TAX TALKS

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

The following information is only of a general nature and should not be taken as professional advice.

17 | SMSF Estate Planning Post July 2017

The landscape for SMSF estate planning changed on 1 July 2017. Before we had the transfer balance cap, estate planning was relatively straight forward and was not subject to any limits in the hands of the surviving spouse – the new transfer balance cap changes all this.

How does the new transfer balance cap affect a reversionary pension upon death of a member? When and how does a credit in the surviving spouse's TBA occur?

SMFS Estate Planning Post July 2017

The new superannuation regulations in place since July 2017 will significantly impact the estate planning of many SMSF trustees. This is particularly the case for those with higher balances in retirement phase or nearing retirement.

Past Approach

When two SMSF members hold an SMSF balance of $1 million each, the traditional estate planning approach would be to give the surviving spouse a reversionary pension when the first spouse dies. Upon death of the second spouse the proceeds of the combined pension account go to the estate or nominated beneficiaries. In many cases this past approach will no longer work under the new $1.6 million transfer balance cap (TBC).

New Rules

Let's say a wife with a $1m pension account inherits her husband's $1m pension account. And as a result exceeds her $1.6m pension cap ($1m + $1m > $1.6m). To avoid negative tax consequences she would need to commute the excess ($400k) back to accumulation. Or cash it out of the superannuation environment.

So for estate planning the new TBC rules don't just impact individuals with a pension account of more than $1.6m. But also impact SMSF members with a lower balance but exceeding $1.6m on a combined basis with their spouse. Similarly, a life insurance benefit might also push the member balance of a surviving spouse above $1.6m.

Child Beneficiary

When children receive a reversionary pension from a parent, they inherit the parent's pension cap. So a reversionary pension will still work for child beneficiaries thanks to the inherited caps. However, apart from children with disabilities, all benefits require a cash out when a child turns 25.

Trust Deeds

So the new rules will often require a different strategy post July 2017. But judging from what we have seen with our own clients, many SMSF have very restrictive trust deeds. Changing the conditions of existing pensions are

The information contained here is general information only and might no longer be up to date or correct. Copyright by Tax Talks

almost impossible in these funds. In some cases, the trust deed requires a pension to stop and re-start to remove a reversionary pensioner. This scenario brings several unintended consequences. A trust deed upgrade may be the most practical approach.

Two-SMSF Strategy

We've also encountered strategies where there are long-term advantages to splitting a large SMSF balance SMSF into two separate SMSFs – one being entirely made up of pension benefits and another being left in accumulation and basically used like a discretionary fund for retirees with more than $1.6m each in their pension accounts (as well as other assets outside of the super environment). Such a strategy would require a complete update of an individual's SMSF estate plan.

Super Not Part of an Estate

It's also worth remembering that superannuation benefits do not become part of a deceased's estate. This applies to any superannuation including SMSF. We regularly see Wills with instructions for benefits held within an SMSF. Even though these instructions are basically meaningless, since a Will does not and cannot override the discretion of the trustee of the SMSF. The only legitimate method to force a trustee of an SMSF to pay benefits to a deceased members estate is via a *valid* binding death benefit nomination.

So it is important to revisit any estate planning considering the recent changes.

MORE

Why Not To Offshore SMSF Work

SMSF Events Based Reporting

The Story behind the Bywater Case

Disclaimer: *Tax Talks does not provide financial or tax advice. This applies to these show notes as well as the actual podcast interview. All information on Tax Talks is provided for entertainment purposes only and might no longer be up to date. You should seek professional accredited tax and financial advice when considering whether the information is suitable to your or your client's personal circumstances.*

The information above is for general information only and should not be taken as constituting professional advice from Tax Talks. We are not a financial, legal or tax adviser. You should consider seeking independent legal, financial, taxation or other advice to check how the above information relates to your unique circumstances.

Copyright by Tax Talks