



## YOUR GUARDIAN

Issue: March 2005



### Children in the SMSF

One of the main reasons for the recent restrictions on the payment of defined benefit pensions from Self Managed Superannuation Funds (SMSFs), is that they supposedly have been used for estate planning purposes rather than for the sole purpose of providing retirement benefits.

One suggestion is that members of a SMSF have been using lifetime pensions which have a Reasonable Benefit Limit (RBL) value much lower than the actual value of the assets supporting the pension. Generally speaking, an amount (determined by an Actuary year to year), which is roughly equal to the difference between the RBL value of the pension and the actual value of the assets, is channelled to the fund's reserve account, and this reserve account is eventually distributed to other members of the fund. This practice can avoid excessive RBL issues by filtering the reserve to the children or spouse of the pension recipient.

If the pension recipient were to instead commence an allocated pension with the portion in excess of their RBL, upon death the beneficiaries may receive a death benefit after excess benefits tax (a maximum of 48.5%) had been deducted.

When paying a death benefit to a member's spouse or children, usually there would be costs involved such as brokerage and CGT upon selling assets of the fund to pay them cash. If the spouse or children are also members of the fund though, these costs can be saved if the reserve account is instead allocated between their member accounts.

Any distribution made from the reserve will be subject to preservation, may be surchargeable, and will count towards the recipient's reasonable benefit limit when taken as a lump sum or pension. This may be unattractive if the recipient of a reserve distribution is not at preservation age and needs access to capital, or if the recipient already has RBL issues.

In order to make the most of these estate planning

opportunities involving a reserve, mums and dads, as trustees of a fund, need to consider the option to appoint their children as members of the fund (and hence also as trustees). However, the pros and cons of introducing children into a typical mum and dad fund go beyond any reserving strategy.

An important issue is that a SMSF must have less than 5 members. If a couple has more than two children, they will have to select only two to join the fund with them. The decision of which children to choose may inevitably cause friction within the family.

When the trustees decide to introduce their children as trustees of the fund, this will water down the parent's decision making power on their own assets, as all trustees will need to be included in all decisions made with the fund. This could lead to chaos when a child trustee with a minimal balance in the fund decides to object to mum and dad making a certain investment decision. Taking a rather bleak view, child members may also occasionally look at their mum and dad's super benefits with thought as to the position of their fund once mum and dad pass away, not necessarily what is best for mum and dad right now.

In addition to being responsible for all decisions within the fund, all trustees are equally liable for any SIS breach the fund makes. Regardless of whose fault, each member could potentially lose 48.5% of their super assets to the ATO if the fund is considered non-complying.

In some circumstances however, the introduction of children can be beneficial. A two child, two parent family will fit nicely in the four person SMSF environment. This will give adult children a chance to accumulate their superannuation benefits with maximum investment control. All expenses, levies and fees associated with having the self managed superannuation fund can be diluted between the four members.

When the parents pass away, the existing assets do not necessarily need to be transferred out of the fund in order to go to the beneficiaries. A fresh pension can commence to the children, or other arrangements may be made.

Upon death of the parents, the remaining children may decide to introduce their spouses into the fund (keeping to the 4 member rule), saving on fund establishment and administration costs. For the purposes of decision making, it may be preferable for one of the children at this stage to roll out of the fund, and establish a new SMSF for their prospective family's benefit (trustees should be diligent, as any transfer of asset ownership can have CGT implications which can potentially be minimised).

Should you wish to discuss the pros and cons of Children in the SMSF in more detail, please call Tania Tonkin or Ed Bernard at our office.



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## Lump Sum Withdrawals

You should be aware that although lump sum withdrawals (also known as Eligible Termination Payments) may be allowed from your SMSF under certain circumstances, there may be restrictions and tax implications upon a withdrawal of the superannuation benefits.

There are also strict deadlines for reporting a lump sum withdrawal to the Australian Taxation Office.

Please contact us prior to taking any assets from your Superannuation Fund for personal reasons, to discuss and consider any of these issues.

## Purchasing Assets Through Your SMSF

A superannuation fund is not a legal entity; it is a type of trust. This results in superannuation funds having a trustee (or trustees). The trustee(s) of the fund are responsible for holding the superannuation assets on behalf of the members. Therefore assets of a superannuation fund must be held in the trustee's name as trustees for the superannuation fund.

The Australian Taxation Office holds the view that all assets must be held in the name of all trustees. Where this is not possible there should be other supporting documentation to demonstrate that the assets belong to the fund (eg trustee minutes and/or a declaration of trust).

### Example:

If the trustees are **Individuals**, you would purchase the assets as:

Mr J & Mrs J Smith As Trustee For  
The Smith Family Superannuation Fund

Where the trustee of the fund is a **Corporate Trustee** you would need to purchase assets as:

ABC Pty Ltd As Trustee For  
The ABC Superannuation Fund

It is important that assets are purchased correctly to avoid confusion over the ownership of the assets. In the event of an ATO audit of your fund, the review process will include verifying these details.

For administrative and audit purposes, whenever an asset is purchased through the superannuation fund you should provide a copy of the contract to SuperGuardian to substantiate the details of the purchase. Such documentation can include; buy contracts of shares, confirmations of investments in managed funds, details of term deposits, settlement statements for property purchases.

If in doubt as to how an investment should be purchased or what documentation to supply to SuperGuardian, please contact us.

## Did You Know?

The ATO has predicted that following the July 1 transition date for Choice of Super, around 20,000 new SMSFs will be created every month! *Source: IFA, March 7 - 13, 2005*

## SuperGuardian Team Talk

The SuperGuardian team have decided to support the 'World's Greatest Shave' to raise funds for the Leukaemia Foundation.

On Friday 11th March, several staff members decided to participate in the cause.

Phil Jaquillard took the plunge and shaved off his beard, Anthony Cullen and Ed Bernard shaved off a healthy head of hair and went completely bald! Olivia Molina, Kimberly Costa, Stacey Cameron and Helen Pight decided to colour their hair crazy for the day.

Overall, the team are aiming to raise a significant contribution, so if you would like to make a donation, please forward any cheques made payable to the Leukaemia Foundation to Olivia Molina at SuperGuardian.



If there are any aspects of this newsletter you would like to discuss in more detail, please call **Phil Jaquillard** or **Ed Bernard** on **1300 787 576**.



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