

Masterclass 3

SMSFs and Family Law – Separation, Settlement and Splitting Assets

Case Studies

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- Case Study 1 – Dollar Split
- Case Study 2 – Percentage Split
- Case Study 3 – a DIY Job



Case Study 1 – Dollar Split

Danny and Tina

Danny and Tina

Danny (45) and Tina (42) who have been married for 10 years decide to divorce.

They each seek separate advice from a family lawyer to draft the orders to be lodged with the court

Application made to the trustee of the Tiny Superannuation Fund by Tina under section 90MZB (Family Law Act 1975) and a declaration under section 62 of the Family Law (Superannuation) Regulations.

Member balances and accounts acquired.

Danny's balance of \$858,900 in accumulation phase. Tina's balance of \$654,908 in accumulation phase.

Danny and Tina

Member Accounts	Closing Balance 30 June 2021
Danny	
Accumulation	\$858,900
Tina	
Accumulation	\$654,908
Totals	\$1,513,808

Investment	Closing Balance
Cash	
CBA	\$ 218,808
Domestic Shares	
CSL	\$ 175,000
Woolworths	\$ 152,000
Comm Bank	\$ 190,000
ANZ	\$ 253,000
Factory	\$ 375,000
Other Assets	
Dana Pty Ltd	\$ 150,000
Totals	\$ 1,513,808



The Orders

...(c) That on or before 3 August 2021 Danny and Tina in their capacity as trustees of the Tiny Superannuation Fund to do all acts and things and sign all documents necessary to:

- i. Cause to be prepared and lodged any outstanding financial statements and taxation returns of the Tiny Superannuation Fund up to and including the financial year ending 30 June 2021,
- ii. Cause to pay any tax, accounting and audit expenses payable by the fund owing as at the date of the orders

(d) In accordance with section 90XT(1)(a) of the Act and in order of priority:

- i. a base amount be allocated to Danny out of Tina's interest in the Tiny Superannuation Fund as required by section 90XT(4) of the Act (Danny's base amount)
- ii. Danny be entitled to pay Danny's base amount when a splittable payment becomes payable to Danny from Tina's interest (such that Danny will then have 100% of the entire interest in the Tiny Superannuation Fund.

(e) Tina's entitlement is hereby correspondingly reduced.....

...(j) for purposes of the above clauses Tina's base amount is calculated as:

Tina's base amount = Danny's Consolidated Interest x 50%

Splitting Notice – SIS regulation 7A.03



Danny and Tina

Member Accounts	Closing Balance 30 June 2021
Danny	
Accumulation	\$858,900
Tina	
Accumulation	\$654,908
Totals	\$1,513,808

Member Accounts	Closing Balance 30 June 2021
Danny	
Accumulation	\$1,513,808
Tina	
Accumulation	
Totals	\$1,513,808

Member Accounts	Closing Balance 30 June 2021
Danny	
Accumulation	\$756,904
Tina	
Accumulation	\$756,904
Totals	\$1,513,808



The Orders

(m) That subject to the trustee giving effect to the request by Danny and Tina in accordance with Clause 9 above that Tina will:

- i. Tender her resignation as a trustee of the Tiny Superannuation Fund
- ii. Resign as a member of the Tiny Superannuation Fund

(n) That simultaneous with compliance and service of a payment split notice pursuant to Regulation 7A.03 of the SIS Regulations 1994:

- i. Tina forthwith do all such acts and things to sign all documents as may be necessary to transfer or rollover her allocated benefit in the Tiny Superannuation Fund to a complying superannuation fund as nominated by her.....

Calculation of Preserved Components of the Benefit

- Danny is 45 and Tina is 42.
- All benefits are preserved.
- Neither meets a condition of release.
- Amount rolled over for Tina (\$756,904) continues to be fully preserved.

Calculation of Taxable and Tax Free Components

Member Accounts	Closing Balance 30 June 2021	Tax free component
Danny		
Accumulation	\$858,900	\$515,340
Tina		
Accumulation	\$654,908	\$294,708
Totals	\$1,513,808	\$810,048

Taxable and tax free components in the amount Tina rolls over to her complying superannuation fund.

$$= \$810,048 / \$1,513,808$$

$$= 53.51\%$$

$$= \$756,904 \times 53.51\%$$

$$= \$405,024$$

Fund Investments

Investment	Closing Balance
Cash	
CBA	\$ 218,808
Domestic Shares	
CSL	\$ 175,000
Woolworths	\$ 152,000
Comm Bank	\$ 190,000
ANZ	\$ 253,000
Factory	\$ 375,000
Other Assets	
Dana Pty Ltd	\$ 150,000
Totals	\$ 1,513,808

Fund Investments

No orders given in relation to the splitting of assets. Left up to the parties.

