



# BUSINESS RESTRUCTURING ANALYSIS REPORT

Medical Practice Restructure - Multi-Party Advisory

ABC Health Pty Ltd to XYZ Health Trust Structure

<b>Prepared for:</b>	Instructing Accountant (Mr Friend / Mr & Mrs Sample)
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<b>Classification:</b>	Confidential

## Client Brief / Query

### Personal Circumstances

Person	Age	Status	Dependants	Assets	Super
Mr Friend	44	Single, never married	None	1 residential property (no mortgage)	Friend Superfund (SMSF) - \$1,000,000
Mr Sample	55	Married (2nd marriage)	1 child from 1st marriage; 2 children from 2nd marriage with Mrs Sample	1 residential (fully paid); 1 investment property (mortgage \$500,000)	Retail super fund - \$550,000
Mrs Sample	50	Married (1st marriage)	2 children from marriage with Mr Sample	Joint assets with Mr Sample	Retail super fund - \$300,000

### Business Circumstances

Mr Friend and Mr Sample established ABC Health Pty Ltd 10 years ago as a medical practice. Annual turnover is \$5,000,000. After expenses, each director receives \$600,000 in salary/director fees. Mrs Sample works as a Nurse for the medical business with an annual gross income of \$90,000.

### Proposed Structure

#### Proposed Structure

1. Set up a Discretionary Family Trust for the Sample Family (Sample Family Trust) with a Corporate Trustee (Sample Pty Ltd).
2. Set up a Company for Mr Friend (Friend Pty Ltd).
3. Set up a Fixed Trust for the Medical Business with a Corporate Trustee (XYZ Health Pty Ltd ATF XYZ Health). Directors: Mr Friend & Mr Sample (equal shareholdings). Beneficiaries: Sample Family Trust 50%, Friend Pty Ltd 50%.
4. Sell the existing ABC Health Pty Ltd Medical business to XYZ Health Pty Ltd ATF XYZ Health.
5. Set up a Self Managed Super Fund (SMSF) for the Sample Family (Sample Family Superfund).
6. Buy a commercial property (\$1,500,000) jointly via Friend Superfund and Sample Family Superfund as tenants in common, leased back to XYZ Health.

### Discussion Topics

#### Topics for Discussion

1. Calculate Capital Gains from the sale: Cost base \$1M, book value \$5M, Capital Gain \$4M.
2. Calculate CGT using Small Business CGT Concessions: (a) 15-year exemption - does not apply; (b) 50% active asset reduction; (c) Retirement exemption (55-year rule); (d) CGT rollover if applicable.
3. Income Tax Benefits: (a) Fixed Trust distribution rules; (b) Discretionary Trust distribution rules (Mrs Sample earns \$90,000 as nurse).
4. Trust assets protection.
5. SMSF investment capabilities, commercial property leasing to related parties, kids joining SMSF for succession.

6. SMSF tenants in common structure, arm's length rules, SIS Act compliance.

# 1. Summary

## Overview

The proposed restructure from ABC Health Pty Ltd to a fixed unit trust (XYZ Health Trust) with downstream discretionary trust (Sample Family Trust) and corporate beneficiary (Friend Pty Ltd) is a sound structure for this two-party medical practice. It achieves: (a) income splitting for the Sample family through the discretionary trust; (b) clean 50/50 separation for the unrelated parties through fixed trust units; (c) asset protection by separating practice risk from accumulated wealth; and (d) SMSF-funded commercial premises leased back to the practice.

The sale of ABC Health's business to XYZ Health Trust triggers a \$4,000,000 capital gain. Using the Small Business CGT Concessions (Div 152 ITAA 1997): the 15-year exemption does not apply (held 10 years). The 50% active asset reduction reduces the gain to \$2,000,000. The retirement exemption eliminates a further \$1,000,000 (\$500,000 per CGT concession stakeholder). The remaining \$1,000,000 can be deferred via the Subdiv 152-E rollover for 2 years, or taxed at the company rate.

The two SMSFs purchasing commercial property as tenants in common (\$1.5M) is viable under s 66 SIS Act (business real property exception). Arm's length lease, independent valuation, and strict SIS Act compliance are essential. Total estimated tax on the restructure (after all concessions): \$0 to \$250,000 depending on whether the rollover is utilised for the remaining \$1M gain.

## 2. Facts & Assumptions

### Facts Provided

ABC Health Pty Ltd established 10 years ago by Mr Friend (50%) and Mr Sample (50%).

Annual turnover: \$5,000,000.

Each director receives \$600,000 salary/director fees after expenses.

Mrs Sample employed as nurse: \$90,000 gross annual salary.

Mr Friend: Single, 44 years old, residential property (no mortgage), SMSF (Friend Superfund) portfolio value \$1,000,000.

Mr Sample: 55 years old, married (2nd marriage), 1 child from 1st marriage, 2 children from 2nd marriage.

Mrs Sample: 50 years old, married (1st marriage), 2 children from marriage with Mr Sample.

Mr & Mrs Sample: Residential property (fully paid), investment property (mortgage \$500,000), retail super funds (\$550,000 Mr Sample; \$300,000 Mrs Sample).

Proposed cost base of the business: \$1,000,000. Proposed sale price/book value: \$5,000,000.

