Super Concepts

TRUSTEE WEBINAR
23rd FEBRUARY 2021

Your Top Questions Answered

QUESTIONS & ANSWERS

Super Concepts

Thank you for attending the webinar on 23rd February 2021 'Your Top Questions Answered'.

Here are the answers to the questions asked during the webinar, plus a few more we couldn't get to in time;

INDEXATION OF TRANSFER BALANCE CAP (TBC) FROM 1 JULY 2021

Q/1.
On behalf of my daughter who has an amount in excess of the $1.6M in her super accounts, aged 51. Is she still entitled to contribute the new, higher, concessional contribution for FY 2021-2022 (assuming it is indexed of course)?

Comments
Yes. Concessional contributions are not impacted by the member's TBC. It appears the concessional contributions cap will increase to $27,500 pa on 1 July 2021. Non-concessional caps will be indexed to $110,000 pa.

Q/2.
I have a pension with a Transfer Balance Account Reporting (TBAR) value of $800k. When the cap increases to $1.7m, do I get the full $100k increase (i.e. can I start another pension with $900k)?

Comments
If you already have a Transfer Balance Account (TBA) credit of $800k, you will not get the full $100k indexation. As you have used 50% of your cap, you will get 50% of the indexation. Your new TBC as at 1 July 2021 will be $1.65m (an increase of $50k).

Q/3.
I started a pension at the max TBC of $1.6m. If I fully stop my pension, do I then get the indexation (i.e. TBC of $1.7m) if I start a new pension after 1 July 2021?

Comments
No. If you used all your $1.6m TBC, you do not get any indexation. This applies even if you fully commute your pension back to accumulation mode. The TBA debit depends on the value of the pension on the day of commutation.

CONTRIBUTIONS OVER AGE 65

Q/4.
I am 68 and will be taking a lump sum from my SMSF to build a house. I anticipate being left money in a Will in the future. At that time, can I replace the lump sum withdrawal?

Comments
It depends! One must satisfy the work test on/after age 67 to contribute (40 hours in a 30-day period). The annual caps ($25k concessional and $100k non-concessional) apply. If the work test is satisfied, and the member's Total Super Balance (TSB) is under the relevant cap/s, they can contribute up to age 75.

Q/5.
Do eligible future after-tax deposits towards the $1.7m cap go into accumulation and therefore incur 15% tax on earnings? I am 67 and retired taking a pension with a balance of circa $1.5m.

Comments
That is correct, but they can be used to commence a pension. One must satisfy the work test on or after age 67 to contribute (40 hours in a 30-day period). Members aged 67 or over cannot use the bring-forward non-concessional cap. To determine if you can make after-tax contributions, you must also look at your TSB as at 30 June the year prior.

Q/6.
I am 65 and my Wife is 63. We have a joint holding in CBA shares outside super. We are thinking of transferring them into super. Are there any $ limitations? Is there Capital Gains Tax (CGT) implications of the proposed transfer?

Comments
As you are 65, you are limited to $100,000 pa non-concessional cap (soon to be indexed). This is dependent on your Total Super Balance (TSB), however. There is no work test for those under the age of 67. As your Wife is less than 65, she can use the bring-forward non-concessional cap of $300,000. Again, subject to her TSB. You both have the concessional cap of $25,000 pa. There may be CGT ramifications for you personally. You *may* be able to use the catch-up concessional contributions (this is subject to a TSB of $500k the 30 June prior).

Q/7.
Confirming. if I made a contribution of $100,000 this financial year before I turn 67, then this is allowed under current rules. I turned 67 on 16 July and made contribution on 5 July 2020.

Comments
If you had a Total Super Balance of less than $1.6 million on 1 July 2020 you could make a non-concessional contribution of $100,000 before you turned 67 without meeting the work test of 40 hours in 30 consecutive days.

DEATH OF A TRUSTEE

Q/8.
Upon death of a member, can the Power of Attorney manage the investments for a specific period? If so, how long for? Do the same rules apply to both member and corporate trustee SMSF?

Comments
On the death of a member, the Power of Attorney ceases. The Executor can replace the deceased trustee and remains up to 6 months after the member's benefit commences to be paid. This means payment of a pension, lump sum, or both. The same logic applies with a corporate trustee. However, the registered names of the investments do not need to change. ASIC simply need to be notified of a Change of Director (Form 484).

Q/9.
What happens when the final member/trustee passes away? Is there any way that shares can be transferred to estate inheritors? Or must they be sold, and the subsequent funds distributed by the executor of the estate?

Comments
One must read the fund's trust deed to see what it says happens. Often the Executor (LPR) of the deceased will become trustee. If there is no BDBN, the LPR will have full discretion where the benefit is paid. This is subject to the super law recipient's rules. Assets can be transferred 'in-specie' to approved beneficiaries, including the deceased's estate. There may be lump sum tax to pay, as well as Capital Gains Tax inside the fund.

Q/10.
What is the procedure when one of the trustees dies?

