






CARRYING ON A BUSINESS IN AN SMSF

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Bryce is recognised as one of Australia's leading SMSF lawyers. He has worked predominantly in the fields of tax and superannuation over the past 17 years and holds a Master of Laws from the University of Melbourne. Bryce is a regular seminar presenter on tax and SMSF topics and has published extensively in these areas. Bryce regularly presents for the major professional bodies including the SMSF Association, CPA Australia The Tax Institute, Chartered Accountants Australia and New Zealand and DBA Network. Bryce is regularly quoted and published in the Australian Financial Review, the Herald Sun, CCH and LexisNexis publications, and elsewhere in the financial press. Bryce wrote the book Complete Guide to SMSFs: Planning for Loss of Capacity and Death, published by CCH Wolters Kluwer. Bryce is on the editorial panel of LexisNexis' Australian Superannuation Law Bulletin. He is a Senior Fellow at the University of Melbourne's Law School, where he is the subject coordinator of Taxation of Superannuation. Bryce is a Specialist SMSF AdvisorSM as well as being a Chartered Tax Adviser.

Introductory case study



Recall this conference's case study:
William is 38, married to Catherine ...
... William is a shareholder, director ... in his own housing construction company ...

Q: What do you think William wants to do with his super?

Introductory case study



A: Presumably William **wants** the following:

- commence an SMSF
- buy real estate
- develop real estate
- 'flip' real estate
- enjoy concessional taxed profits
- (sit on beach, sip mai tai, reward adviser handsomely)

Q1: How many different methods are there to structure this?

Q2: Which method is the 'safest'?

Introductory case study



Method 1

- commence an SMSF
- SMSF buys real estate (from un-related party), pays with SMSF's own cash
- SMSF buys physical items (from un-related party), pays with SMSF's own cash
- SMSF engages related party for all services, pays with SMSF's own cash
- SMSF sells developed real estate
- SMSF enjoy concessional taxed profits
- What could go wrong?
 - **Possible issue 1:** Does this constitute the SMSF running a business (and isn't that illegal)?
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Can an SMSF run a business?



Can an SMSF run a business: *Scott (No 2)*



- People point to *Scott (No 2)* (1966) 16 ATD 333 as being the starting case on why SMSFs can't run businesses
- How accurate is this?
- Consider facts of *Scott (No 2)*:
 - Leslie Scott was a lawyer, who was also involved with real estate development
 - In 1958 Leslie Scott commenced what purported to be a superannuation fund
 - Fund members: Leslie, his wife and his parents-in-law
 - Fund received contributions of £5,500
 - Fund had significant related party dealings (acquiring real estate, borrowing), not necessarily on arm's length terms
 - Fund showed following income in its returns:

Can an SMSF run a business: *Scott (No 2)*



- FY1960 — £19,584
 - FY1961 — £28,442
 - FY1962 — £3,856
 - FY1963 — £4,667
- Income tax returns show all this as being exempt
- Commissioner commences inquiries
- Single judge of the HCA (Windeyer J) said:

It is obvious enough that Associated Provident Funds could not by investing in the ordinary way a capital of £5,500 provided by periodic contributions made over five years have in the same period accumulated £59,869 ...

The accumulations in the fund really represent profits made by dealings in land, mainly by subdividing land and selling it off in allotments

[Windeyer J described these activities as 'the business of dealing in land']

Can an SMSF run a business: *Scott (No 2)*



- So what was the conclusion?

The inference I draw from the evidence as a whole is that there never was in truth a superannuation fund established for the benefit of employees
- So actually, *Scott (No 2)* was about sham:

... if the scheme, including the deed, was intended to be a mere façade behind which activities might be carried on which were not to be really directed to the stated purposes but to other ends, then the words of the deed should be disregarded
- *Scott (No 2)* is very old — but is 'sham' still good law?
- Yes — consider the SMSF in *Millar* [2016] FCAFC 94

So old it refers to 'roneed' forms

Can an SMSF run a business: ATO's view



Q: According to the ATO, can an SMSF run a business?

A: As per <https://www.ato.gov.au/super/self-managed-super-funds/investing/carrying-on-a-business-in-an-smsf/>:

Self-managed super funds (SMSFs) are not prohibited from carrying on a business, but the business must be:

- * allowed under the trust deed*
- * operated for the sole purpose of providing retirement benefits for fund members.*

Q: What does this have in common with the following 'flash fiction' (allegedly written by Ernest Hemmingway)?