### Assumptions Made

Assumption [ASSUMED]	Affects
ABC Health Pty Ltd is not part of a consolidated group and has no other subsidiaries. [ASSUMED]	Determines whether Div 703-719 consolidated group rules need consideration.
The \$5M sale price represents the fair market value of the business (goodwill, equipment, patient records, brand). [ASSUMED]	If not at market value, Part IVA and related party pricing issues arise. Independent valuation essential.
Both Mr Friend and Mr Sample are each 50% shareholders and directors. No other shareholders. [ASSUMED]	Determines the CGT concession stakeholder test and the MNAV calculation.
The \$6M maximum net asset value (MNAV) test under s 152-15 is satisfied (total net CGT assets of all connected entities and affiliates < \$6M). [ASSUMED]	CRITICAL - if MNAV exceeds \$6M, Div 152 concessions are NOT available. Must be verified with actual asset valuations.
All business assets being sold (goodwill, equipment, patient lists) are active assets under s 152-40. [ASSUMED]	Active asset status is required for all four Div 152 concessions.
The investment property held by Mr & Mrs Sample has a market value of approximately \$800,000-\$1,000,000 (with \$500,000 mortgage). [ASSUMED]	Required for MNAV calculation. Net value (~\$300K-\$500K) is included.
Mr Friend's residential property is his main residence and fully exempt under Subdiv 118-B. [ASSUMED]	Main residence is excluded from MNAV test (s 152-20(1)).
The Sample Family residential property is the main residence and fully exempt. [ASSUMED]	Main residence excluded from MNAV test.
The children from Mr Sample's marriages are all over 18 except where stated otherwise. [ASSUMED]	Affects Division 6AA (minors' penalty tax) for trust distributions. Ages of children needed.
No existing Division 7A loans between the shareholders and ABC Health Pty Ltd. [ASSUMED]	Existing Div 7A issues must be resolved before the restructure.
Mrs Sample's \$90,000 salary is paid by ABC Health Pty Ltd (and will continue from XYZ Health). [ASSUMED]	Affects her marginal tax rate for trust distribution planning.

## Information Needed

Missing Information [NEEDED]	Impact if Different
Independent business valuation of ABC Health Pty Ltd. [NEEDED]	The \$5M sale price must be supportable. An independent valuation is essential for CGT, Part IVA, and stamp duty purposes.
Detailed asset register (equipment, fitout, IP) with original costs and adjustable values. [NEEDED]	Determines the split between goodwill (CGT asset) and depreciating assets (Div 40 balancing adjustments).
Full MNAV calculation including all connected entities and affiliates. [NEEDED]	If total net CGT assets exceed \$6M, Div 152 concessions are NOT available. This would fundamentally change the CGT outcome.
Ages of all children (from both marriages). [NEEDED]	Minors (under 18) cannot receive discretionary trust distributions at adult rates (Div 6AA).
Terms of the investment property mortgage (interest rate, lender). [NEEDED]	Relevant for deduction claims and any restructure of the property holding.
Whether a Personal Services Income (PSI) determination applies to the medical practice. [NEEDED]	If PSI rules apply (Div 85-87 ITAA 1997), income splitting through the trust may be limited.
Current SMSF trust deed for Friend Superfund - does it permit tenants in common investment? [NEEDED]	The investment strategy and trust deed must authorise the proposed property acquisition.

### 3. Related Areas & Cross-Over Analysis

Area	Relevance	Key Provision	Impact
CGT - Business Sale	Sale of business assets from ABC Health to XYZ Health Trust.	Div 104, Div 152 ITAA 1997	\$4M capital gain. SB CGT concessions critical to managing the tax liability.
CGT - SB Concessions	50% active asset reduction, retirement exemption, and rollover.	Subdiv 152-C, 152-D, 152-E	Can reduce \$4M gain to potentially \$0 taxable with combination of concessions.
Income Tax - Trusts	Fixed trust (50/50) and discretionary trust (Sample Family).	Div 6 ITAA 1936, s 97, s 99A	Fixed trust distributes per unit holdings. Discretionary trust enables income splitting.
Division 6AA	Minors' penalty tax on unearned income.	Div 6AA ITAA 1936	Children under 18 cannot receive trust distributions at adult rates.
PSI Rules	Medical practitioner income may be PSI.	Div 85-87 ITAA 1997	If PSI, income attributed back to the individual. Must pass a business test.
Division 7A	Company-trust distributions, loans, and UPEs.	Div 7A ITAA 1936	Friend Pty Ltd receiving fixed trust distributions - UPE risk if not paid.
GST	Sale of business, ongoing medical services, property lease.	s 38-325, Div 38-B GST Act	Medical services are GST-free (health). Business sale may qualify as going concern.
Stamp Duty (QLD)	Transfer of business assets including goodwill.	Duties Act 2001 (Qld)	Goodwill - no QLD duty on business assets/chattels. But check landholder duty if property involved.
Super / SMSF	New SMSF setup, property purchase, tenants in common.	SIS Act ss 17A, 62, 66, 67A, 109	Strict compliance required. BRP exception for related party lease. Arm's length terms.
Asset Protection	Separating practice risk from family wealth.	Bankruptcy Act ss 120, 121	Trust holds assets separate from operating risk. Corporate trustee limits liability.
Part IVA	Anti-avoidance - tax benefit from restructure.	s 177D ITAA 1936	Must demonstrate genuine commercial purposes beyond tax minimisation.
Section 100A	Reimbursement agreements for Sample Family Trust.	s 100A ITAA 1936	Trust distributions to Mrs Sample or children must be genuine.

## 4. Analysis

### 4.1 Assessment of Proposed Structure

The proposed structure is assessed below against the key objectives.