What happens here is a matter for the nominated fund and whether it can accept the transfer of assets.

Sale of assets in fund will be a CGT event and tax would be payable by the fund.

Settlement agreement needs to include a clause concerning tax liabilities on sale of assets

Case Study 2 – Percentage Split

Alan and Therese

Alan and Therese

Alan and Therese have decided to divorce after a short but volatile relationship.

In relation to superannuation matters the settlement agreement acknowledges the assets and liabilities of the AT Superannuation Fund as at 30 June 2020 to be:

Assets	
ANZ Savings Account	\$1,200,000
Interest in the Industrial Unit Trust	\$1,900,000
Hume Highway property	\$850,000
Chatswood property	\$950,000
Total Assets	\$4,900,000

Alan and Therese

The parties intend to equally divide their total interests in the super fund as follows:

- a. Alan's interests in the Super Fund will be rolled over to a new SMSF
- b. Therese will retain her interest in the Super Fund
- c. 50% of the units in the Industrial Unit Trust will be transferred to Alan's SMSF
- d. The Chatswood property will be transferred to Richard's SMSF
- e. Therese will retain 50% of the units in the Industrial Unit Trust
- f. Therese will retain the Hume Highway property in the Super Fund
- g. The cash account in the Super Fund will be used to equalise the total amount of the amount paid to Alan which will be rolled over to Alan's SMSF
- h. The costs of establishing Alan's SMSF will be shared equally between the parties

Superannuation Agreement

The operative date of the agreement will begin on the 4th business day after service of the agreement on the trustee.

Alan and Therese agree that within 14 days of the agreement that Therese will serve the trustee with a copy of the agreement.

Alan and Therese agree that the base amount will be allocated to Tanya as calculated as follows:

$$BA = \frac{A_t + T_t}{2} - T_t$$

Where BA is the Base Amount being the total amount of Alan's entitlement at the date of the creation of the new interest for Therese out of Alan's superannuation entitlement

T_t is the total amount of There's entitlement on the date of the creation of the new interest for Therese out of Alan's superannuation entitlement

Superannuation Agreement

$$BA = \frac{\$3,300,000 + \$1,600,000}{2} - \$1,600,000$$

$$BA = \frac{\$4,900,000}{2} - \$1,600,000$$

$$BA = \$2,450,000 - \$1,600,000$$

$$BA = \$850,000$$

Alan and Therese

Alan and Therese agree that the amount calculated as the base amount is the amount to which Therese is entitled and reduce Alan's entitlement accordingly.

After Therese has served the Superannuation Agreement on the trustee

- that a payment split notice will be served on each of the parties
- Provide options to Therese under Division 7A.2 of the SIS regulations in relation to the Splitting Clauses
- Give effect to the request to create a new interest in her name in the fund being the base amount
- That the period agreed for purposes of regulation 7A.08 of the SIS Regulations is the period agreed between Alan and Therese.

After Allocation of Base Amount

Member Accounts	Closing Balance 30 June 2021
Alan	
Accumulation	\$2,450,000
Therese	
Accumulation	\$1,600,000
New interest	\$850,000
Totals	\$4,900,000

Assets	
ANZ Savings Account	\$1,200,000
Interest in the Industrial Unit Trust	\$1,900,000
Hume Highway property	\$850,000
Chatswood property	\$950,000
Total Assets	\$4,900,000

Allocation of assets to Alan's new SMSF:

50% of units in the Industrial Unit Trust	\$950,000
Chatswood Property	\$950,000
Balance in Cash	\$550,000

Calculation of Taxable and Tax Free Components

Member Accounts	Closing Balance 30 June 2020	Tax free component
Alan		
Accumulation	\$3,300,000	\$1,100,000
Therese		
Accumulation	\$1,600,000	\$1,600,000
Totals	\$4,900,000	\$2,700,000

Taxable and tax free components in the amount Alan rolls over to his SMSF.