For sale: baby shoes, never worn

Can an SMSF run a business: ATO's view



A: They're both short stories!

However, are there longer stories available?

ATO also state on their website:

Sole purpose test

If the trustee of an SMSF carries on a business, we examine the activities closely to ensure the sole purpose test is not breached. Cases that attract our attention include those where:

- * the trustee employs a family member (we look at things such as, the stated rationale for employing the family member and the salary or wages paid)*
- * the 'business' is an activity commonly carried out as a hobby or pastime*
- * the business carried on by the fund has links to associated trading entities*
- * there are indications the fund's business assets are available for the private use and benefit of the trustee or related parties.*

Can an SMSF run a business: ATO's view



ATO also go on to state:

Other regulatory provisions

... Your investment strategy ...

Restrictions on investments – all investments by your SMSF must be made on a commercial 'arm's length' basis ...

... the business activities must not involve:

selling an ... asset for less than its market value ... or ... purchasing an asset for greater than its market value ...

... purchasing assets ... from a member or other related party ...

... drawing on a bank overdraft ... could contravene the borrowing restrictions

... placing a mortgage on an asset would contravene the ... charge-over assets restrictions.

... employing a member ... at ... higher than an arm's length rate could contravene ... arm's length provisions.

Collectables and personal use assets ... can't be displayed at the business premises

Can an SMSF run a business: ATO's view



So, yes, an SMSF can run a business, and the ATO agree so long as you:

- dot the i's
- cross the t's
- ... and ...
- also dot the lower case j's

Is the ATO list from the previous slides a list of absolutely positively exhaustively definitively without exception everything you need to think about?

But do you still want proof that it can be possible for an SMSF to run a business?

Where else can we look?

The tax provisions!

Can an SMSF run a business: tax provisions



Consider the following:

- 19/2/20: SMSF buys real estate for \$500k with intention that real estate is trading stock
- 19/2/21: SMSF sells real estate for \$900k
- What are the tax consequences?

Hint:
Remember TD 2002/10

- Options:
 - **Option 1:** capital account and probably tax of **\$40k** [ie, 10% x (\$900k – \$500k)]
 - **Option 2:** capital account and probably tax of **\$60k** [ie, 15% x (\$900k – \$500k)]
 - **Option 3:** revenue account and probably tax of **\$60k** [ie, 15% x (\$900k – \$500k)]
 - **Option 4:** non-complying! Probably tax of **\$180k** [ie, 45% x (\$900k – \$500k)]

Can an SMSF run a business: tax provisions



Remember ITAA 1997 s 295-85

Therefore, surely, a **COMPLYING** superannuation fund can run a business, because the tax law provides for the relevant tax outcomes

It was changed from 2011. Reasoning is in the EM to the Tax Laws Amendment (2012 Measures No. 1) Bill 2012 (Cth):

... during the recent economic downturn, a number of superannuation entities sought, for the first time, to treat some of their shares as trading stock ...
... this practice creates potential uncertainty regarding the appropriate tax treatment of gains and losses made from the sale of shares owned by complying superannuation entities
This has created the need to amend the law to reduce the present ambiguity around the application of the trading stock provisions ...

NEW LAW Complying superannuation entities cannot account for gains and losses on certain assets (primarily shares, units in a unit trust and **land**) on revenue account using the trading stock exception.

Can an SMSF run a business: conclusion



Mini-conclusion: yes, an SMSF trustee can run a business

But remember:

- Deed must positively empower trustee to do this
- Lots of details to get right ... expect ATO scrutiny

Unit trusts



Unit trusts: introductory case study revisited



Recall the next possible issue (issue 2) from the introductory case study:

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How might a unit trust seek to overcome this?

Unit trusts: introductory case study revisited

Unit trust then acquires real estate, develops, sells, distributes profits

Unit trust Cash: \$3.2M

I need \$3.2M to pay for everything

SMSF Cash: \$1.6M

Related family trust Cash: \$1.6M

What could go wrong?