#### Structure Overview

##### **XYZ HEALTH PTY LTD ATF XYZ HEALTH (Fixed Unit Trust)**

Corporate Trustee: XYZ Health Pty Ltd

Directors: Mr Friend (50%), Mr Sample (50%)

Unit Holders: Sample Family Trust (50 units), Friend Pty Ltd (50 units)

Purpose: Operates the medical practice

##### **SAMPLE FAMILY TRUST (Discretionary Trust)**

Corporate Trustee: Sample Pty Ltd

Beneficiaries: Mr Sample, Mrs Sample, children, related entities

Receives: 50% of XYZ Health Trust income (fixed entitlement)

Distributes: Discretionary distributions to Sample family members

##### **FRIEND PTY LTD (Company)**

Director/Shareholder: Mr Friend (100%)

Receives: 50% of XYZ Health Trust income (fixed entitlement)

Pays: Franked dividends to Mr Friend or retains earnings at 25%

#### Structure Assessment

Assessment: The proposed structure is sound. A fixed trust for the practice ensures clean 50/50 separation between unrelated parties, while the downstream discretionary trust provides the Sample family with income splitting flexibility. Friend Pty Ltd gives Mr Friend the option to retain earnings at 25% (company rate) rather than taking all income at his marginal rate.

Key issue to verify: Personal Services Income (PSI) rules under Div 85-87 ITAA 1997. Medical practitioner income is typically PSI. If the income from the practice is PSI and the PSI business tests are not satisfied, the trust/company structure may not be effective for income splitting - the income would be attributed back to the individual practitioner. The practice must satisfy at least one business test (results test, unrelated clients test, employment test, or business premises test) to avoid PSI attribution.

## 4.2 Capital Gains Tax on Sale of ABC Health Business

### Step 1 - Capital Gain Calculation

ABC Health Pty Ltd sells its business (goodwill, equipment, patient records, brand) to XYZ Health Pty Ltd ATF XYZ Health.

Item	Amount	Reference
Capital proceeds (sale price)	\$5,000,000	s 116-20 ITAA 1997
Less: Cost base	(\$1,000,000)	Div 110 ITAA 1997
<b>Capital gain</b>	<b>\$4,000,000</b>	<b>s 104-10 (CGT Event A1)</b>

### Step 2 - CGT Discount

#### No CGT Discount for Companies

ABC Health Pty Ltd is a company. Companies are NOT entitled to the 50% CGT discount under Div 115 ITAA 1997. The capital gain remains at \$4,000,000.

### Step 3 - Basic Conditions for Small Business CGT Concessions (Div 152)

The basic conditions under Subdiv 152-A (s 152-10) must be satisfied before any of the four concessions can apply:

Condition	Requirement	Status
CGT event	A CGT event happens in relation to a CGT asset.	<b>SATISFIED - CGT Event A1 (disposal of business assets)</b>
Small business entity OR MNAV test	Entity has aggregated turnover < \$2M (CGT SBE) OR satisfies the \$6M maximum net asset value test (s 152-15).	\$5M turnover exceeds the \$2M CGT SBE threshold. Must rely on the \$6M MNAV test. [MUST BE VERIFIED]
Active asset	The CGT asset is an active asset (s 152-40) - used or held ready for use in a business.	<b>SATISFIED - business goodwill and equipment are active assets</b>
Significant individual (company)	For a company, there must be a significant individual with at least 20% interest (s 152-305(2), s 152-50).	<b>SATISFIED - Mr Friend (50%) and Mr Sample (50%) both exceed 20%</b>

#### MNAV Test Warning

**CRITICAL:** The \$6M MNAV test (s 152-15) is the gateway to all SB CGT concessions. If total net CGT assets of the company + connected entities + affiliates exceed \$6M, NO concessions are available.

Preliminary estimate: Business value \$5M + Sample investment property net ~\$300K-\$500K + other assets. Super fund assets are excluded (s 152-20(2)). Main residences excluded. Total estimated: ~\$5.3M-\$5.5M. This is TIGHT - a formal valuation is essential.

If the MNAV test fails, the entire \$4M gain would be taxed at the company rate with no concessions. This would result in approximately \$1.0M-\$1.2M in company tax - a fundamentally different outcome.

### 4.3 Small Business CGT Concessions - Application

#### (a) 15-Year Exemption - Subdiv 152-B

The 15-year exemption requires the CGT asset to have been continuously owned for at least 15 years (s 152-105). ABC Health Pty Ltd was established 10 years ago.

##### 15-Year Exemption: NOT AVAILABLE

Does NOT apply. The business has been held for 10 years, not the required 15 years. Additionally, for a company, a significant individual must be at least 55 years old and retiring in connection with the CGT event. While Mr Sample is 55, the 15-year ownership period is not met.

#### (b) 50% Active Asset Reduction - Subdiv 152-C

Under s 152-205, the entity can choose to reduce the capital gain by 50%. This is optional and applies after offsetting any capital losses and (if applicable) the CGT discount. Since the company receives no CGT discount, the reduction is applied directly to the \$4M gain.

Step	Amount	Reference
Capital gain	\$4,000,000	
Less: 50% active asset reduction	(\$2,000,000)	s 152-205 ITAA 1997
<b>Remaining capital gain</b>	<b>\$2,000,000</b>	

##### Note: Active Asset Reduction in Company Context

The \$2,000,000 reduction is disregarded and does not form part of the company's assessable income. However, for a company, this amount remains within the company's retained earnings. It can be distributed to shareholders on winding up (potentially as a return of capital or liquidator's distribution).

