

SMSFs

WHAT IS HOT



morrows

*the difference
is significant*

Pensions: Odds and Ends



- TR 2013/5 requires first year account based pensions to withdraw at least two pension payments (a series of payments) in the first year to be eligible for exempt pension income according to the ATO.
- Reminder that lump sum payments from unrestricted non preserved benefits count for pension payments.
- Where members are receiving Centrelink entitlements make sure combining pensions doesn't exclude them from eligibility. Pensions commenced post 1 January 2015 will have their income deemed.

Deeming Rule -The Change



From 01 Jan 2015

Centrelink assesses the income of new Account Based Pensions (ABP) using the 'Deeming Rule'

What is the 'Deeming Rule'?

Status	Deeming Threshold	Rate below Threshold	Rate above Threshold
Single	\$48,000	1.75%	3.25%
Couple	\$79,600		

Example:

John commenced an ABP at age 65 with \$500,000 & no other financial assets. John is single.

Centrelink Assessable Income = \$15,530 (regardless of actual ABP income)

the difference is significant

Grandfathering Provisions



Grandfathering Provisions allow existing ABPs to continue to be assessed for pension eligibility under the previous rule subject to:

- the ABP is commenced prior to 01 Jan 2015,
- the client is in receipt of an income support payment prior to 01 Jan 2015 and is in continuous receipt of that payment going forward,

Continuous receipt is KEY

If the ABPs / CSHC / Centrelink payments are stopped and restarted after 01 Jan 2015, the Deeming Rule will apply.

Art Work & Collectables



The transition period for holding artwork, antiques, coins, or other collectibles in your superannuation fund ends 30 June 2016.

The regulations from 1 July 2016 require that they:

- must not be leased to any related party of the fund,
- must not be stored or displayed in the private residence of any related party of the fund,
- trustees must make a written record of the reasons for the decisions on where to store the collectables and keep the record for 10 years,
- transfers to related party must be done at market price determined by a qualified independent valuer.
- collectable and personal use assets must be insured in the name of the fund within 7 days of acquisition.

Deduction for future service benefit



On 5 June 2015 the ATO issued ATO ID 2015/17

- Section 295-470 of the ITAA 1997 allows a fund to claim a deduction based on the fund's future liability to pay benefits,
- The deduction is available on the payment of a death benefit, terminal illness benefit, a disability superannuation benefit or a temporary incapacity income stream payment,
- Generally only available if the event occurs prior to the member's 65 birthday,
- The deduction is available as an alternative to taking a deduction for life insurance premium.

Deduction for future service benefit



- The ATO's view is that to be eligible the Fund needs to hold a life insurance policy so that a choice can be made,
- The choice can be made after death,
- The decision implicitly provides that the trustee can choose to deduct the future service portion even if, in respect of previous financial years, the trustee has chosen to claim a deduction for the insurance premiums,
- The choice must be made in the tax return for the financial year in which the death benefit is paid,
- Once the choice is made it applies to all members and applies to future financial years.

Anti Detriment Payment (ADP)



