

I LOVE REAL ESTATE PROFESSIONAL SERIES

# THE SMSF & ADVANCED STRUCTURE ONLINE TRAINING EVENT 2020



*How Smart, Savvy Real Estate Investors Use SMSF And  
Advanced Asset Protection And Structure Techniques  
To Maximise Their Portfolios*



2. **ADVANCED  
SELF-MANAGED  
SUPERANNUATION**  
– CLINT DUCAT



## Advanced Self-Managed Superannuation



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## What did we cover last week?

- What you need to know when contemplating setting up a SMSF
- The SMSF set-up process
- What can a SMSF invest in
- Importance of Asset Allocation and Diversification
- Taxation for Superannuation
- Options to invest in property through a SMSF
- Limited Recourse Borrowing Arrangements
- Mitigating risk and reducing leverage by retirement



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2 MAIN TYPES OF **SUPER**

**CONCESSIONAL**  
*(Before Tax)*

**NON-CONCESSIONAL**  
*(After Tax)*

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## Non-Concessional Contributions (NCC)

Personal contributions where no tax deduction is claimed for (including lump sum cash contributions, in specie asset contributions)

- If more than 1 Fund, all amounts added together and counted towards non concessional cap
- Annual cap is \$100,000 per member with a 2 year bring forward, therefore \$300,000 at any one point in time
- NCC only available to members with balances under \$1.6mil)



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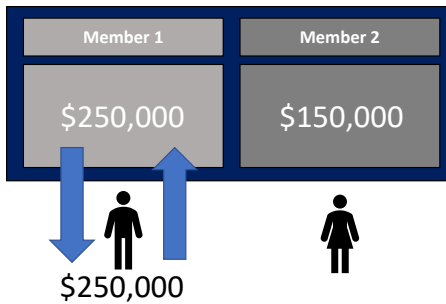
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## Re-Contribution Strategy



Used to convert taxable component to non-taxable component (potentially significant tax savings to adult beneficiaries).

Must meet a full condition of release

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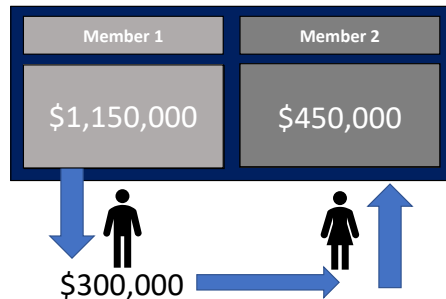
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## Spousal Re-Contribution Strategy



Also used to rebalance superannuation balances between spouses

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## Downsizing contributions into super

- From 1<sup>st</sup> July 2018, if you are 65 years old or older and meet the eligibility requirements, you may be able to choose to make a downsizer contribution into your superannuation of up to \$300,000 from the proceeds of selling your home.
- The downsizer contribution is not a non-concessional contribution.
- It can also still be made if the member's total super balance is already greater than the transfer balance cap (\$1.6m).
- Must be from proceeds of the sale of your PPR (that you have owned for 10yrs or more) and made within 90 days of receiving the proceeds.



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## Excess Contributions

### Excess - Concessional

- Any excess now included in assessable income, taxed at marginal tax rates plus an excess contributions charge
- If left excess will count towards your non concessional cap
- Can release 85% of the excess, with 15% tax offset



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## Excess Contributions

### Excess - Non-Concessional

- Can elect to release, with no financial penalty
- Earnings linked to the excess until refunded included in individual's assessable income
- If left in the fund, then excess contributions will be taxed at the highest marginal tax rate plus Medicare levy (47%)



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## Are there any other ways to get money into superannuation?

### Sale of a Small Business Active Asset CGT Exemptions

- Retirement exemption – Lifetime Limit \$500,000
- 15-year asset exemption - \$1,515,000 (2020 FY)

What is a Small Business Active Asset?

This can either be proceeds from the sale of the business itself or a commercial property used in the business.

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## In-Specie Contribution

In-specie contributions are contributions to your fund in the form of an asset other than money.

Generally you must not intentionally acquire assets from related parties of your fund (including in specie contributions).

There are some significant exceptions

to this rule, including:

- listed shares and securities
- business real property



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## Business Real Property

### What does business real property mean?

The definition of BRP for superannuation purposes includes any freehold or leasehold interest in real property where the property is used wholly and exclusively in one or more businesses.