#### (c) Small Business Retirement Exemption - Subdiv 152-D

Under s 152-300, the company can choose to disregard a further capital gain amount - up to \$500,000 per CGT concession stakeholder over their lifetime (s 152-315). The company must make a payment to the CGT concession stakeholder of the chosen exempt amount.

Stakeholder	Interest in Company	CGT Concession Stakeholder?	Age	Retirement Exemption Available	Super Requirement
Mr Sample	50% (significant individual)	Yes (>20%)	55	<b>\$500,000</b>	Over 55 - no requirement to contribute to super. Can take directly or choose to contribute.
Mr Friend	50% (significant individual)	Yes (>20%)	44	<b>\$500,000</b>	Under 55 - MUST contribute exempt amount to a complying super fund or RSA (s 152-325).

Step	Amount
Remaining gain after 50% reduction	\$2,000,000
Less: Retirement exemption - Mr Sample	(\$500,000)
Less: Retirement exemption - Mr Friend	(\$500,000)
<b>Remaining capital gain</b>	<b>\$1,000,000</b>

Stakeholder	Interest in Company	CGT Concession Stakeholder?	Age	Retirement Exemption Available	Super Requirement
<p><b>Retirement Exemption Payments</b></p> <p>Mr Sample (55): Can receive \$500,000 directly from the company. He may choose to contribute this to the new Sample Family Superfund as a CGT cap contribution (s 292-100 ITAA 1997), which does not count toward the non-concessional contributions cap. The CGT cap lifetime limit is currently \$1,780,000 (indexed).</p> <p>Mr Friend (44): MUST contribute \$500,000 to his SMSF (Friend Superfund). This is a mandatory requirement under s 152-325 because he is under 55. The contribution must be made within a specified period. This is also a CGT cap contribution - it does not count toward the non-concessional cap.</p> <p>The company must make the payments to the stakeholders. These payments are NOT Division 7A deemed dividends (s 152-325(5) specifically overrides Div 7A for retirement exemption payments).</p>					

#### (d) Small Business Rollover - Subdiv 152-E

The remaining \$1,000,000 capital gain can be deferred under Subdiv 152-E if ABC Health Pty Ltd acquires a replacement active asset within the replacement asset period (2 years, extendable to 4 years in some circumstances).

##### Rollover Practicality

The rollover is available but has practical limitations here: ABC Health is selling its entire business and will effectively become a shell company. It would need to acquire new active assets within 2 years to maintain the rollover.

Options: (a) ABC Health acquires a new active asset (e.g., investment in another active business) - this preserves the rollover; (b) If no replacement asset is acquired by the end of 2 years, CGT event J5 occurs and the \$1,000,000 gain is reinstated and taxed; (c) The reinstated gain may still qualify for the retirement exemption if the stakeholders have remaining lifetime cap (s 152-300).

Alternative approach: Do not claim the rollover. Instead, the company pays tax on the remaining \$1,000,000 at the company tax rate. At 25% (base rate entity), this equals \$250,000. At 30% (if not BRE in the year of sale), this equals \$300,000.

## 4.4 CGT Waterfall Summary

Step	Description	Amount	Cumulative Position
1	Gross capital gain (CGT Event A1)	\$4,000,000	\$4,000,000
2	CGT discount (company - not available)	\$0	\$4,000,000
3	50% Active Asset Reduction (Subdiv 152-C)	(\$2,000,000)	\$2,000,000
4a	Retirement Exemption - Mr Sample (Subdiv 152-D)	(\$500,000)	\$1,500,000
4b	Retirement Exemption - Mr Friend (Subdiv 152-D)	(\$500,000)	\$1,000,000
5a	Option A: SB Rollover (Subdiv 152-E) - 2 year deferral	(\$1,000,000)	<b>\$0 (deferred)</b>
5b	Option B: No rollover - taxed at company rate	Tax: \$250,000-\$300,000	<b>\$250K-\$300K tax payable</b>

## 4.5 Income Tax Benefits of the Trust Structure

### (a) Fixed Trust - XYZ Health Trust

XYZ Health is a fixed unit trust. Income is distributed strictly in proportion to unit holdings: 50% to Sample Family Trust and 50% to Friend Pty Ltd. The trustee has no discretion over the proportions - this is determined by the units held.

Under Division 6 ITAA 1936 (s 97), each unit holder is presently entitled to their proportionate share of the trust's net income and is assessed accordingly. For a fixed trust, the income shares are fixed by the units - no streaming of capital gains or franked distributions is available (streaming requires a discretionary trust with specific trust deed powers).

### (b) Discretionary Family Trust - Sample Family Trust

The Sample Family Trust receives 50% of XYZ Health Trust's net income. The trustee of the Sample Family Trust then has full discretion to distribute this income among the beneficiaries in whatever proportions it chooses (subject to s 100A and Div 6AA restrictions).

### Distribution Planning - Sample Family

Beneficiary	Current Position	Trust Distribution Capacity	Effective Tax Rate on Distribution	Notes
Mr Sample	\$600,000 salary (45% + 2% Medicare)	Excess after other beneficiaries are allocated	47% marginal	Already in the top bracket. No benefit from additional income.
Mrs Sample	\$90,000 nurse salary (32.5% bracket)	Limited - already has \$90K income	32.5%-37% on additional income	Limited income splitting benefit due to existing salary.
Adult children (over 18)	Assumed low/no income	Up to \$18,200 each tax-free; then marginal rates	0% on first \$18,200 each	<b>Most effective distribution targets. Number of eligible adult children is critical.</b>
Children under 18	N/A	\$416 unearned income before penalty rates	66% above \$416 (Div 6AA)	NOT effective targets for trust distributions.
Bucket company (if established)	N/A	Excess income after individuals allocated	25% (if BRE)	Receives excess distributions at flat 25% rate. Div 7A applies on extraction.