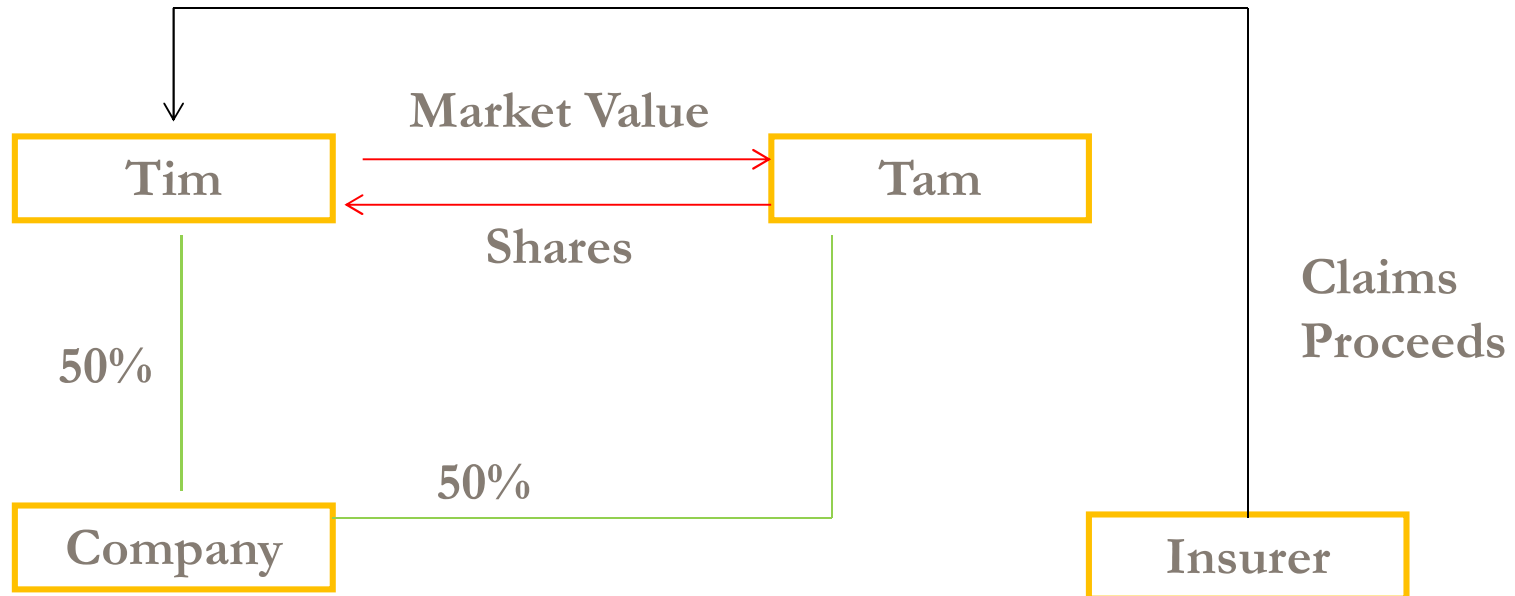
- Legacy of reforms to superannuation from 1/7/1988.
- Anti detriment provisions provide two additional benefits:
 - increases the lump sum death benefit
 - provides the fund with the ability to claim a tax deduction based on the increased amount of the superannuation lump sum death benefit.
- Additional payment cannot be withdrawn from other member balances.
- Require reserves of creating a new asset within the fund.

Deduction for future service benefit



- Unlike Anti-detriment claims no reserve is required,
- The amount calculated is a deduction and does not have to be paid out. The expense can offset capital gains and contribution tax,
- Where the fund has also taken an anti-detriment deduction, the amount of the future service deduction is increased,
- Benefit amount \times future service days/total service days,
- If a future service tax deduction is taken then it will attach to the fund for the benefit of current and future members.

Buy/Sell Agreement



the difference is significant

Buy- sell agreement in SMSF ATO ID 2015/10



- Tim and Tam are 50% owners in a company,
- Life insurance policies for both owners are paid via contributions to the superannuation fund,
- The insurance policy is based on the value of the company,
- On the death of Tam the insurance benefit is added to his member entitlement,
- The total amount is paid to his dependant,
- Tam's share in the company will be transferred to Tim,
- ATO's interpretative decision is the above is a breach of Section 62 and 65(1)(b) of the SIS.

Double dipping Contribution Strategy



- Contribute extra concessional contribution in June via a reserve, to be allocated before 28 July the following year,
- The ATO has clearly indicated that such a strategy is acceptable with sufficient evidence and documentation,
- Strategy could be an advantage where large capital gains may have been incurred by an individual,
- Objection may be required if the ATO issues an excess contribution notice.

Double dipping contributions Strategy



- Where an objection notice is to be lodged the ATO will require additional evidence and documents to support the taxpayer objection.

This will include:

- A copy of the fund's trust deed, which shows the ability for the fund to hold unallocated contributions,
- Trustee minutes outlining the resolutions to allocate to and from contribution reserve,
- Minutes of the decision to allocate funds to the contributions reserve,
- Contribution reserving strategy.

