



ICCA NEWS

Newsletter Date 17/08/11

Special points of interest:

Superannuation Funds not to be used as lenders of last resort

A recent decision handed down by the Administrative Appeals Tribunal has affirmed the Commissioner's decision to include in a taxpayer's assessable income amounts paid to the taxpayer from the taxpayers self-managed superannuation fund (SMSF). The payments were in breach of the SIS Act.

The taxpayer and her husband conducted a real estate agency business. They got into financial difficulty when their bank refused to continue extending them credit. To avoid voluntary administration of the company business structure, the taxpayer accessed money from her SMSF. The business survived and the taxpayer returned the moneys to the SMSF.

The Commissioner included in the taxpayer's assessable income the

amounts paid from the SMSF to the taxpayer. These amounts were \$50,000 in the 2008 tax year and \$37,000 in the 2009 tax year.

The AAT upheld the Commissioner's decision not exercise his discretion under s 304-10(4) of the ITAA 1997 not to include these amounts in the taxpayer's assessable income. The AAT expressed sympathy for the taxpayer's dilemma but held that the context of the discretion in the

ITAA 1997 meant that SMSFs were not to be used as a "lender of last resort".

(AAT Case [2011] AATA 563, Re Smith and FCT, AAT, Ref No: 2010/5243, Allen SM, 16 August 2010.)

Company Details

Vicca Chartered Accountants

Level 9
97 Creek Street
Brisbane Qld 4000

GPO Box 3015
Brisbane Qld 4001

Ph: (07) 3012 8748
Fax: (07) 3012 8700
Email: noe@viccaca.com

www.viccaca.com

DISCLAIMER: The contents herein are intended for general information only and should not be construed as legal or accounting advice.

Vicca Chartered Accountant bears no responsibility for any loss that might occur from reliance on information contained in this publication

Please do not reproduce, transmit or distribute the contents herein in any form without prior permission from the firm.