#### Income Splitting Limitations

Key limitation: Mrs Sample already earns \$90,000 (32.5% marginal bracket). Distributing additional trust income to her provides limited savings compared to distributing to adult children with no other income.

If there are 2 adult children (over 18) with no other income, the Sample Family Trust can distribute \$18,200 to each (\$36,400 total) at 0% tax. This saves approximately \$17,000 compared to the same amount being taxed at the parents' marginal rates.

The remaining trust income distributed to Mr or Mrs Sample is taxed at their marginal rates (37%-47%), which limits the total income splitting benefit.

**(c) Friend Pty Ltd - Mr Friend's Position**

Mr Friend's 50% share of XYZ Health Trust income flows to Friend Pty Ltd, which is taxed at the company rate of 25% (base rate entity, assuming aggregated turnover < \$50M and no more than 80% passive income). Mr Friend can then choose when to extract profits as franked dividends, giving him control over the timing of his personal tax.

If Friend Pty Ltd retains profits, they are taxed at 25% (vs 47% if paid as salary to Mr Friend). The retained earnings can be paid out as franked dividends in years when Mr Friend's income is lower, or contributed to super. Division 7A applies to any loans from the company to Mr Friend.

## 4.6 Personal Services Income - Critical Consideration

### PSI Warning - Must Be Verified

Medical practitioner income is typically Personal Services Income (PSI) under Div 85 ITAA 1997. PSI is income that is mainly a reward for the personal efforts or skills of an individual (s 84-5).

If the income IS PSI and the entity does not satisfy a PSI business test, the PSI rules attribute the income back to the individual practitioner (s 86-15). This would NEGATE the income splitting benefits of the trust structure for the practice income.

The practice MUST satisfy at least one of the following PSI business tests to allow income splitting:

(1) Results test (s 87-18): Unlikely for medical services (not contracted to produce a specific result).

(2) Unrelated clients test (s 87-20): Requires >80% of PSI from two or more unrelated entities. If the practice has many individual patients, this may be satisfied.

(3) Employment test (s 87-25): If the practice employs other staff (nurses, admin - Mrs Sample is a nurse employee). This is the most likely test to be satisfied.

(4) Business premises test (s 87-30): Maintains separate business premises not shared with clients. Medical practice premises typically satisfy this.

If the employment test or business premises test is satisfied, the PSI rules do NOT apply and income splitting through the trust structure is effective.

## 4.7 Trust Asset Protection

The proposed structure provides layered asset protection:

Layer	Protection Mechanism	Assets Protected	Risk Mitigated
XYZ Health Trust (Fixed)	Operates the practice. Liabilities are borne by the trust assets and the corporate trustee (XYZ Health Pty Ltd). Limited liability company acts as trustee.	Practice assets (minimal - equipment leased, property owned by SMSFs)	Medical malpractice, employment claims, lease disputes, patient complaints.
Sample Family Trust	Holds the Sample family's wealth separate from the practice. Corporate trustee (Sample Pty Ltd) limits personal liability.	Unit holding in XYZ Health Trust, investment assets, accumulated distributions.	Creditors of the practice cannot access the Sample Family Trust assets.
Friend Pty Ltd	Holds Mr Friend's share of practice income. Separate legal entity.	Unit holding in XYZ Health Trust, retained earnings.	Creditors cannot access Friend Pty Ltd assets for personal claims against Mr Friend.
SMSFs	Superannuation fund assets are NOT property divisible among creditors (s 116(2)(d) Bankruptcy Act 1966).	Super balances and SMSF property (\$1.5M commercial property).	Protected from personal creditors of members (with s 121A exception for contributions to defeat creditors).

The corporate trustee structure (XYZ Health Pty Ltd, Sample Pty Ltd) is essential. Under s 197 Corporations Act 2001, directors of a corporate trustee are personally liable only if trust assets are insufficient to meet the trust's debts AND the directors failed to ensure sufficient trust assets. This is a much narrower exposure than acting as an individual trustee.

## 4.8 SMSF - Sample Family Superfund

### Establishment

The proposed Sample Family Superfund will be established under s 17A SIS Act. Members will initially be Mr Sample and Mrs Sample. Each member must be a director of the corporate trustee (or an individual trustee). The retail super fund balances (\$550,000 + \$300,000 = \$850,000) will be rolled over into the new SMSF.

In addition, Mr Sample's \$500,000 retirement exemption amount from the ABC Health sale can be contributed to the new SMSF as a CGT cap contribution (s 292-100 ITAA 1997), bringing the opening balance to approximately \$1,350,000.

### Investment Capabilities

The SMSF can invest in a wide range of assets, including:

- Listed shares and ETFs (direct share market investment)
- Commercial property (including business real property)
- Residential investment property (but NOT acquired from a related party - s 66 SIS Act)
- Fixed interest and term deposits
- Managed funds and unit trusts (subject to in-house asset rules)

All investments must comply with: the sole purpose test (s 62 SIS Act), the investment strategy (Reg 4.09 SIS Regs), arm's length dealing (s 109 SIS Act), and the in-house asset rules (Part 8 SIS Act).

### Children Joining the SMSF

#### Children and SMSF Succession

Children can join the SMSF as members once they turn 18 (to be a director of the corporate trustee). The SIS Act permits up to 6 members per SMSF (from 1 July 2021).

