42 May 26-27, 2007 The Weekend Australian Financial Review www.afr.com

SMART MONEY

YOUR QUESTIONS **JOHN WASILIEV**

Make your money sweat for the spouse

I am 60 with no plans to retire soon. I wish to start a transition-to-retirement pension after July from my self-managed super fund (my wife is 54 and a member). Our three children are not financially dependant on us.

Recent articles on death benefits discuss strategies to lift the non-taxable component of super that will ultimately pass to my family. If I adopt a strategy of increasing my undeducted contributions over the next few years – to increase the non-taxable component of my ultimate death benefit – how is the character of this changed, if at all, when it passes to my spouse? If my pension reverts to my spouse, do the taxable and non-taxable components remain the same? How do my pension payments reduce the taxable/non-taxable components?

If my wife took the amount as a lump sum, are the components no longer relevant and will there be issues concerning her ability to pay this lump sum into her own super account given the undeducted contribution limits.

Assuming my wife outlives me, are we better off making the undeducted contributions in her name? Also administratively, how do we ensure she is nominated as a reversionary pensioner to my pension?

Phil Jaquillard of Adelaide-based SuperGuardian says if a death benefit is paid to your spouse as a lump sum, the split between taxable and non-taxable components becomes irrelevant. A spouse is considered a dependant for tax purposes, so any death benefit paid from a taxed super fund will be free of tax. This would not apply if the death benefit was paid to a non-dependant. Instead, the taxable component would be taxed at 16.5 per cent.

But if she wishes to put the proceeds back into her super, she will need to adhere to new contribution limits of $150,000 per annum (the "averaging" rule can be used to bring forward the next two years' limits if she is under 65). If she is over 65, the limit will be $150,000 and the work test of 40 hours in 30 days must be met.

Under the new super rules, pension payments will reduce the two components (taxable and non-taxable components) on a proportionate basis. So the higher the proportion of non-taxable component of the total member balance when the pension starts, the higher the required drawdown from this component .

If a death benefit is paid as a reversionary pension to your spouse, she would retain the original components you had. If you were over 60 at death, or your spouse is over 60, the pension income will be free of tax under the new rules. But for estate planning, it is important she acknowledges the breakdown of the ETP components and the possible taxation upon her death.

If your wife outlives you, there may be a benefit in contributing undeducted (or non-concessional) contributions into her name. Therefore, the amount of the death benefit paid to her will ultimately be less, and contribution restrictions less of an issue.

To effectively nominate your spouse as a reversionary beneficiary, make sure the trust deed permits this, and then write to the trustee requesting a pension be paid to her. The trustees should hold a meeting and prepare minutes which acknowledge the letter and approve the pension and its reversionary status. This should be communicated back to you.

I am approaching retirement and have accrued long-service leave. Can I have this credited to my super and pay the 15 per cent contribution tax? If not, what is the tax rate payable?

John Randall, a partner with Deloittes, says it is unlikely that the leave can be sacrificed. This means it can't be converted into taxable super contributions.

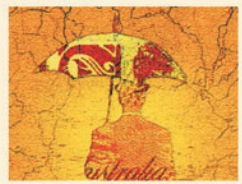
The tax varies depending on the period of service, when earlier long-service leave was taken (if any) and the circumstances of the payment. A bona fide redundancy, for example, attracts a lower tax rate than voluntary termination of employment.

The tax rates start with 5 per cent of the leave being assessable at marginal tax rates if there is a pre-August 16 1978 component.

For a post-August 1978 to August 17 1993 component, the tax rate is a maximum 30 per cent plus Medicare.

A post-August 17 1993 component is taxable at marginal rates.

ASK US



Don't ponder the meaning of the new super rules. Many readers have sent us questions about the new system and more are welcome. We'll seek expert advice where necessary to help you make sense of it all. Send any query, big or small, to wasiliev@yoursuper.net