Unit trusts: in-house assets

- Is the investment in the unit trust an in-house asset?
- Yes (SISA s 71(1)), unless an exception applies
- Key exception is if the unit trust is a div 13.3A unit trust
- One requirement in div 13.3A is that (SISR reg 13.22D(1)):

If regulation ... 13.22C applies to an asset, that regulation ceases to apply to the asset if any of the following events happens: ... (d) ... a trustee of the unit trust, conducts a business;
- So, do the activities of the trustee of unit trust constitute a business?

Most people call this a reg 13.22C unit trust — why is '13.22C' misleading?

Unit trusts: What is a business?

- Is it notoriously difficult to know where a business starts and stops
- LexisNexis Encyclopaedic Australian Legal Dictionary says:

Taxation and revenue
 ... includes any profession, trade, employment, vocation, or calling, but not occupation as an employee...

Whether a particular activity constitutes a business for taxation purposes is a question of fact and degree and no one factor is decisive in determining whether a business exists...

However, the courts have identified a number of characteristics that indicate the existence of a business, such as profit-making, repetition, regularity, organisation, and the use of a system...

Conversely, a business may exist even if the immediate purpose of the enterprise is not to make a profit, or if it involves an isolated transaction (under the 'Myer principle' ...), and even where the activities are carried out in addition to a taxpayer's profession or other business...

Unit trusts: What is a business? What ATO say



ATO list factors in TR 97/11 [13]:

- * ... significant commercial purpose or character ...
- * ... more than just an intention to engage in business ...
- * ... purpose of profit as well as a prospect of profit ...
- * ... repetition and regularity of the activity ...
- * whether ... same kind and carried on in a similar manner to that of the ordinary trade ...
- * whether ... planned, organised and carried on in a businesslike manner ... directed at making a profit
- * the size, scale and permanency of the activity ...
- * whether the activity is better described as a hobby, a form of recreation or a sporting activity...

How do these factors weigh for a unit trust that:
 (1) is 'brand new' and a 'clean skin'
 (2) will purchase real estate but engage another party to build
 (3) sells via a real estate agent and
 (4) distributes profits and then winds itself up?

How do practitioners apply these factors to try to ensure that an entity is not running a business? (And how success are such attempts?)

JR Walker



- Consider *JR Walker* (1985) 16 ATR 331:
 - ~1979: Mr Walker (real estate agent) buys one goat (Mango Citrine)
 - ~1980: Mango Citrine has two children:
 - Treesbound Dian and
 - Geraldine
 - ~1981: Mango Citrine and Treesbound Dian die
 - ~1982: Geraldine has two children
 - ~1984: Mr Walker sells Geraldine and her two children
 - Mr Walker ceases the goat business, but claims losses from his goat 'business'
 - ATO said that this was NOT a business
 - However, the court held it **WAS** a business, applying the following from an earlier case:

A person may conduct a business albeit of a limited nature the activities of which business are preparatory to or in preparation for the conduct of another business on a larger scale

Unit trusts: When do real estate activities constitutes businesses?



- Few SMSFs wish to get into the goat business
 - But many SMSFs wish to be involved with real estate activities
 - When do real estate activities constitute a business?
- What is the most relevant case?



Unit trusts: WWXY and Rosgoe



- Consider WWXY [2015] AAT 130, and appeal (Rosgoe [2015] FCA 1231)
- Mar 2006 : taxpayer (Rosgoe Pty Ltd ATF a family trust) acquires one property in Queensland
- The directors have a history of property development through other entities
- Aug 2007: taxpayer acquires second property, which adjoins the first
- Taxpayer acquired the real estate with intention to develop and sell as part of a joint venture (The real estate has a book value of ~\$3.07M)
- FY2010: Joint venture 'came to nothing'
- Taxpayer decided to rent out the two properties in its unimproved stated
- ~2013 taxpayer engaged a related party to obtain development approval for the real estate
- Sep 2013: related party obtains DA for real estate (approval for 10 storey development)
- The taxpayer engages real estate agents to sell the real estate
- Dec 2013: real estate sold at a profit
- Taxpayer asked for a ruling to confirm sale was the mere realisation of a capital asset
- ATO said it was beyond mere realisation of a capital asset: Taxpayer appealed to AAT

