

## Don't bank on it: SMSFs and trustees have to keep things separate

*By Keeli Cambourne, Deputy Editor SMSF Adviser and Matthew Burgess, Director, View Legal*

SMSF Trustees need to keep separate bank accounts for the fund and personal use said a leading legal adviser.

Matthew Burgess, Director of View Legal said holding only one bank account for the fund and the trustee is actually in breach of the ATO legislation.

"Often where an SMSF trustee owns all of the units in a unit trust, if only from a cost perspective, the decision will be made to have one bank account where all of the monies that would otherwise pass to the unit trust and then ultimately be routed back to the SMSF pass directly to the SMSF," he said.

However, Mr Burgess said, the ATO has confirmed in an interpretive decision (ID 2014/7) that it believes such an approach breaches the superannuation legislation.

"In particular, the Tax Office argues that the provisions of regulation 4.09A of the Superannuation (Industry) Supervision Regulations require that an SMSF must keep its money and the other assets of the fund separate from any money or assets that are, for example, held by a trustee personally," Mr Burgess said..

"Practically however, where the SMSF maintains the bank account, they have arguably not breached regulation 4.09A, rather it may be the trustees of the unit trust that have failed to segregate the funds of the unit trust."

He added, as unit trusts are not directly regulated by the superannuation laws, any breach of trust would have to be separately pursued, and where the trust is solely owned by the SMSF, it is unlikely that anyone would fact seek to complain.

"Whether the Tax Office is likely to adopt such a pragmatic approach appears somewhat unlikely in the context of the interpretive decision mentioned above," he noted.

