

WHAT ARE THE ISSUES?

Firstly, are you aware that superannuation interests do not automatically form part of your estate? This is a surprise to many people.

In relation to SMSFs, three issues determine the passing of benefits upon death:

1. The Trustee Structure of the Fund
2. The Deed of the Fund
3. Any death benefit nominations that may have been made.

SMSF TRUSTEE STRUCTURE

A couple could be either individual trustees of their SMSF, or Directors of a Company which acts as 'Corporate Trustee' of their SMSF. From an estate planning point of view a Corporate Trustee is superior in our view. This is due to the fact that with individual trustees there must be at least 2 individuals; whereas a single person is able to be sole Director of a company, and thus control their SMSF in their own right.

Take for example the situation where one person passes on, and they are an individual trustee of their SMSF. At this point the surviving member/trustee is forced by law to bring another individual on board as trustee of the SMSF.

With SMSFs being established for reasons of increased control and flexibility, it is then incongruent for a person to be forced to bring on board a third party to make decisions about their superannuation monies. With a corporate trustee the surviving party is free to manage their superannuation monies as they wish (subject to governing legislation of course).

From an estate planning perspective, the Constitution of the company acting as corporate trustee might need to be reviewed to determine whether any specific rules apply to the death of a Director or shareholder.

SMSF DEED AND BENEFIT TYPES

There are a great many SMSF Trust Deeds in the marketplace, each with their pros and cons. In general terms these Deeds set down three options for death benefits:

1. Payment of a lump sum to an estate
2. Payment of a lump sum to an individual/beneficiary directly from the superannuation fund
3. Payment of an income stream to an individual/beneficiary directly from the superannuation fund.

Decision-making will depend generally upon tax, asset protection and potential blended family issues.

DEATH BENEFIT NOMINATIONS

Once again, there are generally three alternatives:

1. Non-Binding
2. Binding with 3 year limit
3. Non-lapsing, binding

Non-binding nominations provide greater flexibility to take into account the laws/situation at the time of the benefit; whereas binding nominations provide greater certainty as to the recipient of the benefit (though potentially not the most tax efficient if laws change between the time of the nomination and the time of payment).

Advice should be taken from a licensed Adviser before making this decision, as each client is different and has different objectives and circumstances.

TAXATION

Taxation of superannuation death benefits is complex, and beyond the scope of this fact sheet. Issues which effect the taxation of death benefits include the type of benefit the deceased had at time of death (accumulation/pension); the age of the deceased and the recipient at the time of payment; and the relationship between the deceased and the recipient at the time of death.

Once again, expert advice should be taken from a licensed Adviser before taking any action.