The edited version of the Compendium of Comments is a Tax Office communication that is not intended to be relied upon as it provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Ruling Compendium – SMSFR 2009/4

This is a compendium of responses to the issues raised by external parties to draft SMSFR 2008/D5 – Self Managed Superannuation Funds: the meaning of 'asset', 'loan', 'investment in', 'lease' and 'lease arrangement' in the definition of an 'in-house asset' in the *Superannuation Industry (Supervision) Act 1993*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1.	It would be useful in the final ruling to have an example of where artwork is leased to the employer of the members at commercial rates and the employer is controlled by the members.	*A new example (example 4) has been included to address this comment.*
2.	Disagrees with the analysis of when an investment 'in' a related party or a related trust exists for example 3 in the draft ruling. …a non-equity placement of funds with an entity is not to be regarded as an investment in the entity. In order for there to be an investment 'in' the Proprietor, it is necessary for some ownership interest to be acquired in the Proprietor so that the rights of the Superannuation Fund extend to all of the assets and all of the activities of the Proprietor.	The ATO accepts that for some types of investments an ownership interest in the entity will be acquired. However the ATO does not accept that this is a necessary requirement for it to be established that an SMSFR holds an investment in a related party or a related trust for subsection 71(1) of the *Superannuation Industry (Supervision) Act 1993* (SISA). As stated in paragraphs 17 and 87 of the ruling (paragraphs 17 and 84 of SMSFR 2008/D5) the ATO believes that it is the reliance on the related party or related trust for payment on the investment that is determinative of whether that investment is in the related party or related trust. *No change required*