Comments
The remaining trustee, if an individual, will need to restructure within 6 months of death. Either appoint another individual or appoint a company. If the trustee was a company, then the remaining member can be the sole director of that company. The deceased members' benefit will need to be 'cashed' as a pension or lump sum (or both).

Q/11.
Can I learn more about the tax applied to super on death?

Comments
If a lump sum death benefit is paid to a spouse (or 'tax dependant'), the amount is lump sum tax free.

Lump sum tax is payable as follows if a death benefit goes to an independent adult child:

Tax Free component	Nil
Taxable component	15%*

*Plus Medicare Levy.

Tax on pensions depends on the age of the deceased on the recipient.

- If the deceased was 60 pension is tax-free to recipient.
- If the recipient is 60 pension is tax-free.

If both aged <60 pension it depends on the pension components:

Tax Free	Nil
Taxable	MTR less 15% rebate

Pension becomes tax free once the death benefit pension recipient turns 60.

Q/12.
My Wife and I are both members and trustees of an SMSF. When one of us dies, do we need to pay any form of death duty? If so, what are the rules?

Comments
If the death benefit goes to a surviving spouse as a lump sum, it is tax free. Whether the deceased's benefit can be paid as a pension will depend on whether the death benefit will push the surviving spouse above their Transfer Balance Cap (TBC). A death benefit must always be paid – in-specie or cash lump sum or pension. But the surviving spouse can return their own benefit to accumulation to get their TBC under the $1.6m pension cap.

Q/13.
When one member of a two-member SMSF dies, can you please summarise the options (e.g. reversionary pension, withdrawals of funds) and procedures that must be completed to ensure the SMSF remains in compliance?

Comments
Firstly, is there a BDBN? What does the trust deed say about death benefits? The deceased's benefit must be used to pay a death benefit pension, lump sum, or a combination of the two. A reversionary pension is one that does not cease on death. Documentation states the pension is to revert to a surviving spouse.

A non-reversionary pension is one without such documentation. It ceases on death and the surviving spouse would then decide to take a new death benefit pension, or death benefit lump sum. If the fund had individual trustees it must be restructured. Either a second individual trustee comes in, or a company can be established as trustee. A company only needs one director who is the member.

Q/14.
Death of Trustee - so, if there may be Cap Gains Tax inside the fund on death of final member/trustee. seems like the moment before falling off the perch, the shares should be sold, and the cap gain is generated while the member was alive and not sold and cap gain generated after the death of the member. What say you "Great One" or NALI.

Comments
The answer to this question depends on whether the final member was in receipt of a pension or in accumulation phase at the time of their death and who will receive the benefit from the fund. If the person was in accumulation phase at the time of death, then the sale of the investments by the fund

would result in a CGT event which could result in a taxable gain or loss. If the person was wholly in pension phase at the time of death and the investments sold it would depend on whether they were sold prior to the pension has ceased. For a non-reversionary pension, the balance of the pension is treated as remaining in pension phase until a decision is made about the distribution of the benefit to dependants or the estate of the deceased or both.

If the shares were sold by the fund prior to the member's death, then CGT can still be payable as it depends on the stage the fund is in and the proportion of the fund split between accumulation and pension phase. If the fund is in accumulation and pension phase concurrently, the actuarial certificate for the fund will determine the proportion of the fund's income that is taxable and tax exempt including any taxable capital gains after taking into account capital losses.

Q/15.

On the death of a member if there are funds in the Accumulation Fund that are to be paid to the Legal Representative, can the assets that make up the amount representing the Accumulation Fund be transferred in specie to the LPR (Estate).

Comments

Yes, it is possible to pay the death benefit lump sum in cash or by the in-specie transfer of assets or a combination of both.

Q/16.

Trustee A aged 78 has a defined benefit pension of $80,000 pa plus an SMSF balance of $150,000, and a Transfer Balance of $1,400,000. Trustee B aged 77 has an SMSF balance of $380,000 and no other pension but will receive a 2/3 reversionary pension on death of A.

Both Trustees currently receive a pension from the SMSF with a binding non lapsing nomination to each other and reversionary pension.

What are the outcomes when either Trustee dies?

Comments

An excellent question and we're not going to do it justice in this brief format. Suffice to say there will be a Transfer Balance Account (TBA) credit to the reversionary recipient of the defined benefit pension on the death of the primary pensioner (Trustee A). It is difficult to say what the actual credit will be, but it would appear to be less that the TBA credit of the primary defined benefit pension recipient. The reversionary pension will mean this income stream continues to the surviving spouse and potentially overrides the binding non-lapsing nomination. This is because the reversionary pension doesn't cease on death and in effect contractually continues to the reversionary. However, you would need to read the fund's governing rules (trust deed and/or pension documentation) to see what actually occurs in this particular circumstance.

If Trustee B dies, then it is likely Trustee A will have an excess above their TBC. They may commute the $150,000 balance in the SMSF, to accept as much of the deceased's reversionary pension as possible, given the cap space. It may be that some of the benefit received by Trustee A would need to be paid from the fund as a tax-free lump sum on the death of Trustee B.

