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MERTHYR LAW

Dealing with lumpy assets in SMSFs

Presented by

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Questions?

Please ask questions through the Q & A pod not on the chat pod.

Not Answered Questions will be emailed to you along with the **webinar recording**

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Tax grab?

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Agenda

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- *Fat cat's tax*
- *Getting lumpy assets out of SMSFs:*
  - *Duty*
  - *Death benefits tax*
  - *CGT*
  - *Death benefits tax*
  - *Asset protection & estate planning*
- *Divorce and business real property*
- *Intergenerational funds*
- *Child pensions*
- *Getting existing member property into super*

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Key concepts

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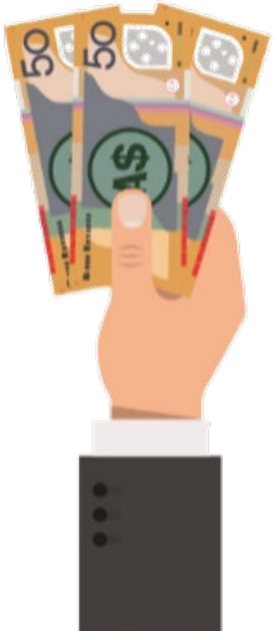
Legal
❑ $1.7m total super balance and NCC cap
❑ Transfer balance account
❑ Death benefits tax
❑ Fat cat's tax
Client
❑ Harmony between children
❑ Cost
❑ Keep business premises for business
❑ Asset protection



Fat cat's tax – scenario one

Joe's SMSF

$1.5m with LRBA of $1m in 2010

Joe (55)
Sole member

- *Valued at $3m 30 June 2025 with $200k LRBA – TSB = $2.8m*
- *Sold for $5.2m on 31 January 2026 = $5m TSB at 30 June 2026*
- *CGT bill = $370K (being 10% of $3.7m)*
- *Fat cat's tax = $120K (15% [($5m - $3m)/$5m x $2m]*
- *Effective tax rate on property sale = 13.24%*

Fat cat's tax – scenario two

Joe's SMSF

- *$1.5m with LRBA of $1m in 2010*

Joe (55)
Sole member

- *Valued at $3m 30 June 2025 with $200k LRBA – TSB = $2.8m*
- *Revalued at $4.5m on 30 June 2026 – TSB = $4.3m*
- *CGT Bill = nil*
- *Fat cat's tax = $68,023 [15% ($4,300,000-$3,000,00) / $4,300,000 x $1,500,000]*

  But no cash?
- *Still can't remove benefits from the fund other than to pay tax*

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Consideration in minimising fat cat's tax

