SuperGuardian™
Superannuation administration made simple!

Chartered Accountants

SuperGuardian in the Press

Published: The Weekend Australian Financial Review December 11 2010

YOUR QUESTIONS JOHN WASILIEV

Non-cash book entries are not the answer

I have a self-managed superannuation fund, from which I draw an annual pension under the transition to retirement rules. Before reaching 65, I intend to withdraw a lump sum of $450,000 from my fund and re-contribute the amount back into the same fund as an after tax contribution. In order to effect this withdrawal and re-contribution strategy, I am thinking of using non-cash entries in the super fund books to avoid having to sell my investments and re-contribute in cash. Am I allowed to do this under the super regulations?

It is not possible to implement this strategy using non cash entries in your super fund accounts as the Australian Taxation Office has clearly stated that journal entries are insufficient to establish that the superannuation fund has paid a benefit, says Olivia Long, chief executive of DIY super administrator SuperGuardian.

Therefore, for the $450,000 to be classified as a withdrawal for superannuation and tax purposes, it will need to be physically paid out of the fund. It is important to remember that capital gains tax may apply to the sale of any fund assets unless you sell them during the pension phase when any gains are treated as tax exempt.

There are other important conditions you must satisfy. Under transition to retirement rules, you will be limited to a maximum withdrawal of 10 per cent of your member balance. To be able to withdraw more than this you must satisfy a condition that gives you access to all your super. The most common condition is retiring from work and declaring you have no intention of working again. If you do this you should be able to withdraw a large lump sum which will be tax free if you are over 60. In order to make a $450,000 re-contribution you must be under the age of 65.

Our DIY super fund is wholly devoted to paying a term allocated pension (TAP) to its only remaining member on the basis that the pension will be paid to the member's spouse if the member predeceases her. Rather than having any adult children who will be beneficiaries of any death benefit face tax at 16.5 per cent on the balance of the pension, is it permissible to commute the pension during the lifetimes of either the original pensioner or the reversionary pensioner? I understand commutation is permissible with pensions generally and I am just checking that the same rules apply for term allocated pensions.

One of the conditions of term allocated pensions, which are super income streams that were made available between 2004 and 2006 and that enjoyed social security concessions, is their limited commutation options, says pensions expert Peter Crump of Portfolio Planning Solutions.

> One of the conditions of term allocated pensions is their limited commutation options.
> Pensions expert Peter Crump

Term allocated pensions are income streams where the terms are based on the age of either the primary pensioner or their spouse if they are nominated to continue to receive the pension on the death of the first pensioner. Such pensions are described as reversionary pensions. If the original term of the pension was based on the age of the primary pensioner, there was the option to commute the pension on the death of the reversionary pensioner, or to continue the pension as a reversionary pension for the balance of the original term.

However, if the pension was based on a longer term, such as the age of a younger spouse, it is not possible to commute the existing pension on the death of the primary pensioner. In that case, the pension must be paid for the balance of the original term, or until the death of the reversionary pensioner, whichever comes first.

There does remain some flexibility, however, for pensions that were set up with an extended term such as one based on the difference between the pensioner's age and age 100. In this case you can commute the pension and use the proceeds to commence a new TAP, but with an amended term, based on the age characteristics of the primary pensioner. This requires some careful planning ahead of time, as the payment term of the new pension will be based on the age of the pensioner at the time of the recommencement. If the original term was based on the "age 100" rule, it is possible that using the life expectancy of the primary pensioner instead may produce a shorter term.

It is important to remember that a commutation on the death of the primary beneficiary will be a benefit payment to the spouse, which is likely to attract no tax where the payment is made to a beneficiary over age 60. Once that amount is paid out, however, it may not be possible to return the balance to superannuation, which means it will then be invested outside super in a taxed environment. Over time, the tax that might be paid could exceed the 16.5 per cent tax that might apply to any payment on the death of the reversionary pensioner.

FBA 045