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MISCELLANEOUS ISSUES

Q/17.
Why does a fund that is 100% pension mode (and under the $1.6m cap) still have to do an annual tax return (since it doesn't pay tax)?

Comments
The annual return that is required to be lodged with the ATO serves a number of purposes. It is mainly a combination of a tax return and compliance return as required by the Superannuation Industry (Supervision) Act 1993. In addition, the legislation requires that certain other information is provided as part of a statistical collection exercise.

Q/18.
Is the 50% COVID-19 pension reduction likely to extend beyond the 2021/22 financial year?

Comments
At this stage, the minimum pension drawdown will revert to its pre-pandemic level in the **2021/22** financial year. Unlike the GFC, where we had a gradual increase, this time it will be standard minimum drawdowns from 1 July 2021.

Q/19.
What is the maximum number of members an SMSF can have?

Comments
Currently, the maximum number is 4 members (not more than 5). However, it is anticipated that number will change to 'not more than 6 members', with legislation is before the Senate. The legislation commences on the first day of the quarter commencing after the legislation receives royal assent (i.e. 1 April, 1 July, 1 October and 1 January).

The Bill is *Treasury Laws Amendment (Self-Managed Superannuation Funds) Bill 2020*.

Q/20.
Can I withdraw a lump sum from our SMSF for a charitable donation to an authorised Deductible Gift Recipient (DGR) and have that donation come from the taxable component of the fund?

Comments
The components of a lump sum are determined by the super interest from whence it came. A member can have multiple superannuation interests however, by having multiple pensions. A member could choose to partially commute a taxable pension and take a lump sum from this superannuation interest, thereby effectively have the donation come from a taxable component of the fund.

Q/21.
In respect to Property Trust Investments, my understanding is that the ATO require a credible valuation every three years, yet Super Concepts appointed auditors often request an independent valuation every year. Why is that so?

Comments

The requirement for a fund to value its assets every three years was dispensed with when the SIS legislation was amended from 1 July 2012 which required that the assets of a fund are shown in the fund accounts at market value. For many assets the market value is usually the value as at 30 June in a financial year. However, the ATO recognises that in some situations it may not be possible to obtain an accurate value as at that time for various reasons. In these situations, it has published valuation guidelines which require a reasonable valuation to be undertaken. Where it is reasonable to expect that the value of an asset has not changed significantly since the previous valuation then it may continue to be accepted. However, where there is a material change in the value of the asset then a revised valuation should be undertaken.

Q/22A.
I am one of two trustee members of a SMSF (non-corporate trustee). I also have another corporate trustee SMSF. Both are in pension phase. Together, I reached my TBC of $1.6m two years ago. I would like to take a lump sum withdrawal of say, $200k from the joint SMSF. Is there an order of doing things, e.g. minimum pension withdrawal first?

Comments
As you are in pension phase it is possible to withdraw a lump sum at any time. There are three ways in which this could occur:

1. As an increase in the amount of pension you are withdrawing, or
2. As a partial lump sum commutation of the pension, or
3. A combination of the two.

Increasing the amount of pension, you are currently will not impact on your TBC of $1.6 million. However, the commutation of the pension will be treated as a debit to your TBC account and reduce the balance in that account by the amount of the commutation.
There is no strict order in which the lump sum or pension payments are required to be drawn down. However, if you are not fully commuting your pension, which seems to be the case, and have not withdrawn at least your minimum pension amount then the remaining balance of your pension must be at least the unused pro rata amount of the minimum pension.

Q/22B.
What steps will have to take place? How will the process also affect the other trustee member?

Comments
1. The member notifies the trustee that they wish to withdraw a lump sum from their pension as a commutation of their pension.
2. The trustee will approve the payment in a minute and arrange for the payment to be made to the member.
3. The ATO will be notified that the pension has been commuted so that the member's TBC account can be adjusted.

There is little impact on the other member with the exception of approving the payment of the lump sum as trustee of the fund.

Q/23.
Regarding the Covid reduction in the draw-down amount for those with an account-based pension, will there be any lenience (i.e. reduction) in FY 2021-22 for those of us who had already taken most of the full amount required in FY 2020-21? (We were not notified until February or March, and I had been making regular withdrawals.)

Comments
The announcement concerning the 50% reduction in March 2020 had a number of impacts on people such as yourself who had already taken the minimum pension required by the time of the announcement. The ATO have asserted that if these amounts were paid as a pension, they will not accept the amounts over and above the minimum and paid prior to March 2020 can be accepted as lump sums.

As the announcement in March 2020 that the 50% reduction would apply to the 2021/22 financial year is well in advance of the commencement of that year the minimum amount should be paid in that financial year. The requirement to pay the minimum pension is a year by year test and does not have a carry forward provision to count amounts above the minimum to be carried forward to a future year.

WHAT YOU NEED TO KNOW

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