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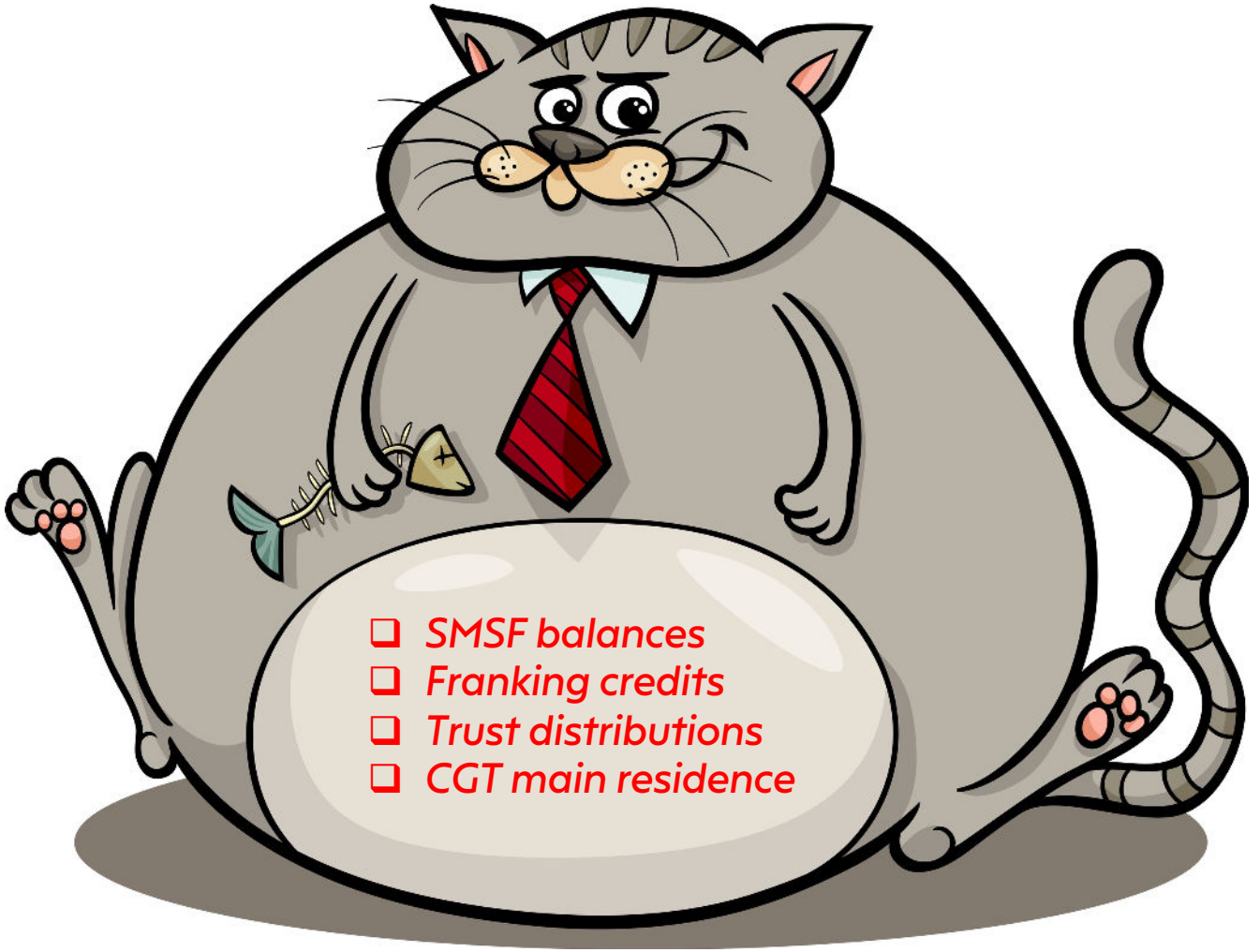
- *Withdrawing benefits before FYE*
- *Asset choice*
  - *Preference for income over growth?*
  - *Removing growth assets from SMSFs?*
- *Cashflow forecasting*
- *Segregated investments?*
- *Eligibility for small business CGT concessions for Business premises outside of SMSFs?*
- *Trusts as an intergenerational tool for business premises?*
- *Using bucket companies as wealth vehicles*
- *Comparing effective tax rates for "fat cats" between super and other entities*
- *Evening balances between spouses*
- *Super splits to older spouse on separation*



Focus on moving real property out of super

Transfer duty on sale / transfer

Victoria – s41A	*Transfer property to a beneficiary where value of property does not exceed beneficiary's interest*
Queensland	*Declaration of trust to a discretionary trust or unit trust*
Queensland, Victoria, New South Wales	*Concessions / exemptions for transfers between super funds*

Transferring to trusts may have greater asset protection and taxation advantages

Declaration of trust – super to family trust

A Lucky Lot Pty Ltd

A Lucky SMSF

Arabella alive

Declaration of Trust

A Lucky Lot Pty Ltd

Trust

- *s53(2) Duties Act (Qld)*
- *Also successfully obtained where from LRBA Holding (Bare) Trust and Unit Trust*

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CGT on sale

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- *Minimising with exempt current pension income*
- *Triggering gains whilst high ECPI %*
- *Relationship breakdown rollover relief*
- *Cost base resets in 2017?*

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Death benefits tax

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	Individual	*Estate*
Death benefits dependents	*Nil*	*Nil*
Non-death benefit dependents (taxed)	*15% + ML*	*15%*
Non-death benefit dependents (untaxed)	*30% + ML*	*30%*

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Minimising death benefits tax

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- *Cashing benefits whilst alive*
- *Recontribution strategies*
- *Pension planning*
- *Earmarking for death benefit dependents*

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Member benefit v super death benefit

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Table in section 307.5 ITAA 1997: what is a superannuation benefit?

Superannuation benefit type	Superannuation member benefit	Superannuation death benefit
Superannuation fund payment	*A payment to you from a superannuation fund because you are a fund member*	*A payment to you from a superannuation fund, after another person's death, because the other person was a fund member*

Member benefit v super death benefit

ATO website updated (QC 45254) – updated 10 Feb 2023

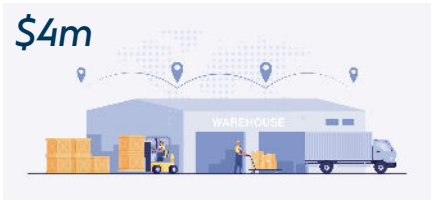
"If a member requested an amount to be paid from their fund before they died, but died before they received it, it may be a member benefit in some limited cases. This is determined by the facts and circumstances surrounding the payment."

