



Legal Update

Related Party Loans in your SMSF

Will you be compliant by 1 July 2016?

The ATO has had concerns for some time about related party loans to self-managed superannuation funds (SMSF's), and in particular whether they have been made on commercial terms.

In a recent *SMSF Adviser* article the ATO stated that limited recourse borrowing arrangements involving a related party must be on commercial terms by **1 July 2016** and that it must be compliant for the whole of the 2015/16 financial year.

In our view this means putting in place the sort of things that a bank would require, such as:

- A commercial interest rate,
- a loan agreement,
- reasonable LVR,
- an obligation to pay interest monthly, or principal and interest monthly,
- a loan term and repayment obligation,
- security, such as a mortgage and personal guarantees.

The only way to really ensure the loan is on commercial terms is to seek and obtain an offer of finance from a bank or financial institution first, and then essentially mirror the terms in the related party loan documentation. This way you can present clear evidence that the terms are commercial terms for that particular transaction.

If you require assistance drafting the necessary loan documentation, please do not hesitate to contact [Paul McHugh](#) or [Luke Steptoe](#) of this office.

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