Benefits of children joining: (a) Asset protection - super assets protected from creditors (s 116(2)(d) Bankruptcy Act); (b) Intergenerational wealth transfer - on death of a member, benefits can be paid to tax-dependants within the fund; (c) Children can begin their own concessional contributions (\$30,000 p.a.) from employment income; (d) Binding Death Benefit Nominations ensure benefits pass to intended recipients.

Caution: Adding children increases the number of people with control over fund decisions. Consider governance provisions in the trust deed and a clear SMSF succession plan.

## 4.9 SMSF Commercial Property - Tenants in Common

### Structure

The proposed structure involves two unrelated SMSFs (Friend Superfund and Sample Family Superfund) purchasing a \$1,500,000 commercial property as tenants in common and leasing it to XYZ Health Pty Ltd ATF XYZ Health.

Item	Detail
Property value	\$1,500,000
Ownership	Tenants in common - each SMSF owns 50% (or as agreed)
Title	Both SMSF trustee names on the certificate of title
Lease	Commercial lease to XYZ Health (the medical practice)
Property classification	Business real property (s 66(5) SIS Act) - used wholly and exclusively in a business
In-house asset rule	Exempt - BRP leased to related party is exempt from the 5% in-house asset limit (s 71(1)(e) SIS Act)

### Key Compliance Requirements

Requirement	Provision	Detail
Arm's length dealing	s 109 SIS Act	ALL transactions must be on arm's length terms. Rent must be at market rate. Independent valuation and rental appraisal required.
Business real property	s 66(5) SIS Act	Property must be used wholly and exclusively in one or more businesses. If any part is used for non-business purposes, BRP status is lost.
Formal lease agreement	SIS Act s 109, SMSFR 2009/1	Written, enforceable commercial lease with market rent, rent review provisions, and standard commercial terms. Must be renewed before expiry.
Rent apportionment	General law	Rent and expenses split according to ownership percentages. Each SMSF reports its share of rental income and claims its share of expenses.
Expense apportionment	General law	All property expenses (rates, insurance, maintenance, management fees) split per ownership percentage.
Independent valuation	ATO guidance	Independent market valuation at acquisition. Revaluation every 3 years (minimum) for audit purposes.
Investment strategy	Reg 4.09 SIS Regs	Each SMSF's investment strategy must address the property acquisition, risk, return, diversification, and liquidity.
Sole purpose test	s 62 SIS Act	Property must be acquired and maintained solely to provide retirement benefits. Cannot be used for member/related party private purposes.
LRBA (if borrowing)	s 67A SIS Act	If either SMSF borrows to fund its share, the LRBA must comply with s 67A: single acquirable asset, held on bare trust, limited recourse. Related party loans must be on arm's length terms (PCG 2016/5 safe harbour rates).
NALI / NALE risk	s 295-550 ITAA 1997, LCR 2021/2	If any expense is below market rate or income is above market rate due to non-arm's length dealing, the income becomes NALI and is taxed at 47% instead of 15%.

#### Tenants in Common - Key Risks

Two unrelated SMSFs purchasing as tenants in common is legally permissible but requires careful structuring:

- (1) A Tenants in Common Agreement is essential - covering decision-making, buy-out provisions, what happens if one SMSF is wound up, restrictions on charging or encumbering shares, and pre-emptive rights.
- (2) The property title must show both SMSF trustee names with their respective ownership percentages.
- (3) Each SMSF maintains its own separate accounting for its share of income and expenses.

Requirement	Provision	Detail
		<p>(4) The arm's length requirement under s 109 SIS Act means the lease must be at market rent, reviewed regularly, and enforced strictly - even though the tenant (XYZ Health) is related to both SMSF members.</p> <p>(5) The ATO has stated that while one co-owner's charge over their interest does not breach SIS for the other SMSF, it creates risks under s 65 SIS Act (financial assistance) if the SMSF's share of sale proceeds could be used to meet the other co-owner's liabilities. Avoid cross-charges.</p>

## 5. Worked Example Tables

### 5.1 CGT Concessions Waterfall

Step	Description	Mr Sample's Share (50%)	Mr Friend's Share (50%)	Total
1	Gross capital gain	\$2,000,000	\$2,000,000	\$4,000,000
2	CGT discount (company)	\$0	\$0	\$0
3	50% Active Asset Reduction	(\$1,000,000)	(\$1,000,000)	(\$2,000,000)
4	Retirement exemption	(\$500,000)	(\$500,000)	(\$1,000,000)
5	Remaining (rollover or taxed)	\$500,000	\$500,000	\$1,000,000
	Tax if no rollover (25% BRE)	\$125,000	\$125,000	<b>\$250,000</b>
	Tax if rollover used (deferred)	\$0 (deferred)	\$0 (deferred)	<b>\$0 (deferred)</b>

### 5.2 Income Tax Comparison - Current vs Proposed

Assumes: Practice net income \$2,000,000 (after all operating expenses excluding director salaries). Currently each director takes \$600,000 salary.

