

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (2013 Measures**
3 **No. 1) Bill 2013: self managed**
4 **superannuation funds and related parties**
5

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1.		
2. Schedule ??, Part 1	1 July 2013.	1 July 2013
3. Schedule ??, Part 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 23 of Schedule 3 to the <i>Superannuation Legislation Amendment</i> <i>(Reducing Illegal Early Release and</i> <i>Other Measures) Act 2012.</i> However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

Schedule ??—Self managed superannuation funds and related parties

Part 1—Main amendments

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1)

Insert:

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1 *business real property* has the meaning given by section 21.

2 Subsection 10(1)

3 Insert:

4 *primary production business* has the same meaning as in the
5 *Income Tax Assessment Act 1997*.

6 3 At the end of Division 2 of Part 1

7 Add:

8 21 Business real property

9 (1) *Business real property*, of an entity, is:

10 (a) any freehold or leasehold interest of the entity in real
11 property; or

12 (b) any interest of the entity in Crown land, other than a
13 leasehold interest, being an interest that is capable of
14 assignment or transfer; or

15 (c) if another class of interest relating to real property is
16 prescribed by regulations made for the purposes of this
17 paragraph—any interest of that class held by the entity;

18 if the real property is used wholly and exclusively in one or more
19 businesses (whether carried on by the entity or not).

20 (2) *Business real property* does not include any interest held in the
21 capacity of beneficiary of a trust estate.

22 (3) For the purposes of subsection (1), real property used in one or
23 more primary production businesses does not cease to be used
24 wholly and exclusively in those businesses only because:

25 (a) an area of the real property, not exceeding 2 hectares,
26 contains a dwelling used primarily for domestic or private
27 purposes; and

28 (b) the area is also used primarily for domestic or private
29 purposes;

30 provided that the use for domestic or private purposes referred to in
31 paragraphs (a) and (b) is not the predominant use of the real
32 property.

33 (4) In this section:

34 *business* includes any profession, trade, employment, vocation or
35 calling carried on for the purposes of profit, including:

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- 1 (a) the carrying on of primary production; and
2 (b) the provision of professional services;
3 but does not include occupation as an employee.

4 **4 Transitional provision—in-house assets**

- 5 (1) For an asset that was an asset of a superannuation fund during any part
6 of the period:
7 (a) starting on 7 July 2010; and
8 (b) ending on the day before the commencement of this Part;
9 paragraph 71(1)(g) of the *Superannuation Industry (Supervision) Act*
10 *1993* applies as if the expression ***business real property*** of the fund had
11 the same meaning in that paragraph as it had in subsection 66(5) of that
12 Act.
- 13 (2) This item has effect despite item 9 of Schedule 1 to the *Superannuation*
14 *Industry (Supervision) Amendment Act 2010*.

15 **5 Section 62A**

16 Before “The” (first occurring), insert “(1)”.

17 **6 At the end of section 62A**

18 Add:

- 19 (2) Subsection (1) has effect subject to sections 66A and 66B (about
20 acquisitions and disposals of certain assets).

21 **7 Subsection 66(1)**

22 After “regulated superannuation fund”, insert “(other than a self
23 managed superannuation fund)”.

24 **8 Subparagraph 66(2A)(a)(iv)**

25 Omit “(ba),”.

26 **9 Subsection 66(5) (definition of *business*)**

27 Repeal the definition.

28 **10 Subsection 66(5) (definition of *business real property*)**

29 Repeal the definition.

30 **11 Subsection 66(5) (definition of *primary production*** 31 ***business*)**

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1 Repeal the definition.

2 **12 Subsection 66(6)**

3 Repeal the subsection.

4 **13 After section 66**

5 Insert:

6 **66A Self managed superannuation funds—certain acquisitions**

7 (1) This section applies in relation to self managed superannuation
8 funds that are regulated superannuation funds.

9 *Certain assets not to be acquired from related parties*

10 (2) A trustee or an investment manager of a self managed
11 superannuation fund must not acquire an asset from a related party
12 of the fund.