Double dipping contributions Strategy



- Bank statements from your SMSF that confirms the contributions being paid for the period your application relates to, and
- Evidence of the reallocation within 28 Days of the end of the month.
- We recommend getting advice before implementation

Binding Death Benefit Nominations (BDBN)



- Binding Death Benefit Nomination ('BDBN') allow SMSF members to direct who is to receive their death benefit,
- SMSF trustees must follow their SMSF deed,
- Generally the SMSF deed empowers a trustee to pay a death benefit to one or more dependants or to the LPR,
- In the absence of a BDBN, this choice is left to the trustee's discretion,
- The actual wording used in a BDBN is very important. It must be clear and consistent with the member's instructions,
- The specific provisions of the deed are vital to ensure that a BDBN can be put into place and also last indefinitely.

Binding Death Benefit Nominations (BDBN)



- Recent cases such as *Munro vs Munro* and *Donovan vs Donovan* have highlighted the potential risks in not drafting a BDBN correctly,
- Rarely is preparing a BDBN as simple as filling in a form, and a failure to take proper advice can lead to expensive, time-consuming litigation ,
- Morrows are updating their deed in light of the recent cases to give more certainty to the BDBN,
- We are currently reviewing all our clients BDBN nominations on file.
- Lets look at the cases in detail.

Munro & Anor v Munro & Anor



- John & Patricia Munro were trustees of their SMSF.
- John (a solicitor) had signed a BDBN, apparently prepared by his accountant.
- Nominated Beneficiary was 100% to “Trustee of Deceased Estate”.
- John died and was survived by his wife and two daughters from a previous marriage.
- It is assumed the dispute arose out of Mrs Munro’s desire to pay the benefit to herself rather than to the children of Mr Munro’s previous relationship.

Munro & Anor v Munro & Anor



The Supreme Court of Queensland considered the following in the context of the Nomination and decided:

- Did the nomination have to comply with the requirements of reg 6.17A of SISR?
- *No. Accordingly, Munro v Munro held that the approach set out in SMSFD 2008/3 is correct.*
- What did Mr Munro mean by nominating “Trustee of Deceased Estate?”
- *The court concluded that Mr Munro intended to nominate the trustee of his deceased estate and not his legal personal representative or executor.*

Munro & Anor v Munro & Anor



What is the effect of the Nomination?

- The nomination is invalid as the SMSF governing rules, SISA and SISR require the nomination to be in favour of dependants or the member's legal personal representative,
- The court concluded that the trustee of a deceased estate is not the same as the legal personal representative,
- The trustee of a deceased estate is a person who acts to apply the estate assets to trusts under a will after the executor has completed the functions and duties of administration of the estate.

Donovan vs Donovan



- Mr Donovan established a SMSF,
- The Trust Deed permitted Mr Donovan as a member to make a BDBN,
- Mr Donovan wrote a letter to himself as trustee of the SMSF, advising of his 'wish' that his estate receive his death benefits,
- On his death his daughter sought a Court Order on whether this constituted a binding nomination that the trustee of the SMSF must give effect to,
- The nomination was found to be invalid as a binding nomination, as it was not in the correct form and only expressed a wish rather than a binding nomination.

Power of Attorney



Current Victorian Legislation

Current legislation for Powers of Attorney is across **three** different Acts:

<i>Part XIA Instruments Act 1958</i>	➤ <i>Enduring Power of Attorney (Financial)</i>
<i>Section 5A Medical Treatment Act 1988</i>	➤ <i>Enduring Power of Attorney (Medical Treatment)</i>
<i>Section 24 Guardianship and Administration Act 1986</i>	➤ <i>Enduring Guardian</i>

Three different forms, three different witnessing requirements

Old legislation, out-dated, lack of guidance, confusion

REQUIREMENT FOR REFORM



Legislation is old

Ageing population

People are living longer and accumulating more wealth as they do so

Greater opportunity for misuse or mistake

Requirement for more clarity and direction

POWERS OF ATTORNEY ACT 2014 – *COMMENCES 1 SEPTEMBER 2015*



- New Act will consolidate the laws in relation to:
 - General Powers of Attorney;
 - Enduring Powers of Attorney (Financial); and
 - Enduring Guardian Power of Attorney.
- Medical Power of Attorney remains.

POWERS OF ATTORNEY ACT 2014 continued



Clarification of existing legislation

Directions and obligations of Attorney are noted - **guidance**

Creation of “Supportive Guardian” role