Item	Current Structure	Proposed Structure
Practice income	\$2,000,000 (ABC Health)	\$2,000,000 (XYZ Health Trust)
Mr Friend's share (50%)	\$600,000 salary. Tax: ~\$241,432 (incl Medicare)	\$1,000,000 to Friend Pty Ltd. Company tax at 25% = \$250,000. Retained in company.
Mr Friend - if takes \$600K salary from XYZ via Friend Pty Ltd	N/A	Salary of \$600K deductible to trust, assessable to Friend Pty Ltd (washes through). Dividends from retained earnings: franked at 25%.
Mr Sample's share (50%)	\$600,000 salary. Tax: ~\$241,432 (incl Medicare)	\$1,000,000 to Sample Family Trust. Distribute: \$400K salary to Mr Sample via XYZ Health + distribute trust income to family.
Sample Family Trust distributions	N/A	Mrs Sample: limited (already \$90K salary). Adult children: \$18,200 each at 0% tax. Bucket company: excess at 25%.
<b>Estimated annual family tax saving</b>	N/A	<b>~\$30,000-\$60,000 p.a. (depending on number of adult beneficiaries and PSI outcome)</b>

### 5.3 SMSF Commercial Property - Income Split

Assumes: \$1,500,000 property, 50/50 tenants in common, market rent \$120,000 p.a. (8% yield).

Item	Friend Superfund (50%)	Sample Superfund (50%)	Total
Rental income	\$60,000	\$60,000	\$120,000
Less: Rates & insurance	(\$5,000)	(\$5,000)	(\$10,000)
Less: Management fees	(\$3,000)	(\$3,000)	(\$6,000)
Less: Maintenance	(\$2,500)	(\$2,500)	(\$5,000)
Net rental income	\$49,500	\$49,500	\$99,000

Item	Friend Superfund (50%)	Sample Superfund (50%)	Total
Tax (accumulation phase - 15%)	\$7,425	\$7,425	\$14,850
Tax (retirement phase - 0%)	\$0	\$0	\$0
<b>Net after tax (accumulation)</b>	<b>\$42,075</b>	<b>\$42,075</b>	<b>\$84,150</b>

## 6. Case Law Support

### Primary Authority

Case	Court	Principle	Application
<i>FCT v Bamford (2010) 240 CLR 481</i>	HCA	Trust income determined by trust deed and general law. Proportionate approach for Div 6.	Foundation for income splitting through XYZ Health Trust and Sample Family Trust.
<i>FCT v Spotless Services (1996) 186 CLR 404</i>	HCA	Part IVA: dominant purpose test is objective. Tax benefit need not be the sole purpose, but must be the dominant one.	Restructure must have genuine commercial substance beyond tax minimisation.
<i>FCT v Guardian AIT Pty Ltd [2023] FCAFC 3</i>	FCAFC	Section 100A reimbursement agreements. Scope of the 'ordinary family or commercial dealings' exclusion.	Trust distributions to Sample family members must be genuine and not subject to reimbursement arrangements.

### Supporting Authority

Reference	Source	Principle	Relevance
LCR 2016/3	ATO (Binding)	Subdiv 328-G genuine restructure and UEO requirements.	If Subdiv 328-G rollover is used for any asset transfers within the restructure.
TR 2022/4	ATO (Binding)	Section 100A reimbursement agreements guidance.	Distributions from Sample Family Trust to family members.
SMSFR 2009/1	ATO (Binding)	Business real property definition and application for SMSFs.	Commercial property lease from SMSFs to the related medical practice.
PCG 2016/5	ATO (Non-binding)	Safe harbour interest rates for related party LRBA's.	If either SMSF borrows from a related party for the property purchase.
LCR 2021/2	ATO (Binding)	Non-arm's length expenditure (NALE) and NALI consequences.	All SMSF transactions must be arm's length or risk NALI taxation at 47%.

## 7. Conclusion

**The proposed restructure is sound and achieves the stated objectives of income splitting, asset protection, and retirement planning.**

The sale of ABC Health's business to XYZ Health Trust generates a \$4,000,000 capital gain. Using the Small Business CGT Concessions (subject to verification of the \$6M MNAV test): the 50% active asset reduction eliminates \$2,000,000; the retirement exemption eliminates a further \$1,000,000 (\$500,000 each to Mr Sample and Mr Friend); and the remaining \$1,000,000 can either be rolled over for 2 years or taxed at the company rate (\$250,000-\$300,000).

The fixed trust (XYZ Health) provides clean 50/50 separation for the unrelated parties. The Sample Family Trust enables income splitting - primarily to adult children at 0% tax on the first \$18,200 each. Mrs Sample's existing \$90,000 salary limits her utility as a distribution target. Friend Pty Ltd enables Mr Friend to retain earnings at 25% rather than paying personal tax at 47%.

The two-SMSF commercial property purchase as tenants in common is viable under the business real property exception (s 66 SIS Act). Strict compliance with arm's length dealing (s 109 SIS Act), formal lease documentation, independent valuations, and proportionate income/expense apportionment are essential. The property is exempt from the 5% in-house asset limit.

### Next Steps

Critical action items:

1. Obtain an independent business valuation to confirm the sale price and verify the \$6M MNAV test is satisfied.
2. Confirm PSI business test status - if the practice does not satisfy at least one business test, income splitting through the trusts will not be effective.
3. Verify ages of all children to determine eligibility for trust distributions at adult rates.
4. Engage a solicitor for: XYZ Health Trust deed (fixed), Sample Family Trust deed (discretionary with streaming powers), Sample Pty Ltd constitution, XYZ Health Pty Ltd constitution, tenants in common agreement, commercial lease.
5. Establish Sample Family SMSF before the business sale settles (to receive Mr Sample's retirement exemption contribution).
6. Obtain independent property valuation and rental appraisal for the commercial property.
7. Resolve any existing Div 7A issues in ABC Health before proceeding.

