CTC ACCOUNTANTS
TAX & BUSINESS SERVICES

SMSF NEWSLETTER

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SPECIAL POINTS OF INTEREST:

1. Dealing with superannuation on death
2. Problems of exceeding the 10% cap on a TRIS
3. ATO comments on rise in scammers
4. Q & A - benefits of corporate trustees

INSIDE THIS ISSUE:

ESTATE PLANNING AND SUPERANNUATION

Many people accumulate substantial superannuation balances over their lifetime. In this article, we discuss various issues regarding the treatment of superannuation on the death of an SMSF member.

Does superannuation get dealt with by a Will?

Generally, no. Superannuation benefits of a deceased member do not automatically form part of their estate. This is because superannuation is not an asset owned by an individual.

However, an SMSF is permitted to pay the deceased's superannuation death benefits across to their estate, which can then be dealt with by the Will.

> **WARNING**–In NSW, laws allow a Court to treat superannuation as forming part of a person's estate.

Who decides what happens to superannuation on death?

It depends. An SMSF member has a range of options to deal with their superannuation death benefit, including:

(a) leaving the decision in the hands of the SMSF's trustees.

(b) providing a binding nomination compelling the trustee to pay the death benefit in accordance with the instructions of the deceased.

(c) making non-binding wishes as to whom they intend to receive their superannuation death benefit. As their wishes are not binding, the trustee can ultimately decide on how the death benefit is to be distributed.

Note, SMSFs cannot access the Superannuation Complaints Tribunal. Therefore, a disgruntled beneficiary may need to resolve any potential claim by other dispute resolution techniques (e.g., mediation) or through the courts.

> **TIP**–A binding nomination (i.e., (b) above) must generally be valid for the trustee to be obliged to follow it, e.g., the trustee usually does not need to follow a lapsed binding nomination.

Who can receive a superannuation death benefit?

A superannuation fund (including an SMSF) is only permitted to pay a superannuation death benefit directly to an individual who was at the time of the deceased's death:

- a current spouse;
- a child of any age;
- someone with whom the deceased was in an interdependency relationship with; and/or
- a financial dependant.

Examples of individuals who would not generally be allowed to receive a superannuation death benefit directly from the fund include:

- a former spouse;
- a friend; and
- a grandchild.

However, if any of these individuals were in an interdependency relationship with, or were financially dependent on the deceased at death, they could receive a superannuation death benefit directly.

Alternatively, if any of these individuals are beneficiaries under the Will, they could receive potentially share in any superannuation death benefits paid over to the estate.

EXAMPLE–Ava has a close relationship with her grandchild, Sophie. Ava wishes to nominate Sophie to receive a superannuation death benefit from her fund. Ava's fund cannot pay the benefit directly to Sophie, unless Sophie was a financial dependant of Ava, or in an interdependency relationship with her.

"...over 1,900 taxpayers handed over personal information to these scammers"

"A company generally allows for easier succession in the event of death or incapacity"

DANGERS OF OVERPAYING PENSIONS

Individuals aged at least preservation age can start a transition to retirement income stream (TRIS).

A key restriction applying to a TRIS is that total pension payments cannot exceed 10% of the account balance. This cap is based on the pension's opening balance (or commencement date, if started during the year).

What happens if this cap is exceeded?

The ATO advises that the following consequences arise if the cap is exceeded:

- the pension stops at the start of the income year. Therefore, income earned on assets supporting this pension will be subject to tax. Note, other pensions paid by the fund remain unaffected.
- pension payments made during the income year are treated as lump sums. The lump sums are included in the individual's personal tax return and taxed as normal income (no superannuation concessions apply).
- The ATO may also impose additional penalties.

TIP–The Government proposes to change the tax treatment of a TRIS from 1 July 2017. That is, the Government proposes that fund earnings on assets supporting a TRIS will be taxable from this time.

ATO COMMENTS ON SCAMMERS AND SCHEMES

The ATO recently announced that it has seen a 90% increase in the number of scam calls made to individuals.

Whilst the ATO acknowledges most people can detect a scam, $1.2m was still lost to scammers purporting to be from the ATO. In addition, over 1,900 taxpayers have handed over personal information to these scammers.

Dealing with scammers

The ATO has stated that it does not:

- cold call taxpayers about debts;
- threaten jail or arrest; nor
- behave in an aggressive manner.

TIP– The ATO advises that taxpayers who are unsure about whether they are dealing with a scammer should hang up and call the ATO on 1800 008 540. Also, you should advise the ATO if you have handed over personal details to a scammer.

Super Scheme Smart

The ATO has also announced the launch of 'Super Scheme Smart'. The purpose of this new initiative is to educate advisers and taxpayers about superannuation schemes.

Q & A – CORPORATE TRUSTEES

"Which is better - a company trustee or individual trustees?"

As a general rule, a company trustee is better than individual trustees. Some of the reasons for this are:

- with individual trustees, a change in fund membership or the death of a member requires title for all fund assets be changed. However, with a company trustee, title will remain unchanged even if the underlying membership changes.
- a company trustee generally offers greater asset protection if the trustee is ever sued.
- ATO imposed administrative penalties are levied on each trustee. That is, a company trustee only incurs one penalty (as it is a single trustee) whereas individual trustees incur a penalty per individual trustee.
- A company generally allows for easier succession in the event of a member's death or incapacity.

A downside of a corporate trustee is the additional cost of a company. A one-time set-up fee plus an annual review fee must be paid to ASIC for a company.

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