Unit trusts: WWXY and Rosgoe



- What did AAT find?
... I do not accept the taxpayer's claim that it was not engaged in a business at all during the relevant period
Moreover I am satisfied the business described in the ruling ... contemplates a business that is broader than developing the property in a particular way with the participation of a particular joint venturer
... the taxpayer contemplated the property being resold at a profit after obtaining development approval, even if that was not the preferred option
... the sale occurred in the ordinary course of the taxpayer's business

→ This is a **BIG** deal

Unit trusts: WWXY and Rosgoe



- **HUGE** implications! The AAT might find that a real estate development business exists even if the entity:
 - was just set up
 - has never engaged in any real estate development activities before
 - did not intend on engaging in any real estate development activities itself (eg, if a joint venturer will do the literal developing)
 - did not intend on selling any real estate itself (eg, a real estate agent will sell)
 - does not obtain any DA itself (eg, if another entity obtains the DA for the taxpayer)
 - doesn't ultimately physically improve the real estate (eg, it all gets too hard, and the entity simply passively leases the real estate and then sells)

Is this last dot point going too far?

Unit trusts: WWXY and Rosgoe



Important side implication: if asking for a private ruling, get your facts perfect in the initial application

- The taxpayer appealed: *Rosgoe* [2015] FCA 1231
- The FCA overruled the AAT, for two reasons:

Reason 1:

- The ATO in their ruling had not identified as part of the arrangement that the taxpayer was carrying on a business
- Whether an entity is running a business is a question of fact
- In appealing a ruling, the AAT cannot draw new facts

Reason 2:

- The sale was the mere realisation of a capital asset
- More specifically, Logan J of the FCA held:

Unit trusts: WWXY and Rosgoe



On the Commissioner's description of the facts which constituted the arrangement, the present was a case where property was acquired not for sale at a profit but rather for the carrying out of a profit-making scheme which later came to be abandoned

When, later, the property was sold, the profit here arose not from the purchase but from the sale and because the sale was not part of the profit-making scheme the profit did not arise 'from the carrying on or carrying out' of that scheme

Indeed the profit did not arise until the scheme had been abandoned

At first blush, this sounds great for SMSFs

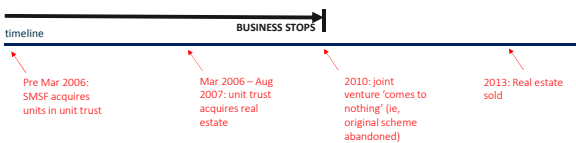
However, on proper consideration, why is this still bad news for SMSFs?

Assume that Rosgoe was a unit trust that wanted to be a div 13.3A (aka 13.22C) unit trust

Unit trusts: WWXY and Rosgoe



- Why Rosgoe is still bad news for SMSFs (assuming that Rosgoe's facts are twisted to make it an SMSF/unit trust case):
- Based on Logan J's comments on the last slide, when did unit trust stop running a business?
- However, under SISR reg 13.22D, for what period of time can the unit trust carry on a business yet still be excepted from being an in-house asset?



Unit trusts: WWXY and Rosgoe



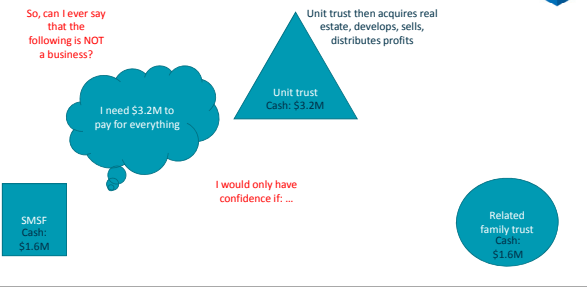
- What sort of things do people do to the Rosgoe facts to try to ensure that Rosgoe was never running a business?
- Things practitioners do include:
 - Say that the unit trust is a passive joint venturer (But so was Rosgoe)
 - Ensure that the unit trust is a 'clean skin' that was just set up (But so was Rosgoe)
 - Say that Rosgoe did not intend to run a business (But it intended to make profit, and certainly didn't intend to engage in a hobby)
- Remember the role of CA s 251A
- However, regardless of how 'pretty' the paperwork might be, what should we remember from *Scott (No 2)* and *Millar*?

What does this provide?

Unit trusts: introductory case study revisited



So, can I ever say that the following is NOT a business?