At the time of payment, the trustee must assess whether it is a member or death benefit based on the facts known at the time, including:

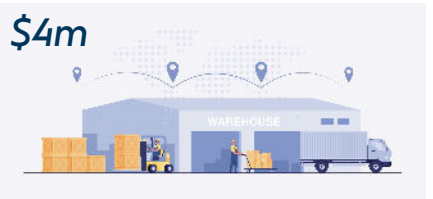
- *Terms of the request from the member*
- *Terms of the trust deed and any other governing rules*
- *Knowledge at the time the payment is made (including whether they are aware that the member has died)*
- *The entity that the payment is being paid to*
- *Circumstances and timing of the payment*
- *Whether the payment is made because of and in line with the request made by the member*

Problems with LRBAs

Redraw on LRBA in divorce



$50k 1st instalment



SMSF 2 PTY LTD

XYZ PTY LTD

$2.5m loan

New SMSF

New Bare Trust

$50k

$1.5m

SMSF PTY LTD

ABC PTY LTD

$1m loan

SMSF

Bare Trust

$1.5m

$0

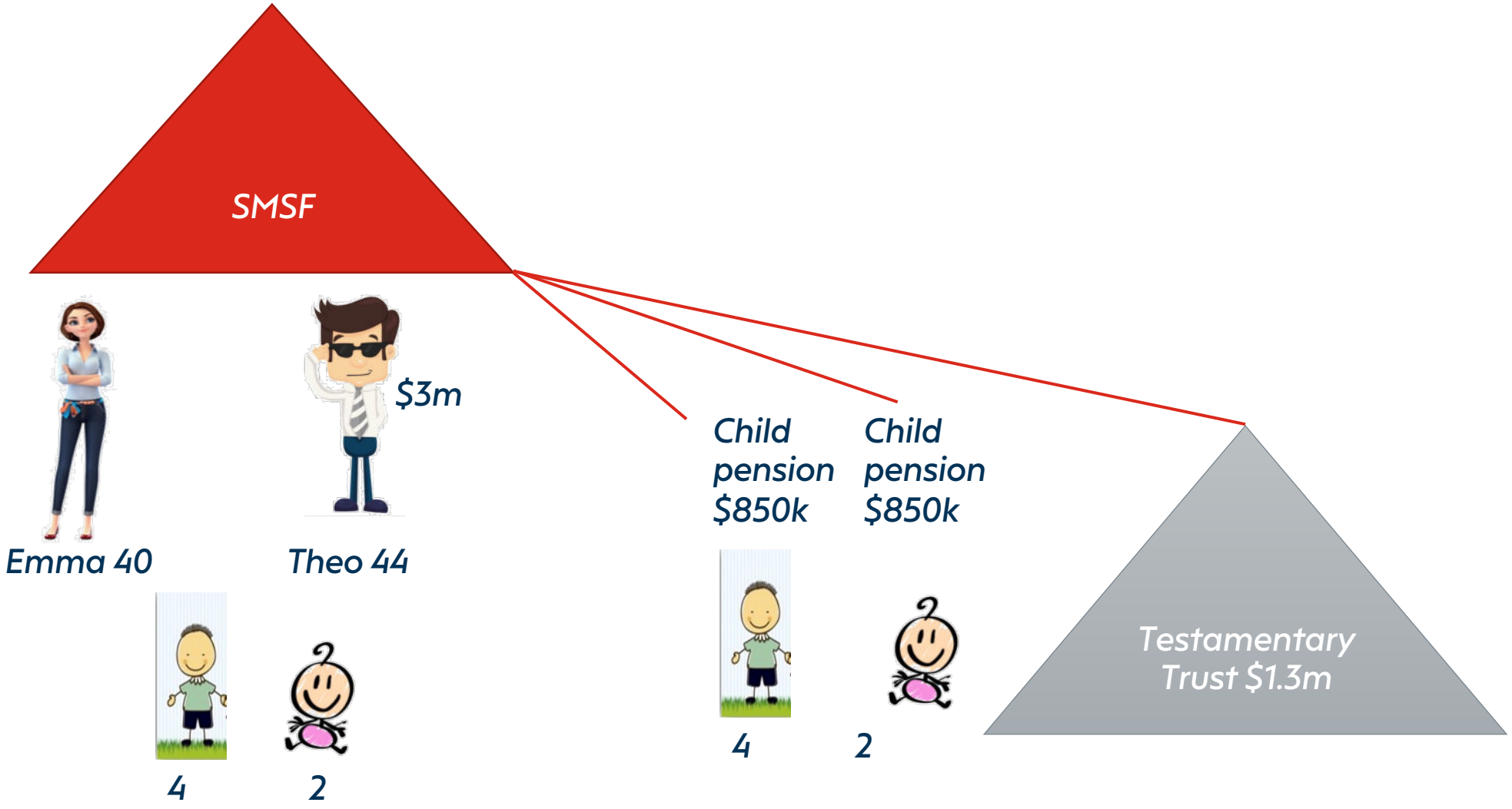
$1.5m

1st rollover $50k

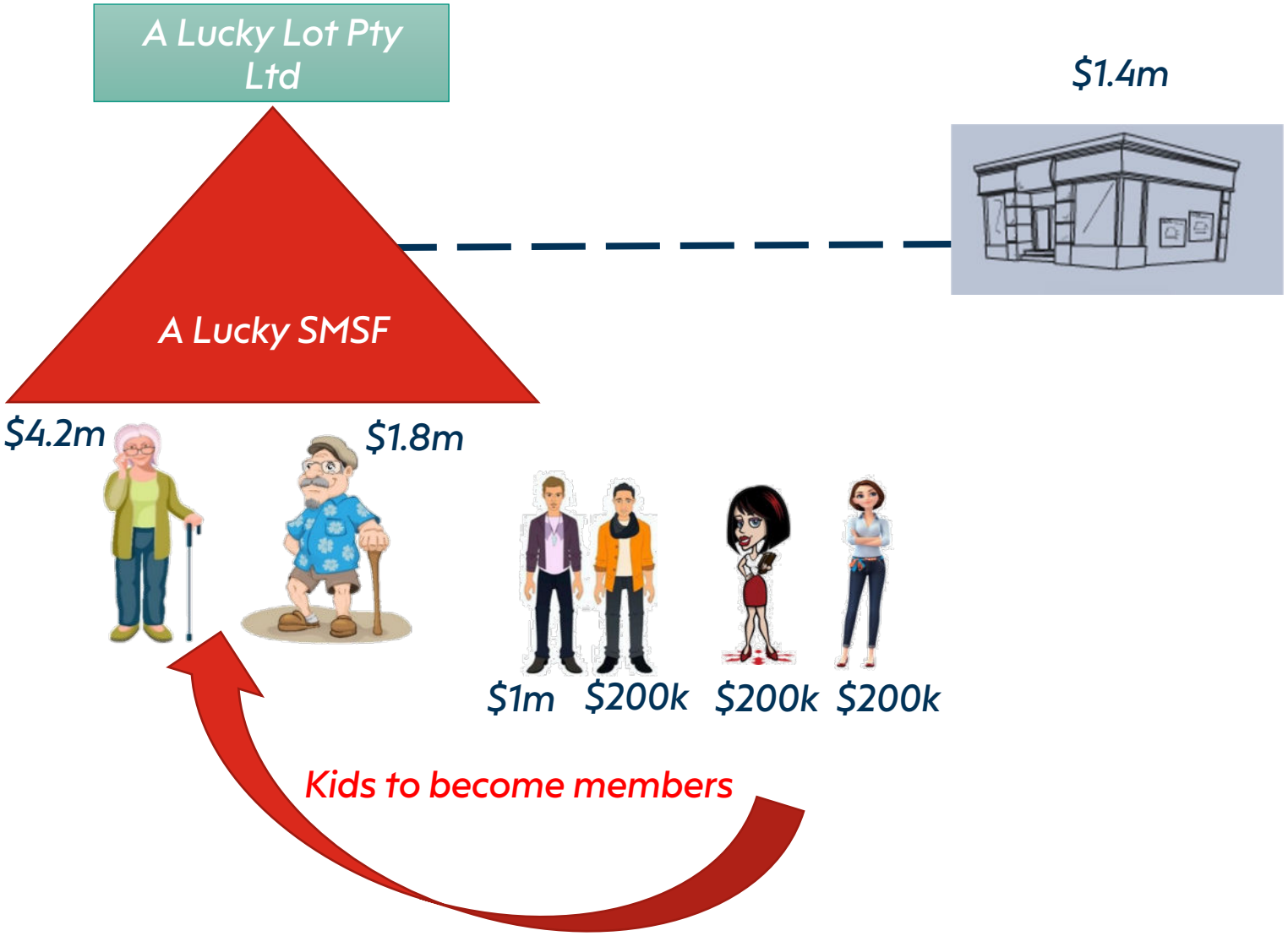
How can we pay the balance $1.5m?