$$= \$2,700,000 / \$4,900,000$$

$$= 55.10\%$$

$$= \$2,450,000 \times 55.10\%$$

$$= \$1,350,000$$

Case Study 3 – The DIY Job

Kevin and Jane



Kevin and Jane

- Kevin (age 79) and Jane Price (age 69) been married for just over 25 years.
- They have decided to separate, however, due to the 'embarrassment' of seeking a court order or financial agreement Jane has decided to split their superannuation on a 50/50 basis. Jane is determined no tax will be payable.
- They have an SMSF, the Big Price Superannuation Fund, which has individual trustees and wholly in pension phase. The following pensions are payable to them:

Member	Pension Type	Start Date	Current Value	Tax Free %	Reversionary	Totals
Kevin Price	ABP	10/8/2016	\$842,851	99.64		
Kevin Price	ABP	1/7/2017	\$865,454	52.85	Jane Price	
Kevin Price	MLIS (R/O)	1/7/2017	\$604,186	61.42		
Kevin Price	ABP	1/7/2013	\$579,624	49.78	Jane Price	\$2,892,115
Jane Price	ABP	10/8/2016	\$842,851	99.64	Kevin Price	
Jane Price	ABP	1/7/2017	\$1,001,272	20.85	Kevin Price	\$1,844,123
Total						\$4,736,238

What do they need to do?



What do they do?

- Remove the reversions from the pensions
- Kevin is to start a new SMSF
- How will the pensions be rolled over the new SMSF tax effectively?
- Payment of balancing amount of \$523,996
- Get Kevin to resign as trustee of the fund
- Trustee of Big Price Superannuation Fund?



Death Benefit Nominations

BENEFICIARY AND DEATH BENEFIT NOMINATIONS

5.6 A Member may from time to time prepare and give to the Trustees notice in writing (the form and content of which notice need not comply with the Regulations and which notice may be contained within a testamentary instrument and which may be given to the Trustees after the Member's death and which does not need to be given by the Member personally) as to the names of those Nominated Beneficiaries (being persons who would be Dependants, if the Trustees were determining dependency at the time of notification, or the Member's Legal Personal Representative or any other person authorised by the Regulations) to whom the Member directs any Death Benefit to be paid and, if more than one, in what proportion and may include a direction by the Member about persons to whom a Benefit is not to be paid. The Member may elect that all or some (as specified by the Member in the notice) of the directions in any such notice shall be binding upon the Trustees but to be binding the content of such notice does not require an express statement that it is a notice binding upon the Trustees and it shall be sufficient if such notice uses words or language that satisfy the Trustees that the notice was intended by the Member to be binding upon the Trustees. If the Member does not make a binding election, the Trustees shall use their discretion in distributing any Death Benefit not covered by a binding election in accordance with Rules 5.11 and 5.12. The notice may:

- 5.6.1 specify the type, amount and proportion of different components of Benefit to be paid;
- 5.6.2 specify whether a Pension including a Reversionary Pension is to be provided;
- 5.6.3 contain conditions which must be satisfied or met in order for a Death Benefit to be paid;
- 5.6.4 specify a period of time or date after which any direction which the Member elected to be binding upon the Trustees is to be no longer binding but is otherwise to remain valid;
- 5.6.5 specify a period of time or date after which the notice lapses;
- 5.6.6 specify the circumstances in which directions in such a notice intended to be binding upon the Trustees are to be treated as no longer binding upon the Trustees including but not limited to:
 - 5.6.6.1 the marriage, separation, divorce or death of a Nominated Beneficiary;
 - 5.6.6.2 the marriage, separation, divorce of a Member;
 - 5.6.6.3 where a Nominated Beneficiary consents;



Change to Reversionary Beneficiary

<insert Date>

The Trustees
Big Price Superannuation Fund
93 Marion St
Cremorne NSW 2090

Dear Trustees,

Alteration to existing Pension Terms

Please be advised that I am currently in receipt of the following Pension:

Pension type:	Account Based Pension
Account Number:	
Purchase Price:	\$967,503
Commencement Date:	1 July 2017
Tax Free Proportion:	52.87%
Reversionary Beneficiary:	Jane Price

I wish to change the reversionary details as per below:

Non-Reversionary upon my death, the remaining balance of the pension will be dealt with according to the rules of the Fund, which may include distribution via the members' death benefit nomination. In the event of your death, a valid Nominated Beneficiary may be able to choose to receive any residual benefits as a pension or lump sum.