Unit trusts: introductory case study revisited



- I would only have confidence that the unit trust is not carrying on a business if:
 - positive ATO input received (private ruling would be ideal, but don't hold your breath)
 - positive input from a QC/silk

How often have you seen either successfully obtained in this circumstance?

Unit trusts: introductory case study revisited



- But what if the facts were fundamentally different?
- What if the unit trust was going to:
 - only sell some of the developed real estate and
 - retain the balance of the real estate to generate rental income?
- Seems unlikely to occur with **this** structure (why?)
- More likely to occur with **this** structure



Unit trusts: 50-50 not related trusts



- If this structure is implemented, can the unit trust run a business?
- Yes
- Anything to watch out for?
 - Never expressly contemplated by ATO in detail (cf NTLG super-sub committee 3/2013)
 - Distributions will be on revenue account (cf if SMSF engaged in activities directly)
 - Risk of distributions constituting non-arm's length income, for example:
 - Will SMSF members wish to perform any services for free for the unit trust (if so, NALI risk)?
 - Will SMSF members provide personal guarantees for the unit trust's lender (if so, NALI risk)?



Unit trusts: conclusion



Mini-conclusion: I'm very reluctant for an SMSF to invest in a related trust if the related trust engages in real estate development

Why? Because I think there's a real risk that the related trust is carrying on a business (and therefore is an in-house asset: cf SISR div 13.3A)

If your client really wants to pursue this, consider ATO or QC/silk input first (but don't hold breath)

Acquiring physical materials



Acquiring physical materials: intro case study revisited



Recall the next possible issue (issue 3) from the introductory case study:

Method 1

- commence an SMSF
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Acquiring physical materials



- Why is it an issue to acquire physical materials from related parties?
- SISA s 66I
- ATO discuss in some detail in SMSFR 2010/1
- What is the simple solution? SMSF acquires:
 - physical materials directly from unrelated parties
 - labour only from related parties
- Why might SMSF be resistant to doing this?
- Trade discounts!
- I can think of three key ways to address — what are they?
 - **Method 1:** Say to client 'too bad — you wanna howl with the big dogs?*' You gotta learn to say woof!†

* 'Howl with the big dogs' constitutes entering the heavily regulated environment of the SMSF, presumably with the subjective intention of obtaining significant tax benefits

† 'Say woof' means not necessarily being able to obtain every discount if an SMSF were not used

Acquiring physical materials



- **Method 2:** building contract with related party says that any materials that related party acquires are as agent for SMSF
 - Q: Why do clients (eg, builders) tend to think this will be easy and preferred?
 - A: They think they simply get a document, and then its 'business as usual', maybe with one or two adjustment payments at the end
 - Worse still, they might think this method effectively allows borrowing (ie, the related party builder pays for physical materials from own pocket, and the SMSF doesn't pay the related party builder until everything is sold and fully settled)
 - Why is this wrong?
 - Consider ATO NTLG super sub-committee minutes from Dec 2011:
 - ... where a related party only acts as an agent, arranging for the acquisition of building materials on behalf of the SMSF trustee from an unrelated vendor, and the related party at no times holds legal title to the building materials, the SMSF trustees have acquired the materials from that vendor, not the related party
- However, yet again, there is a longer story
- Therefore, section 66 of SISA would not apply to the acquisitions.

Acquiring physical materials



- **Method 2:** That sounds like good news, but ATO also state:
 - *If the related party pays for building materials and invoices the SMSF either progressively (that is, at regular intervals) or at the end of the project ... this might be indicative of the purchase of the materials by the related party in their own right and on-sale to the SMSF trustee rather than a purchase by the SMSF trustee through the related party as agent*
 - When should an SMSF be reimbursing a related party?
 - ATO have suggested an answer (albeit in a different regulatory context)
 - When do the ATO suggest an SMSF should reimburse a related party?
 - **Option 1:** immediately
 - **Option 2:** as soon as possible
 - **Option 3:** as soon as practicable
 - **Option 4:** within 1 month
 - **Option 5:** before lodging that year's statutory annual return
- Hint:
See SMSFR 2009/2 [16]

Acquiring physical materials



- **Method 3:** (also considered by ATO in NTLG super sub-committee Dec 2011):
 - Bare trust opened in related party builder's name
 - SMSF puts all the money into this bank account
 - Related party builder uses this bank account exclusively to buy physical materials
- ATO also indicated that this could work

Acquiring physical materials



Mini-conclusion: the most obviously compliant way to deal with related party builders is if:

- the SMSF acquires physical materials directly from third party suppliers and
- the SMSF acquires only labour from related parties

Unfortunately, you can expect resistance from clients!

