

# Investing together

Running a business together makes SMSF tricky

DIY  
SUPER

Monica Rule



It is a common misconception among self-managed superannuation fund professionals that the law does not allow people who operate a business together to invest together unless their combined investment represents no more than 50 per cent of shares in a company or units in a unit trust.

This view is correct for people who operate a "partnership" business together.

However, where the business is operated under a company structure, it is the size of their shareholding that determines whether they can invest together.

Under the superannuation law, where a member of an SMSF operates a company with other people who are not related to them by blood or by marriage, and each of the directors of the company holds no more than 50 per cent of the shares of the company, the company is not a Part 8 Associate of each of the directors and the directors are also not Part 8 Associates of each other.

The misconception is caused by the wording in the superannuation law that describes who is a Part 8 Associate of a member of an SMSF.

Under the superannuation law, a partner of a member of an SMSF or a partnership in which a member of an SMSF is a partner; or if a member of an SMSF is a partner of the company or a partnership in which the company is a partner, then due to the partnership relationship, the other individual or entity in the partnership would become a Part 8 associate of the member of an SMSF.



Associates: Peter Wright and Lang Hancock were business partners but could they have a joint SMSF?

This means people who operate a "partnership" business together would be treated as Part 8 associates of each other under the superannuation law.

It also means that if two people operate a joint bank account that derives bank interest, or invest in a property that derives rental income, then these people will become a Part 8 associate of each other. This is even if the two people are not related to each other by marriage or by blood.

This is because, the term "partnership" is defined in tax law as an association of persons (other than a company or a limited partnership) carrying on a business as partners or in receipt of ordinary income or statutory income jointly.

So, how does the tax law affect the superannuation law?

The revision of the in-house asset rules in the superannuation law was made with the passing of the Superannuation Legislation Amendment Bill (No. 4) 1999. The Government's policy objective was explained in the explanatory memorandum to the Bill.

The memorandum refers to partners in the sense that the taxation law considers the partner-

ship as taxpayers. Therefore the superannuation law's "view" of "partner" and "partnership" does not mean partner in the sense of a domestic partner or business partner but a partner of a partnership.

If you and two other people operate a business under a company structure, and provided all three of you are not in a partnership relationship with each other, then the three of you are not business partners under the superannuation law and therefore are not treated as Part 8 associates of each other.

Although the three of you are directors of the company where you operate a business together, you are not partners either of each other or of your company.

So, if you and the other directors of your company do not hold a controlling interest in the company (that is none of you hold more than 50 per cent of the shares in the company); and, provided you do not have a partnership relationship of any sort, then the superannuation law does allow you to pool your SMSFs' money and invest together.

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“THIS IS EVEN IF THE TWO PEOPLE ARE NOT RELATED TO EACH OTHER BY MARRIAGE OR BY BLOOD.”

## Talk about funeral if prepaying

Ben Harvey

One of Australia's leading funeral companies has urged people considering a prepaid funeral to talk about the decision with their families.

Luke Gregory, the general manager of the company which owns Purslowe, Chipper, Mareena Purslowe, Simplicity, Oakwood and Christian Funerals, said some people rushed into the decision.

"Protecting loved ones from the cost of a future funeral is a generous and caring act but don't let this desire lead you to purchase a product that isn't right for you," he said.

"If you are looking to get your affairs in order before retirement, or you are helping a parent to do so, then making an informed choice between a prepaid funeral or a funeral insurance policy — which requires ongoing payment of premiums lest you lose your cover — can make a significant difference in terms of what you will pay and the peace of mind you will gain."

Mr Gregory said prepaid funerals were increasingly believed to be a way of limiting the stress experienced by families upon someone's death.

"Capturing these choices and paying for them in advance, extends the financial protection you are providing and turns it into a real emotional benefit to loved ones," he said. "Gone will be any kind of stress about what kind of funeral you wanted and your legacy will be of your own design."

Knowing that an experienced funeral planner was at hand was a relief for grieving families.

"With a prepaid funeral, a nominated, trusted and local funeral director is only a phone call away," Mr Gregory said. "When the time (comes), there is no complicated claims process and your chosen funeral director will attend to all of the choices you have made."

Emotional benefits were as important as financial ones, he said. "A prepaid funeral's price is fixed at today's price, protecting you from inflation and, when fully paid, there is no more to worry about," he said. "For those living on, or about to live on, a fixed income, this can make a significant contribution to your peace of mind. There are also instalment plans available to help you achieve this financial protection."

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