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Update – Natural disaster repairs to properties

As you know, much criticism has been targeted at the ATO for their staunch stance on the non-permitting of repairs to flood and cyclone affected properties owned by the SMSF through a bare/holding trust with a limited recourse loan. I personally put them under fire at a recent conference I attended in this regard, with my statements and questions to him & other ATO officials attending.

After a recent announcement, I am pleased to now inform you that the ATO **will** use its discretionary powers to provide relief for self-managed superannuation fund (SMSF) trustees who have acquired a property in their fund that has been damaged as a result of recent natural disasters. Specifically, taxation commissioner Michael D'Ascenzo is using powers provided to him under the *Superannuation Industry (Supervision) Act* to allow SMSF trustees to use limited recourse borrowings to repair the fund asset damaged by the disaster in question. This also extends to insurance proceeds paying for repairs or even replacements of the whole dwelling.

The Commissioner indicated he was willing to disregard breaches of the replacement asset rule due to the extraordinary circumstances faced by some individuals.

"In financing repairs or incurring other costs, trustees may need to borrow funds and if trustees contravene the limited recourse borrowing provisions due to the natural disasters experienced Australia-wide, we would be favourably inclined to exercise the commissioner's discretion under section 42A(5) of the *Superannuation Industry (Supervision) Act 1993* to continue to treat the super fund as complying," D'Ascenzo said. "We are currently reviewing this matter with APRA (Australian Prudential Regulation Authority) and Treasury to ensure no unintended consequences arise."

Be careful to ensure that if you use contributions to effect the repairs (expenses paid out of your own pocket) that these added to the normal contributions do not exceed the maximum allowable. **THIS IS MOST IMPORTANT.** Even if you affect the repairs yourself or use a draw down on your own housing loan to effect repairs, this is an in-specie contribution.

The ATO may also allow the contribution caps be exceeded, but that is not on offer at the moment, so be careful and have a chat to us please. Feel free to get in contact with us if you have any questions on (07) 3808 2868 or info@holzlaw.com