Reversionary Pension upon my death, the remaining balance of the pension will be paid as a reversionary pension to the dependant nominated below. The nominated beneficiary meets the eligibility criteria to receive a reversionary pension.

Dependant Name: _____

Relationship to the Member: _____

Dependant Date of Birth: ____/____/____

Gender: Male / Female

Dependant Address: _____

Yours faithfully

Mr Kevin Whistler Price



Adjustment to Kevin's Pension Accounts

Member	Pension Type	Start Date	Current Value	Tax Free %	Reversionary	Totals
Kevin Price	ABP	10/8/2016	\$842,851	99.64		
Kevin Price	ABP	1/7/2017	\$865,454	52.85	Jane Price	
Kevin Price	MLIS (R/O)	1/7/2017	\$604,186	61.42		
Kevin Price	ABP	1/7/2013	\$579,624	49.78	Jane Price	\$2,892,115

Tax effective ways to transfer the benefit to Kevin's new SMSF?

1. Fully commute all pensions
2. Commute pensions in part
3. A combination of 1 and 2

Any advantages in the order of commutation?

Can the settlement amount of \$523,996 be transferred to Jane's accumulation account?

Issues to be Considered

CGT events are not disregarded if assets are transferred between funds

Apportionment of preservation components are not required

Apportionment of taxable and tax free components are not required

Partial commutation of the pensions will impact on Kevin's Transfer Balance Cap

Either spouse may rethink their position and make a challenge to the amount they have received as a 'settlement'.



August 2021

Our team of technical experts



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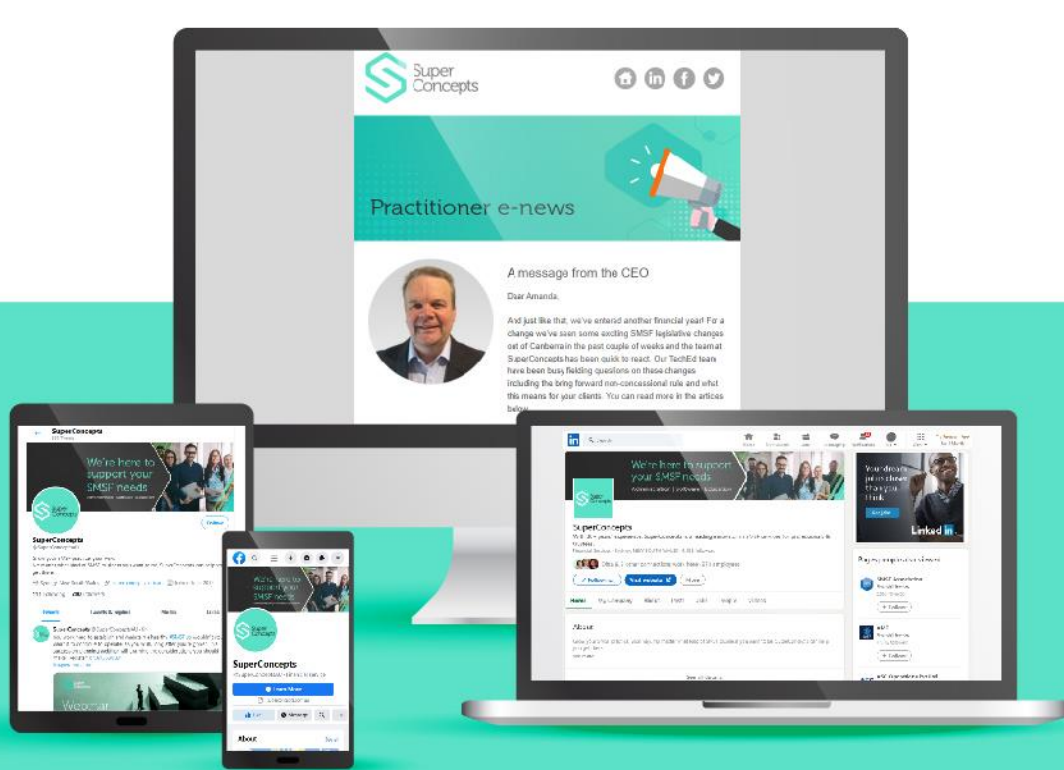
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