Commercial property PHYSIOS

Wei Xu, CPA, from Physio Accountant looks at ways in which physiotherapists can own their business premises.

Your practice can thrive in a particular location as you, your partners and your team become known for quality physiotherapy services. As a result, you could be working out of the ideal premises for your present and future growth, or that premises may be ideally located nearby. It's the reliance on, and goodwill in, the local area, coupled with the waste of paying rent compared to paying an interest-only loan that gives physiotherapy practices the natural motivation to buy the premises they operate from, or an appropriate one nearby that can cater for growth in the business.

There are many practices around Australia that operate out of a residential premises on a main street of a suburb, yet they are operating a commercial activity: their physiotherapy services. This can enhance your chances of obtaining a loan to purchase that premises.

Purchasing your own premises can be a wise business and investment decision but it needs to be structured correctly so you/your partners take account of personal wealth protection, income tax considerations and capital gains tax considerations.

Firstly, do not buy your premises in the same name that your business operates in. You as physiotherapists will have yourselves covered with professional indemnity insurance for your services, but we live in a litigious society and there are a number of ways that your livelihood and assets can be threatened when you're in business. Your business premises will grow in value as the years go by and you do not want this increase in value to be at risk, so it needs to be protected.

For income tax purposes, a simple structure that will allow you to claim all the expenses related to the premises and then distribute any excess rental income to individual family structures is the best way to deal with the income tax that will be attributable to the business premises. If your superannuation has only a modest balance then a discretionary trust structure for sole practitioners or a unit trust for multi-partner practices are the best structures to house this premises and afford it all the asset protection and taxation benefits. These structures will legally minimise the potential capital gains tax in the future sale of the premises. Trusts can avail themselves of capital gains tax advantages that companies can't, so do not buy your premises in a trading company structure. If you receive advice to the contrary then ask for another opinion.

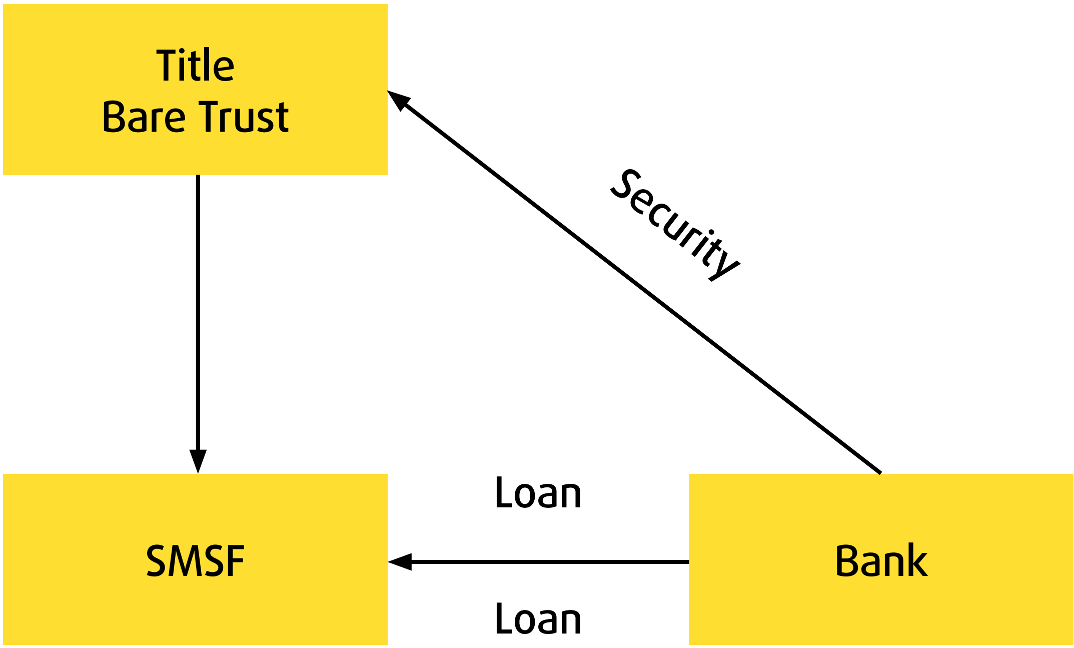
Despite trusts being excellent structures for holding business premises, the ultimate structures for physiotherapists involve their and potentially their personal partner's superannuation.

For sole practitioners there is some good news. In September 2007 the law was changed to allow self-managed superannuation funds (SMSFs) to borrow money and buy property as long as it is set up correctly via a bare trust arrangement. A bare trust is a trust established that has 100% of its benefits and tax assessments going to a SMSF. It's a complicated structure, but once in place it has significant advantages. A diagram of a bare trust/SMSF loan arrangement is below.

Once in place, your business premises will be owned by your SMSF (via the bare trust) and a bank. This will mean that your SMSF invoices the physiotherapy practice for rent and declares that rent is paying 15% tax. Your practice will claim a tax deduction for this rent of 30%, so there is a 15% gain each year on the rental income. If you decide to sell this property one day then in a SMSF you will pay a maximum 10% tax rate, but more than likely you will pay no tax.

For multi-partner physiotherapy practices there is a specific structure that is ideal for holding the practice premises. A unit trust gives fixed portions of benefits to the unit holders. In addition, if the unit trust has a trustee company, there is solid asset protection in place. This makes sense as the partners are most likely not family-related. This structure is also ideal for involving

SMSF Loan



the unit holders' SMSFs. As long as no particular partner (and their family) owns more than 50% of the units in the unit trust, then that unit trust can borrow to buy the premises while the SMSFs of the partners of the practice contribute the required deposit, stamp duty and legal costs.

Here is an example. Julia, Antonia and Bobbie are unrelated physiotherapy partners running a very successful practice. They have an opportunity to buy the premises that their practice operates from for $1 000 000. Their bank will offer $550 000 if the partners can come up with the $450 000 deposit plus stamp duty and legal costs ($60 000). The total required cost of the partners is $510 000, or $170 000 each.

Julia, Antonia and Bobbie are advised that if they combine their own superannuation with their personal partner's, they will each have the funds required to meet the $170 000:

- Julia and partner have $210 000 combined
- Antonia and partner have $240 000 combined and
- Bobbie and partner have $205 000 combined.

Each family establishes a SMSF and contributes the required funds to purchase the property with the bank providing the funds at settlement of $550 000. The income tax and capital gains tax benefits are then similar to a sole practitioner buying the property in a bare trust. In addition, a unit trust is a seamless structure for partners exiting and entering because the units are exchanged for a market price and this will avoid any stamp duty being paid each time this happens.

To implement these structures for a commercial premises make sure your advisors know direct property, lending and your industry. Be accurately advised on your business premises structure to maximise all the key asset protection and tax minimisation strategies all the while understanding your wants and needs—not just as consulting professionals yourselves, but as long-term investors who want to use their own piece of business real estate to drive up retirement savings.

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