CGT rollover relief for relationship breakdown

Using child pensions



Multi-generational funds



Specific asset purchases

Lease

Rollover excess

Dave Rick John Ben Louis

Rent

DRJ Mechanical Engineering Pty Ltd

SMSF

Dave FT Rick FT John FT Ben FT Sally FT

Dave Rick John Ben Sally

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Unrelated unit trust

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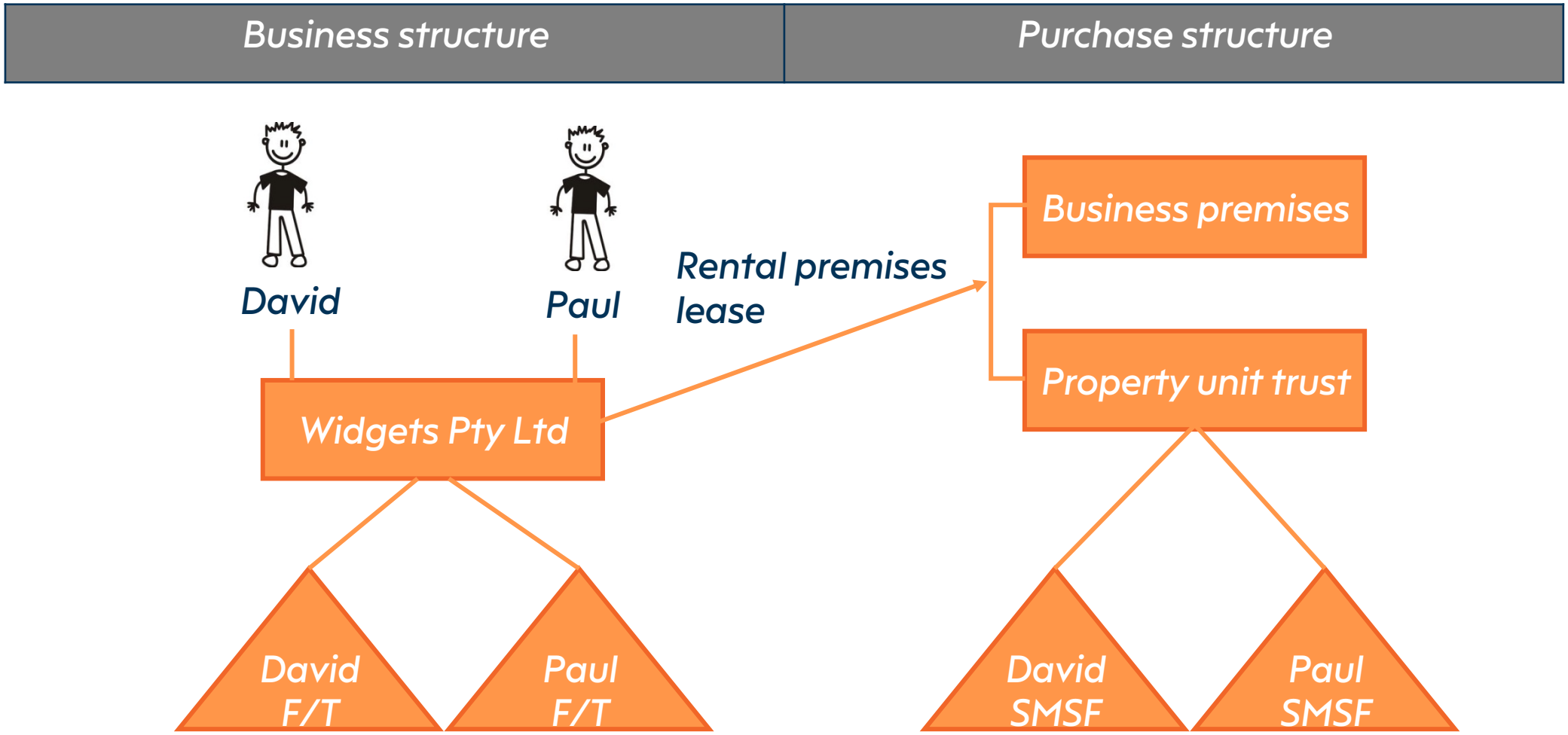

Selling business real property from parents' SMSF to child's SMSF?

Super fund split

Lease

SMSF

$2m

$500k
rollover

Bare Trust

SMSF

$1.5m

Industry
Fund

$500k

Rollover $500k

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Sacrificed topics

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- *Existing property into SMSFs*
  - *Small business CGT concessions*
  - *Duty relief*
  - *Reducing non-deductible debt*
- *Instalment Contracts and alternative to LRBAs*
- *LRBA tips*
  - *Fixing safe harbour rates*
  - *Div 7A loans*

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Thank you

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