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## Business Real property In-Specie Contribution

An in-specie contribution changes the legal ownership of the asset from the individual contributing to the SMSF.

Therefore in the case of Business Real Property, you may have stamp duty payable by the Fund depending on the asset (and state that you are in) and capital gains tax may be payable by the contributor (as this is a disposal of the asset for CGT purposes).

State	Section of the State Duties Act	Details
NSW	Section 62A	\$500 concessional flat rate
VIC	Section 41	Exemption
WA	Section 122	Nominal duty of \$20
QLD	Stamp Duties Act 2001 (QLD)	No exemption
SA	Stamp Duties Act 1923 (SA)	No exemption

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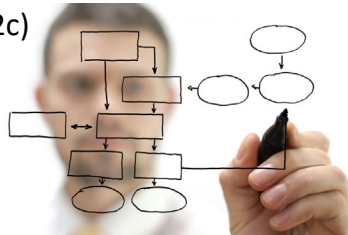
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## Using Unit Trusts to structure property ownership

- Related Party Unit Trust (13.22c)
  - \*Ungeared
- Unrelated Party Unit Trust
  - \*Geared



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## SMSFs and Property Development

Can an SMSF undertake a property development project?

There is no specific prohibition on a SMSF conducting a business, but the activities of the project may involve a breach of SISA (Superannuation Investments Supervision Act) requirements.

In conducting the project, the SMSF must:

- Comply with the **sole purpose test**
- Enter **arms length dealings**
- Comply with the SMSF's **investment strategy and trust deed**



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## Related Party (Ung geared) Regulated 13.22c Unit Trust

An SMSF can acquire units in an ungeared unit trust to acquire direct property.

- ✓ Can include other unit holders (including related parties)
- ✓ Can acquire Commercial or Residential Property
- ✓ Can manufacture growth:
  - Renovation | Subdivision | Construction

Needs to adhere to the strict requirements outlined in SISR 13.22C

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## SISR 13.22c Key Requirements

- ✓ Fund must have < 5 Members; and
- ✓ Asset cannot be leased to a related party unless business real property (BRP); and
- ✓ If BRP, then lease agreement must be legally binding with a related party; and
- ✓ The Units can be transferred across to the SMSF over time, even if it holds residential property (must be at market rate)
- ✗ **CAN NOT** Borrow (watch out for accidental borrowings)
- ✗ **CAN NOT** invest in another entity including purchasing shares
- ✗ **CAN NOT** loan to another entity, unless it's a deposit with an ADI

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## SMSF's and Property Development using a Unrelated Party Unit Trust



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## Unrelated Party (Geared) Unit Trust

- This is where no member or related parties control the trust
  - - i.e. own > 50% of the Units
- Can have more than 2 parties and can comprise of SMSF, Company, Discretionary Trust and Individual ownership
- Generally treated as a normal Unit Trust for borrowing but you must be dealing at a Commercial Level
- Considerations
  - Make sure your funds trust deed/investment strategy allow it
  - All unit subscriptions must always be at market value

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## Unrelated Party (Geared) Unit Trust

To make it very clear, the unit trust will be unrelated if the fund trustee and its associates do not:

- exercise Sufficient Influence; or
- have a fixed entitlement to **more than** 50% of the income and capital of the unit trust; or
- have the power to remove or appoint the trustee for the unit trust (Chairperson not able to have a casting vote)
- So each SMSF or related group of investors can own up to 50% in combination between them and still maintain an unrelated trust and meet the above requirements.

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## Unrelated Party Unit Trust Scenario

3 unrelated investors/business partners are coming together to complete a development of 10 Townhouses and need \$1.2 mil of funds and a \$2.8 mil in development finance to complete the project.

- Investor 1 has \$400k in his family trust
- Investor 2 has borrowed \$400k from equity
- Investor 3 has \$200k cash and a \$500k SMSF

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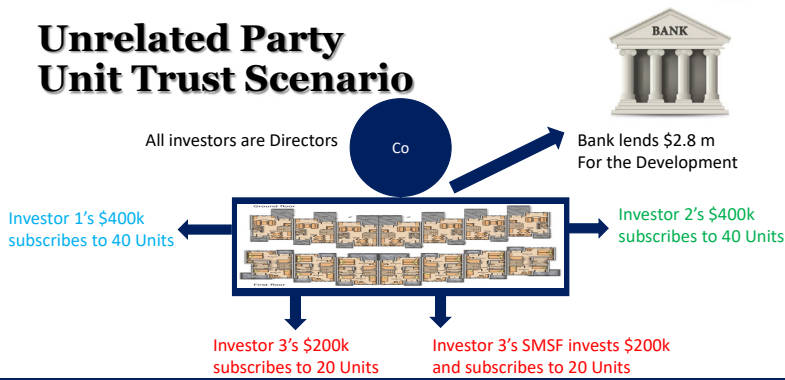
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## Unrelated Party Unit Trust Scenario



