

WHY THE ARGYLE DEBT INSTALMENT TRUST?

The Argyle Debt Instalment Trust is a financial structure developed by Argyle to facilitate a superannuation fund borrowing, in accordance with the rules that allow this, to acquire an interest in any assets that a superannuation fund may properly invest in.

WHY A DEBT INSTALMENT TRUST?

The Superannuation Industry (Supervision) Act 1993 (the "SIS") provides in section 67 (4A) an exception to the superannuation borrowing restriction. In simple terms, a superannuation fund trustee may borrow to acquire a beneficial interest in an asset that is held on trust for it. The Argyle Debt Instalment Trust has been developed under a collaborative effort of The Argyle Partnership Super, Property, Taxation and Financing teams to enable a super fund to take advantage of these provisions of the SIS. Using the Argyle Debt Instalment Trust, super funds may leverage newly acquired investments whilst at the same time limiting the exposure of the superannuation investments.

The super borrowings will enable greater investment diversification within superannuation where there are the additional benefits of asset protection and tax efficiency.

Build your Superannuation

Currently legislation limits the amount which a member can invest in super annually. By borrowing, the super fund is in a position to increase the value of the assets held in superannuation. All future growth will be within a super environment where the capital gains taxes will be at a maximum of 15% and potentially will be zero.

Provided the terms are compliant not only with the provisions of section 67 (4A) but also with the other SIS investment principles, the lender to the super fund may include the member themselves. Thus, a person may be able to loan into their super fund what they are not able to contribute.

Asset protection

Subject to the operation of specific anti-avoidance rules in legislation such as the Corporations Act and the Bankruptcy Act, acquiring and accumulating assets in a superannuation fund can protect those

assets from any commercial risks that may otherwise face the members.

Gearing an investment asset personally may enable current income tax benefits, but it means that the growth will be locked into the hands of the individual. Where the gearing is accomplished through their superannuation fund, any growth (and future income) will be enjoyed in a Bankruptcy Act friendly environment.

Tax Efficiency

Current Australian tax laws offer significant tax benefits for investing in superannuation. These benefits are:

- Reduced taxation rates of 15% if in accumulation phase and 0% if in pension phase; and
- Reduced capital gains tax of 10% for assets held more than 12 months in an accumulation phase super fund or 0% if the fund is in pension phase.

These 'rates' compare very favourably with the potential rates of taxes due on a personally held investment.

HOW DOES THE DEBT INSTALMENT TRUST OPERATE?

The starting point is for the super fund to identify a 'complying' asset it would like to acquire. This may be listed securities, real property and even works of art, as long as the usual superannuation rules are followed. When the target asset is identified, the Argyle Debt Instalment Trust is established. A loan approval is obtained to fund the acquisition of the asset and this loan fund is added to by the super fund which contributes its portion of its investment in the asset. The loan is advanced by the lender to enable the acquisition of the asset by the trustee of the Debt Instalment Trust.

By following the foregoing approach, the trustee of the Debt Instalment Trust becomes the legal owner of the asset but holds it for the super fund. Over time the super fund makes instalment payments to acquire the asset.



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It is important for satisfying the SIS that the loan is limited to recourse against the super fund in that the lender may only recover outstanding monies by realising the asset or exercising the rights the super fund has in relation to the asset.

Once established, the super fund receives all income derived from the asset and enjoys all benefits of ownership including any relevant tax deductions, franking credits and the like. The super fund has the right to call upon the trustee of the Debt Instalment Trust to transfer the asset to the super fund upon payment of the final instalment. There is no obligation upon the super fund to acquire the asset at the end of the instalment term; it can be rolled-over into a fresh geared investment.

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The Argyle Debt Instalment Trust includes an extensive package of supporting documents including pro-forma trustee minutes, an overview of legal points, an explanatory summary of specific aspects of the trust arrangement. The Argyle Debt Instalment Trust package provides all of the clauses, trustee discretions, flexibility and trustee powers necessary to ensure that the super fund will benefit to the full extent possible under current Australian laws dealing with superannuation, income tax, capital gains tax, bankruptcy, estate planning, stamp duty and commercial business practice.

The Argyle Debt Instalment Trust package has enjoyed the involvement of the Argyle team of superannuation, property, taxation and financing lawyers. It is regularly updated for relevant changes and views of the operation of the laws.

In view of the strict legislative requirements in Section 67(4A) for the borrowing arrangement, it is important to get the structure right at first instance. It will be too expensive to rewrite the primary rules.

Unlisted shares, real property and other items of stamp dutiable property which is transferred would normally attract stamp duty at ad valorem or share transfer rates. The Argyle Debt Instalment Trust has been structured in such a way as to minimise stamp duty payable upon the second transfer of the asset to the superannuation fund. If the Argyle procedures are followed correctly only the proper stamp duty need be paid once.

As part of our superannuation trust deed review service we get to review a vast number of superannuation trust deeds. We know that some trust deeds lack important basic clauses. Some trust deeds have poorly drafted or have inflexible clauses. Some trust deeds lack the "extra special" clauses that can provide a significant difference to the after tax financial position of its members. Not all superannuation trust deeds available in the market offer members all of the planning benefits to which they are legally entitled under the borrowing rules. At Argyle, we ensure that our super team can quickly and easily identify the problem and the solution.

In short, we believe the Argyle Debt Instalment Trust package is superior package because:

- the Argyle Debt Instalment Trust package is prepared by our team of Super, Property, Taxation and Financing lawyers all of whom have considerable expertise and experience in dealing with trust related matters within their area and who can tailor the terms of your acquisition instalment trust to meet your specific objectives;
- the "before and after" service provided by The Argyle Partnership which helps you through the establishment process and helps you in understanding how best to utilise your Argyle Debt Instalment Trust.
- the package comes with an extensive supporting documents including pro-forma trustee minutes, an agreement with the trustee, an overview of legal points and explanatory summary of the debt instalment trust process;
- at a technical level, it provides the members with the ability to take advantage of superannuation tax planning opportunities that exists under current Australian tax laws (see above);
- it contains specific mechanisms designed to protect the super fund assets and limit the recourse of the lender to a particular asset of the Argyle Debt Instalment Trust;
- it is drafted to protect against the unintended and often significant stamp duty implications that can arise as a result of the transfer of dutiable property that is needed at the end of the instalment process; and



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- it contains various mechanisms by which the borrowings of the super fund can be tailored to meet members' immediate needs and objectives.

The correct flow of funds during the course of the transaction is crucial to enable the super fund to take full advantage of the benefits that can be gained by using an Argyle Debt Instalment Trust. The Argyle Debt Instalment Trust package will provide the tools to enable you to manage the acquisition process and to complete any transfer of the asset to the super fund in the future, with only minimal future cost.

A member of the Argyle Property team can assist with the acquisition of real property and documenting or advising regarding the arrangements with the financier.

For further information contact any of the Argyle Partnership Private Client Services Team.

Argyle Debt Instalment Trust Team or visit us at our website www.argylelawyers.com.au.

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