Trustee services



Trustee services: intro case study revisited



Recall the next possible issue (issue 4) from the introductory case study:

Method 1

- commence an SMSF
- SMSF buys real estate (from un-related party), pays with SMSF's own cash
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- SMSF engages related party for all services, pays with SMSF's own cash
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Trustee services: new NALI provisions



Remember that from 1 July 2018, NALI can arise even if (ITAA 1997 s 295-550(1)(c)):
... in gaining or producing the income, the entity does not incur a loss, outgoing or expenditure, that the entity might have been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme...

But this effectively doesn't always apply:

- EM: *The requirement that parties not be dealing with each other at arm's length means that the non-arm's length income rules do not apply in respect of a superannuation entity's arrangements that are purely internal.*
- ATO (LCR 2019/D3): *The non-arm's length expenditure provisions are not intended to apply to services provided by a trustee (or a director of a corporate trustee) of a complying superannuation fund in their capacity as trustee (or director of a corporate trustee)*

Trustee services: new NALI provisions



Q: So, should a director/trustee be remunerated?

A: From a NALI point of view, it all depends on whether performing their activities in their:

- personal capacity or
- capacity as a trustee

How can you tell in which capacity someone acts?

Trustee services: new NALI provisions



ATO state (albeit, it's only in draft form [LCR 2019/D3]):

Factors that indicate that the individual is performing their activities in their individual capacity and not in their capacity as a trustee (or a director of a corporate trustee) include:

- *The individual charges the complying superannuation fund for performing the services. However, the individual can still be acting in their individual capacity if they do not charge the fund for performing the services.*
- *The individual uses the equipment and other assets of their business, or used in their profession or employment.*
- *The individual performs the activities pursuant to a licence and/or qualification relating to their business, or their profession or employment.*
- *The activity is covered by an insurance policy relating to their business, or their profession or employment (for example, indemnity insurance).*

Trustee services: remunerating trustees



However, what is the real mischief?

Too much money being pumped into the concessionally taxed SMSF environment!
If there's an ATO review of your client's SMSF, surely you want to be able to say:

The SMSF is in the exact same position as it would be if all work had been done by a non-related party

Therefore, generally, err on side of wanting to remunerate trustee/director for their work

Trustee services: remunerating trustees

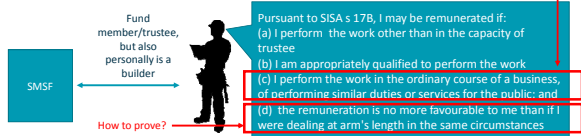


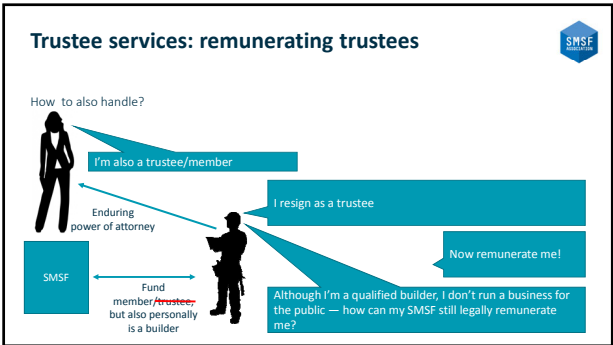
- What are potential dangers of remunerating trustees/directors?
 - **Potential danger 1:** Could fail the definition of SMSF (SISA s 17A: definition of SMSF)
 - **Potential danger 2:** Could contravene SISA s 65 (prohibition on provision of financial assistance) and/or SISA s 62 (sole purpose test)
 - **Potential danger 3:** Could contravene SISR reg 6.17 (no benefit payments except in accordance with SISR pt 6: that is, a form of early release)
- Nevertheless, remunerating trustee/directors (ie, ensure profits in SMSFs are entirely consistent with arm's length dealing) is lesser of two evils
- (Why do I consider NALI to be the greater of two evils?)
- How to deal with these potential dangers?

