# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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## 187 | SMSF Buys Property Jointly

When an SMSF buys property jointly with others, make sure it is as tenants in common. You can contribute further tranches later. Just make sure you have CGT and stamp duty sorted.

### SMSF Buys Property Jointly

When an SMSF buys property jointly as tenants in common with somebody else, how does this actually work?

While we already touched on this in ep 177 and 182, the devil is in the detail. What does the initial joint acquisition and later contributions actually look like?  Andrew Henshaw of Velocity Legal in Sydney kindly agreed to walk you through the how and when.

Here is what we learned from this episode but please listen in as Andrew explains all this much better than we ever could.

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**Why Tenants in Common?**

Why tenants in common? Why not as joint tenants? The answer lies in the concept of survivorship.

A joint tenant receives the other interest in survivorship. So whichever joint tenant dies first, the other joint tenant receives that share.

Let's say you and your SMSF buy a $2m property as joint tenants. You pass away and so now – since joint tenants – your SMSF receives your interest in survivorship. That interest is treated as a contribution, hence will exceed all contribution caps, attracting excess contribution tax.

However, as tenants in common there is no right of survivorship. So on your death your interest as tenants in common becomes part of your estate and passes according to the terms of your will.

**Any Other Entity**

Your SMSF can acquire a property jointly with any other entity – be it you or another member or a third party like another individual, SMSF or unit trust.

**Example**

Let's go through an example similar to the one before. Bob buys a property in NSW together with his SMSF. The property is $2m. Bob and his SMSF each acquire 50% as tenants in common. Bob later contributes another 10% as an in specie contributions but now the value of the property has increased to $2.2m.

**Commercial Property**

This scenario is a common set up, but it only works if the property is commercial property. Bob can only sell further tranches to the SMSF if it is commercial property.

If the property is residential, the SMSF can still jointly acquire the property with Bob. But Bob can't contribute any further tranches.

**Stamp Duty**

You have a duty exemption in New South Wales under section 62A for transfers from members to the SMSF. What the concession says is that you will only attract a stamp duty of $500 rather than full stamp duty based on the market value of the transferred property.

In New South Wales it doesn't matter if the transaction is sale or a contribution – both can qualify for the duty concession. But these super fund transfer exemptions are different in each state. So please check this out for your relevant state or territory.

**Capital Gains Tax**

The CGT rules don't distinguish sales between unrelated parties from sales between related parties. So transactions between family members still trigger CGT. This case is no different.

The property has a market value of $2.2m now, resulting in a capital gain of $20,000 for the 10% Bob contributes later. Bob might be able to reduce the capital gain through the 50% CGT discount and / or the small business CGT concessions.

**Options**

You might think that an option contract might be the way to reduce capital gains implications for later contributions of further tranches. But there are issues. If the other entity enters an option contract with the SMSF, you would have a related party acquiring an in-house asset from the SMSF. If the other entity doesn't pay for the option, then the contract is not at arm's length. And so on. So tread carefully around options.

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