13 Note: This subsection is a civil penalty provision (see subsection (5)).

14 *Exceptions*

15 (3) Subsection (2) does not apply if:

- 16 (a) the asset is a listed security acquired in a way prescribed by
17 regulations made for the purposes of this paragraph; or
18 (b) the asset is business real property of the related party, and the
19 acquisition of the asset is at market value, as determined by a
20 qualified independent valuer; or
21 (c) the asset is acquired:
22 (i) under a merger between regulated superannuation
23 funds; and
24 (ii) at market value, as determined by a qualified
25 independent valuer; or
26 (d) the acquisition of the asset:
27 (i) constitutes an investment covered by a subparagraph of
28 paragraph 66(2A)(a); and
29 (ii) is at market value, as determined by a qualified
30 independent valuer; and
31 (iii) would not result in the level of in-house assets of the
32 fund (within the meaning of Part 8) exceeding the level
33 permitted by that Part; or
34 (e) the asset is money; or

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1 (f) the asset is of a kind that the Regulator, by legislative
2 instrument, determines may be acquired by self managed
3 superannuation funds.

4 Note: A determination under paragraph (f) may specify different kinds of
5 assets for different classes of self managed superannuation funds (see
6 subsection 33(3A) of the *Acts Interpretation Act 1901*).

7 (4) Subsections 66(2B) and (2C) apply in relation to subsection (2) of
8 this section in a corresponding way to the way those subsections
9 apply in relation to subsection 66(1).

10 *Civil penalty provision*

11 (5) Subsection (2) is a civil penalty provision as defined by
12 section 193, and Part 21 therefore provides for civil and criminal
13 consequences of contravening, or of being involved in a
14 contravention of, that subsection.

15 **66B Self managed superannuation funds—certain disposals**

16 (1) This section applies in relation to self managed superannuation
17 funds that are regulated superannuation funds.

18 *Certain assets not to be disposed of to related parties*

19 (2) A trustee or an investment manager of a self managed
20 superannuation fund must not dispose of an asset to a related party
21 of the fund.

22 Note: This subsection is a civil penalty provision (see subsection (5)).

23 *Exceptions*

24 (3) Subsection (2) does not apply if:
25 (a) the asset is a listed security disposed of in a way prescribed
26 by regulations made for the purposes of this paragraph; or
27 (b) the asset is disposed of for market value, as determined by a
28 qualified independent valuer; or
29 (c) the asset is of a kind covered by regulations in force for the
30 purposes of section 62A (about collectables and personal use
31 assets) immediately before 1 July 2013; or
32 (d) the asset is money; or
33 (e) the asset is of a kind that the Regulator, by legislative
34 instrument, determines may be disposed of by self managed
35 superannuation funds.

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Note: A determination under paragraph (e) may specify different kinds of assets for different classes of self managed superannuation funds (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (4) Subsections 66(2B) and (2C) apply in relation to subsection (2) of this section and a disposal in a corresponding way to the way those subsections apply in relation to subsection 66(1) and an acquisition.

Civil penalty provision

- (5) Subsection (2) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

66C Self managed superannuation funds—avoidance schemes

- (1) A person must not enter into, commence to carry out, or carry out a scheme (within the meaning of section 66) if:
- (a) the scheme results, or is likely to result, in a trustee or an investment manager of a self managed superannuation fund:
 - (i) acquiring an asset from an entity; or
 - (ii) disposing of an asset to an entity; and
 - (b) the scheme avoids subsection 66A(2) from applying to the acquisition, or subsection 66B(2) from applying to the disposal, (as appropriate) because the entity is not a related party of the fund; and
 - (c) that subsection would so apply were the entity a related party of the fund; and
 - (d) the entity has a connection, directly or indirectly through one or more interposed entities, with a related party of the fund.
- (2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

14 After paragraph 193(b)

Insert:

- (ba) subsection 66A(2);
- (bb) subsection 66B(2);
- (bc) subsection 66C(1);

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Part 2—Administrative penalties

Superannuation Industry (Supervision) Act 1993

15 Subsection 66A(2) (note)

Omit “Note”, substitute “Note 1”.

16 At the end of subsection 66A(2)

Add:

Note 2: Section 166 imposes an administrative penalty for a contravention of this subsection.

17 Subsection 66B(2) (note)

Omit “Note”, substitute “Note 1”.

18 At the end of subsection 66B(2)

Add:

Note 2: Section 166 imposes an administrative penalty for a contravention of this subsection.

19 Subsection 166(1) (after table item 3)

Insert:

3A	Subsection 66A(2)	60 penalty units
3B	Subsection 66B(2)	60 penalty units

20 At the end of subsection 166(2) (before the note)

Add:

; or (c) for subsection 66A(2) or 66B(2)—a person covered by paragraph (a) or (b), or an investment manager of a self managed superannuation fund.

21 Application of amendments

The amendments made by this Part apply in relation to acquisitions, and disposals, happening on or after the commencement of this Part.