Trustee Q&A Webinar

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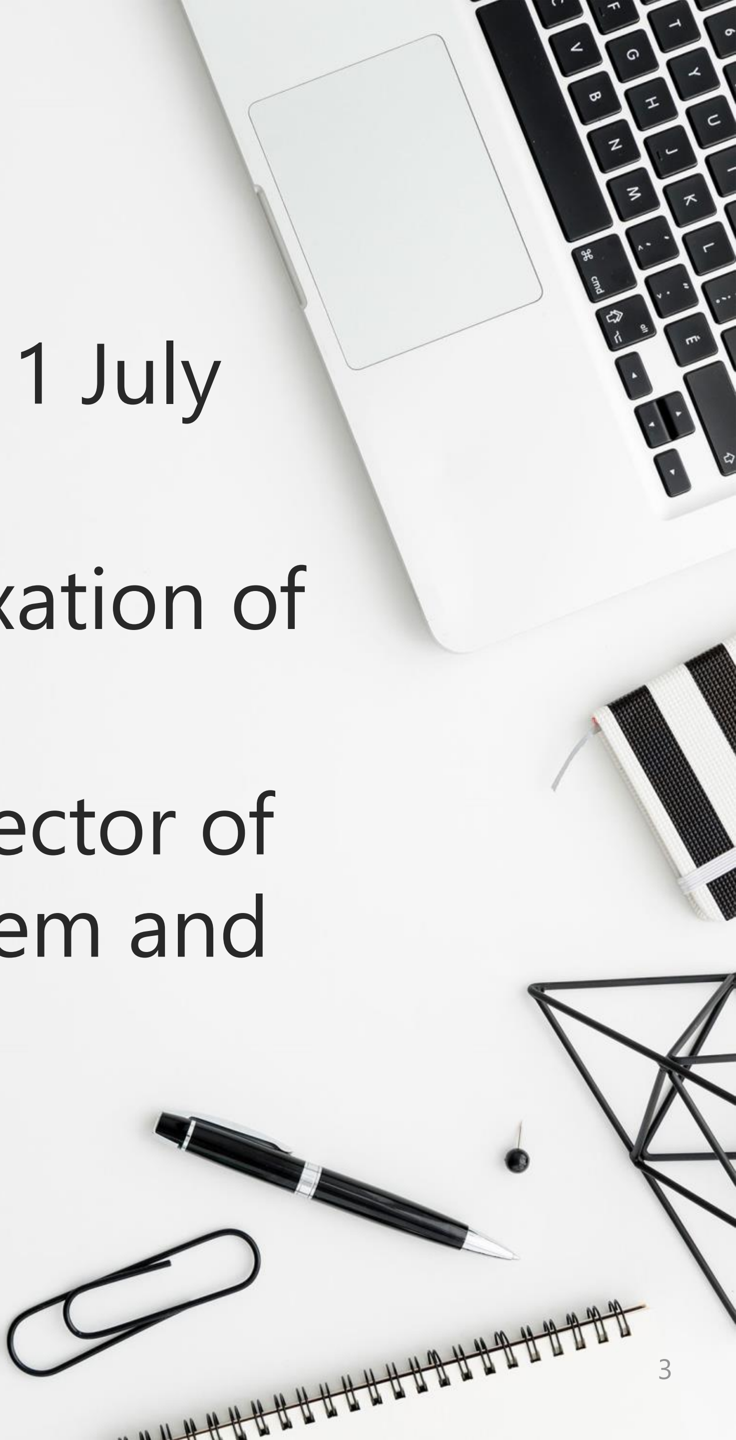
Session overview

- Indexation of the Transfer Balance Cap from 1 July 2021
- Making contributions after age 65 and indexation of contribution amounts
- What happens if one of the trustees or a director of the corporate trustee dies? Who replaces them and how is it done?



Abbreviations

- ATE – Assets Test Exempt
- ABP – Account Based Pension
- BDBN – Binding Death Benefit Nomination
- CC – Concessional Contribution
- ECPI – Exempt Current Pension Income
- EPOA – Enduring Power of Attorney
- LPR – Legal Personal Representative
- MLP – Market Linked Pension
- NCC – Non Concessional Contribution
- NOI – Notice of Intent
- OMT – Off Market Transfer
- TBA – Transfer Balance Account
- TBAR – Transfer Balance Account Reporting
- TBC – Transfer Balance Cap
- TSB – Total Super Balance.

TBC indexation

TBC Indexation

Question:

- 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)?

Answer:

- 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.

TBC Indexation

Question:

- I have a pension with a TBAR 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)?

Answer:

- If you already have a 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
- So your new TBC as at 1 July 2021 will be $1.65m (an increase of $50k).

TBC Indexation

Question:

- 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?

Answer:

- No. If you used all of 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 after age 65

Contributions after age 65

Question:

- 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?

Answer:

- 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 work test satisfied, can contribute up to age 75.

Contributions after age 65

Question:

- 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.

Answer:

- 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.

Contributions after age 65

Question:

- 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?

Contributions after age 65

Answer:

- As you are 65, you are limited to $100,000 pa non-concessional cap
- This is dependant on your TSB, however
- There is no work test for those under 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.

Death of a trustee

Death of a trustee

Question:

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

Death of a trustee

Answer:

- 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 needs to be notified of a Change of Director (Form 484).

Death of a trustee

Question:

- 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?

Death of a trustee

Answer:

- 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 super law recipients
- 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.

Death of a trustee

Question:

- What is the procedure when one of the trustees dies?

Answer:

- 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).

Death of a trustee

Question:

- Can I learn more about the tax applied to super on death?

Answer:

- 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.

Death of a trustee

Answer:

- Tax on pensions depends on age.
- 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.

Death of a trustee

Question:

- 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?

Answer:

- 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 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.

Death of a trustee

Question:

- 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?

Answer:

- 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.

Death of a trustee

Answer:

- 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.

Miscellaneous

Miscellaneous

Question:

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

Answer:

- We have been advised that the minimum pension drawdown will revert to its pre-pandemic level in the 2022/23 financial year
- Unlike the GFC, where we had a gradual increase, this time it will be standard minimum drawdowns.

Miscellaneous

Question:

- What is the maximum number of members an SMSF can have?

Answer:

- 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' 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.*

Miscellaneous

Question:

- Can I withdraw a lump sum from our SMSF for a charitable donation to an authorised DGR and have that donation come from the taxable component of the fund?

Answer:

- 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.

Introducing your tech and education team

A team with nationwide presence, allows us to be where you are.

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Thank You!