Trustee services: remunerating trustees



- Q: If the related party is a corporation (of which SMSF trustees are directors) does remunerating the related party equate to remunerating the SMSF trustees?
- A: No (see *Lee's Air Farming* [1961] AC 12 and *Salomon* [1897] A C 22)
- However, what if related party is not a corporation, but an individual, such as:
- When can builder be remunerated in this circumstance?





Trustee services: conclusion

Mini-conclusion: less of two evils is to remunerate trustee/director BUT it is vital that:

- you can prove all remuneration is entirely consistent with an arm's length dealing and
- you are remunerating in a way that does not contravene the law

Putting it all together

Putting it all together



- I think following is 'safest' way for an SMSF to engage in a real estate development business:
- buys real estate (from un-related party), pays with SMSF's own cash
 - buys physical items (from un-related party), pays with SMSF's own cash
 - engages related party for all services, pays with SMSF's own cash and retains evidence that all services/labour acquired at arm's length
 - sells developed real estate
 - no borrowings
 - no unit trusts
 - no joint ventures
 - no free work from related parties (related parties must only provide labour on arm's length terms)
 - a thorough investment strategy exists

Putting it all together



I acknowledge some won't like my 'safest' method, and might view it as cumbersome and impractical.
Fine — but to proceed otherwise involves **RISK** and clients should understand that risk before assuming that risk

But wait ... there's still more!



But wait ... there's still more!



I also want to mention:

- Joint ventures
- Share trading
- Crypto currency trading
- Additional ATO materials

But wait ... there's still more: joint ventures

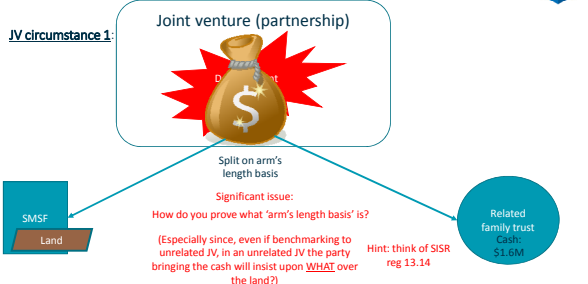


When people say joint ventures, they are typically referring to one of two circumstances:
JV circumstance 1:

But wait ... there's still more: joint ventures



JV circumstance 1:



But wait ... there's still more: joint ventures

JV circumstance 2:

Joint venture (partnership)

Split on arm's length basis

Significant issue:
How do you prove what 'arm's length basis' is?
(Especially since, even if benchmarking to unrelated JV, in an unrelated JV the party bringing the cash will insist upon WHAT over the land?)

Even MORE significant issue:
Technically, while the JV is being carried out, what asset does the SMSF acquire?
Does the SMSF acquire equitable rights from the land owner (ie, from a related party)?
Unless you can point to opinion from ATO/property barrister saying otherwise, I believe it's a yes (ie, s 66 contravention)

Hint: think of SISA s 66

SMSF Cash: \$1.6M

But wait ... there's still more: JV conclusion

So although people talk JVs and SMSFs fairly flippantly, on proper consideration I think they are deeply problematic and best avoided

But wait ... there's still more: shares/crypto

I've been focusing on real estate businesses

What about:

- share trading businesses and
- crypto currency businesses?

Theoretically, they are both possible (and typically taxed on capital account), but watch out for:

- risk to you as the adviser because it's often more akin to speculation (see paper)
- 'business expenses' and ensuring costs and paid appropriately from different sources (especially if doing things like bitcoin mining)

But wait ... there's still more!



The first two ATO case studies here are interesting (time permitting I will discuss these):
<https://www.ato.gov.au/General/Gen/Super-scheme-Smart-Individuals-information-pack/>

Conclusion!



SMSF can run a business
But it's not quick/easy/simple/unsophisticated thing
High chance of implementation mistakes
High change of ATO scrutiny

Following is 'safest' way for an SMSF to engage in a real estate development business:

- buys real estate (from un-related party), **pays with SMSF's own cash**
- buys physical items (from un-related party), **pays with SMSF's own cash**
- engages related party for all services, pays with SMSF's own cash and **retains evidence that all services/labour acquired at arm's length** (ideally even get that evidence independently reviewed and tested before and during the development)
- no borrowings
- no unit trusts
- no joint ventures
- no free work from related parties

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