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## SMSF Annual Compliance

As a trustee you have a number of administrative obligations. Including, but not limited to:

- Appoint an SMSF auditor
- Value the funds assets annually
- Lodge SMSF annual returns
- Accounting records and minutes
- Notify the ATO of changes



NOTE: ATO take activities in a SMSF VERY seriously and actively monitor for breaches

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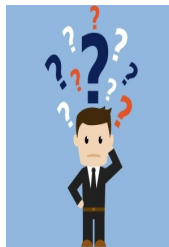
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## Existing SMSF's Housekeeping

- Are your reporting requirements up to date?
- When was your **SMSF's Trust Deed** last updated? Does it take into account all the recent super reforms?
- Have you got a **Special Purpose Trustee Company** acting as Trustee?
- Is your **Investment Strategy** current? Does it need updating?
- Have you got a valid **Death Benefit Nomination**?



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## Common Contraventions

The ATO actively monitors SMSFs and takes breaches seriously. Examples of activity they often find includes, but is not limited to:

- Providing benefits to members prior to meeting a condition of release
- Related party transactions entered into on non-commercial terms
- Limited recourse borrowing arrangements that are not structured correctly
- Funds not paying minimum pension payment
- Timely lodgement of SMSF annual returns

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## ATO's Regulatory Powers

- Rectification directions
- Education directions
- Administrative penalties will be imposed for specific contraventions - \$900 to \$10,800



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## ATO's power to apply fines

Some examples of penalties include:

- failure to properly prepare financial statements \$2,100
- failure to keep SMSF money separate \$4,200
- provision of loan to member or relative of members \$12,600
- failure to keep proper trustee minutes and records \$2,100
- Contravention of the in-house asset rules \$12,600

\* The trustees or directors of corporate trustees will be personally liable for the above penalties

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## Trustee Responsibilities

### SMSF Trustee Education

We encourage new and existing Trustee's about SMSFs and the environment they operate in.

The Self-Managed Superannuation Fund Trustee Education Program, is a free program designed to educate trustees of SMSFs to understand their role and responsibilities.

<http://www.smsftrustee.com/cpa/htm/home.asp>



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## Retirement and Pensions



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## When can you get access to your superannuation?

Must meet a Condition of release.

Common ones include:

- Reach 65
- Transition to Retirement Income Stream
- Retirement once reached Preservation Age
- Death



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## Minimum Pension Payments

Once a pension has begun, the minimum percentage must be taken otherwise the SMSF will lose its concessional tax status and will be taxed at 45%



Age	Minimum Pension (% of account balance)
Under 65	4%
65 – 74	5%
75 – 79	6%
80 - 84	7%
85 – 89	9%
90 – 94	11%
Over 95	14%

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## Tax on 'Income Stream' withdrawals

- If retired under 60 (and of preservation age), tax-free component is tax free
- Transition to Retirement Income Stream (TRIS)
  - under age 60 taxed at Individuals Tax Rate
  - after 60, tax free
- Income from Superannuation assets supporting a TRIS are taxed at the 15% Accumulation tax rate.

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## Tax on 'Lump Sum' withdrawals

- Tax free if fully retired after preservation age
- Tax free after 65
- Tax free on death, if paid to a financial dependent
- Tax free component always tax free
- Members with account balances above \$1.6m may pay some CGT on sale of capital assets

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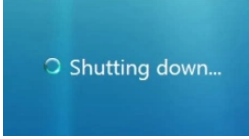
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## Winding up your SMSF

- Complete any requirement that the deed specifies about winding up the fund
- Assets will need to be sold or transferred
- Cash either rolled over to a complying superannuation fund or paid to the member if they meet a condition of release (leave sufficient amount to pay final tax or expenses if required)
- Appoint an SMSF auditor to complete the final audit
- Final Tax Return Lodged with the ATO (with wind up details)
- Close Bank Account
- Deregister Trustee Company



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