BARE TRUST FAQ

WHAT IS A BARE TRUST?

A Bare Trust is generally the simplest form of trust.
A "Bare" Trust arises where X holds a particular item, for example, a parcel of shares, simply as a "nominee" for one or more specifically identified beneficiaries. Under a Bare Trust, the trustee has no active duties to perform beyond conveying the property to the beneficiaries when instructed to do so. [1] The trustee is merely the nominee of the beneficiaries. As an analogy, the Trustee is merely a puppet controlled by the puppet master being the beneficiary. Note that the terms "Trustee" and "Nominee" are generally used interchangeably.

WHY AND WHEN SHOULD I USE A BARE TRUST?

USE A BARE TRUST TO BUY SHARES IN A PRIVATE COMPANY
When a startup business is raising capital, it generally will take small investments from a large number of investors. To comply with Australian law a private company has strict limits around capital raising (i.e. 20/12/2 rule) as well as limits (50) investors on the share registry. This often makes it difficult for the company to raise the capital it needs to grow. To work around these issues a startup may choose to use a nominee structure to reduce the official number of shareholders on the Share registry. The shares are still owned by the beneficiary however are held in name only by the Nominee.

HOW IS A BARE TRUST ESTABLISHED?

A Bare Trust may be established by a formal deed, sometimes known as a declaration of trust, a deed of settlement or a Trust Deed. The declaration of trust involves an owner of property declaring themselves as trustee of that property for the benefit of the beneficiaries, such as where ABC Pty Ltd holds property and declares that it will hold that property from now on as bare trustee for Mr Z, rather than for ABC Pty Ltd's own benefit. The deed of settlement involves an owner of property transferring that property to a third person on condition that they hold the property on trust for the beneficiaries. In essence there are 2 types of Bare Trusts that can be established: (i) prior to purchasing the shares the investor elects to use a Nominee service; or (ii) the investor purchases shares directly from the company, the company later requests and the investor agrees to transfer the shares to the Nominee and hold these shares in trust on behalf of the investor (a "Rollup").

ESSENTIAL CHARACTERISTICS OF A BARE TRUST

A Bare Trust deed must outline the role of the Bare Trustee.
A Bare Trust should clearly show:

- That any sale of contract or transfer is between the vendor and the Bare Trustee as the apparent purchaser.
- That the purchase money was provided by the beneficial owner and none by the Bare Trustee.
- That the Bare Trustee is simply holding the shares in trust for beneficiaries.

[1] https://www.ato.gov.au/law/view/document?DocID=LIT/ICD/2510-9/2007/00001

- The obligations of the Bare Trustee to only act on any request or direction from the beneficiary.

WHO SIGNS THE CONTRACT OF SALE?

The Trustee of the Bare Trust is the entity that holds the legal title to the shares on trust for the beneficiary. Therefore, it is the Bare Trustee that must be noted as the purchaser of the shares on the contract of sale. There is no mention of the beneficiary, and as long as the Bare Trust deed was signed before the offer and acceptance, there is no problem with capital gains tax (CGT).

DOES THE TRUST NAME APPEAR ON THE SHARE CERTIFICATE?

The investee company cannot enter trusts in their share registry with ASIC. The company must enter the Trustee's name (Nominee) and their contact details and only indicates that the shares are beneficially held. The Investor's name or shareholding never appear on the share register or any registry with ASIC. The Nominee may issue a **Beneficial Owner Certificate** to the Investor indicating the number of shares and the Nominees name through which they are held.

IS THE BENEFICIARY SUBJECT TO A CGT EVENT ON TRANSFER?

No. The beneficial owner does not change therefore there is no capital gains event on the transfer hence no CGT tax payable.

WILL I LOSE ESIC TAX BENEFITS IF PURCHASED THROUGH THE BARE TRUST OR ON TRANSFER?

No. The ESIC Tax benefits rests with the beneficial owner. Whether purchased through the Trust or transferred to the Trust the ESIC Tax benefits are not lost. The beneficial owner remains the same.

WHO PAYS THE INCOME TAX?

The asset subject to the Bare Trust will always belong to the beneficiary therefore any income tax associated tax matters will be linked back to the beneficiary. For example, each year, any share dividends must be declared by the beneficiary and not the trustee. The same too with any capital gains tax (CGT) event with the sale of the shares.

WHAT HAPPENS WHEN THE TRUSTEE BECOMES INSOLVENT OR CLOSES DOWN?

The assets are always OWNED and controlled by the beneficiary. The beneficiary instructs the Trustee or the Administrator to transfer the shares to another BARE trust or to the beneficiary directly and be listed on the company's share register.

Any further questions please email: trustee@angelloop.org.

Angel Loop Foundation is a charitable Institution (QLD) for the promotion of Innovation and Entrepreneurship in Australia [2] through the achievement of its public benefit in "that innovative ideas generally be carried through to successfully commercial fruition" "which is not only beneficial to the public generally but also a direct benefit to a section of the public, being those members of the public with the inclination and ability to make inventions for commercial purposes and invest in them". The BARE Trust is a public service designed to promote the "inventive process" by enabling more inventions to receive the necessary funding required for successful commercialisation.

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[2] The Commissioner of Taxation v The Triton Foundation [2005] FCA 1319