ordinarily, not paying market interest rates in an SMSF is usually a breach of superannuation laws. However, the ATO have provided guidance which allows SMSFs with an LRBA to negotiate a reduction in or waiver of interest payments because of the financial impacts of the COVID-19.

If the repayment relief reflects similar terms to what commercial banks are currently offering for real estate investment loans as a result of COVID-19, the ATO will accept the parties are dealing at arm's length and the NALI provisions do not apply.

What do you need to do?

There are some important things you should ensure are in place when you are providing a loan concession, especially when this is a related party.

- Ensure the relief only applies to the related party loan
 - Any relief offered on the loan can only relate to that loan agreement. The ATO concession does not extend to other loans.

- Ensure that the concessions are temporary.
 - This means it should have an agreed period of time or agreed date where the concessions are reviewed in light of the economic circumstances.

- The financial difficulty faced by the SMSF is linked to the financial impacts of COVID-19.
 - Any negotiated concession will need to be measured against the COVID-19 financial impact suffered by your SMSF.

- Clear arrangements which detail the amount of discount, waiver or deferral of the concession.
 - In evidencing that the concession is reasonable, it would be best practice if it is consistent with an approach taken by an arm's length loan.
 - For example, terms currently include temporary repayment deferrals for most businesses of up to 6 months, with unpaid interest being capitalised on the loan.
 - It is also expected that there is evidence that interest continues to accrue on the loan and that the SMSF trustee will catch up any outstanding principal and interest repayments as soon as possible.

- Ensure you have proper documentation which allows your independent auditor to be satisfied that the concession satisfies all of the above.
 - This may take the form of a signed minute, renewed loan agreement or anything deemed appropriate to amend the terms of the loan.
 - The parties to the arrangement must also document the change in terms to the loan agreement and the reasons why those terms have changed.
 - Even if you are both the lessor and lessee, the above should all be documented.

These are extraordinary times and the ATO is providing this guidance to allow SMSF trustees to be flexible and agile.

If trustees act in good faith in implementing a reasonable and measured reduction concession because of the impacts of COVID-19 they should not fall foul of the law.

Source: SMSF Association

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