## 8. Risks & Caveats

**\$6M MNAV test: [CRITICAL]** If the total net CGT assets of ABC Health + connected entities (Mr Friend, Mr & Mrs Sample, their entities) exceed \$6M, NO small business CGT concessions are available. The entire \$4M gain would be taxed at company rate (\$1.0M-\$1.2M tax). An independent valuation with full MNAV calculation is non-negotiable.

**Personal Services Income (PSI): [HIGH]** If the medical practice income is PSI and no PSI business test is satisfied, the trust/company structure does not achieve income splitting. The income is attributed back to the individual practitioner. Must verify the employment test or business premises test is satisfied.

**Part IVA risk: [MEDIUM]** The restructure involves significant tax benefits (income splitting, CGT concessions). Must demonstrate genuine commercial substance: asset protection for a medical practice (high malpractice risk), clean 50/50 separation for unrelated parties, SMSF-funded commercial premises. Document the commercial rationale contemporaneously.

**Section 100A: [MEDIUM]** Distributions from Sample Family Trust to family members must be genuine - not part of a reimbursement agreement. Each beneficiary must genuinely receive and control the distribution. TR 2022/4 and Guardian AIT apply.

**SMSF - Arm's length: [HIGH]** The commercial property lease between the SMSFs and XYZ Health (related party) must be at market rent, with formal documentation, enforced strictly. Failure to deal at arm's length triggers NALI (s 295-550 ITAA 1997) - income taxed at 47% instead of 15%. This is a major ATO audit focus area.

**SMSF - Sole purpose test: [MEDIUM]** The property must be acquired and maintained solely for retirement benefit purposes (s 62 SIS Act). Cannot be used for member/related party private purposes. Medical practice use satisfies this if the lease is on commercial terms.

**Division 7A - Friend Pty Ltd: [MEDIUM]** Fixed trust distributions to Friend Pty Ltd create UPEs if not physically paid. These must be placed on compliant Div 7A loan terms by the company's lodgment day, or physically paid in cash. Ongoing annual compliance required.

**Stamp duty on business sale: [LOW-MEDIUM]** QLD abolished duty on transfers of business assets (chattels) and goodwill. However, if any real property is transferred, full duty applies. Confirm no real property is included in the business sale.

**Rollover expiry (Subdiv 152-E): [MEDIUM]** If the rollover is claimed for the remaining \$1M gain, ABC Health must acquire replacement active assets within 2 years. If it fails to do so, CGT event J5 reinstates the gain. Given ABC Health is being wound down, the rollover may not be practical.

**Trust distribution deadline: [ANNUAL]** The Sample Family Trust trustee must resolve to distribute all trust income before 30 June each year. Failure results in the trustee being assessed at 47% under s 99A ITAA 1936.

## 9. Rulings & References

### Legislation

Provision	Relevance
ITAA 1997, Division 104 (CGT Events)	CGT Event A1 on sale of business assets
ITAA 1997, Division 110-114	Cost base and capital proceeds calculations
ITAA 1997, Division 115	CGT discount (not available to companies)
ITAA 1997, Subdivision 152-A (s 152-10, s 152-15)	Basic conditions and \$6M MNAV test
ITAA 1997, Subdivision 152-B (s 152-105)	15-year exemption (not available - held 10 years)
ITAA 1997, Subdivision 152-C (s 152-205)	50% active asset reduction
ITAA 1997, Subdivision 152-D (s 152-300, s 152-315, s 152-325)	Retirement exemption and \$500K lifetime cap
ITAA 1997, Subdivision 152-E	Small business rollover (2-year replacement)
ITAA 1997, s 292-100	CGT cap contributions to super
ITAA 1997, Division 85-87	Personal Services Income rules
ITAA 1997, s 295-550	Non-arm's length income (NALI) for super funds
ITAA 1936, Division 6 (ss 95-102)	Trust taxation and present entitlement
ITAA 1936, Division 6AA	Minors' penalty tax rates
ITAA 1936, s 100A	Reimbursement agreements
ITAA 1936, Division 7A	Deemed dividends on company to shareholder payments
ITAA 1936, s 177D (Part IVA)	Anti-avoidance - dominant purpose test
SIS Act 1993, s 17A	SMSF definition and member requirements
SIS Act 1993, s 62	Sole purpose test
SIS Act 1993, s 66, s 66(5)	Acquisition from related party prohibition; BRP exception
SIS Act 1993, s 67A	Limited recourse borrowing arrangements
SIS Act 1993, s 71(1)(e)	In-house asset exemption for BRP
SIS Act 1993, s 109	Arm's length dealing requirement
SIS Regulations, Reg 4.09	Investment strategy requirements
GST Act, Div 38-B	Health services - GST-free
GST Act, s 38-325	Going concern - GST-free
Bankruptcy Act 1966, s 116(2)(d)	Super protected from creditors

### ATO Rulings & Guidance

Reference	Topic	Status
TR 2022/4	Section 100A reimbursement agreements	Binding
SMSFR 2009/1	Business real property definition for SMSFs	Binding
LCR 2021/2	Non-arm's length expenditure (NALE)	Binding
PCG 2016/5	Related party LRBA safe harbour terms	Non-binding
SMSFRB 2020/1	SMSF property development and related party rules	ATO guidance

## Case Law

Case	Court	Principle
FCT v Bamford (2010) 240 CLR 481	HCA	Trust income determination; proportionate approach
FCT v Spotless Services (1996) 186 CLR 404	HCA	Part IVA dominant purpose test
FCT v Guardian AIT Pty Ltd [2023] FCAFC 3	FCAFC	Section 100A reimbursement agreements
Thomas v FCT (1972) 3 ATR 165	HCA	Present entitlement under Division 6

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