TRUSTEE WEBINAR
25TH MAY 2021

SMSF Year End Considerations

QUESTIONS & ANSWERS

Thank you for attending the webinar on 25th May 2021 'SMSF Year End Considerations'.

Here are the answers to the questions asked during the webinar, plus a few more we couldn't get to in time;

Q/1.
If the SMSF is in pension mode, and all the funds are in pension mode with balance of > $1.6 million, is an Actuarial Certificate required?

If so, what is the benefit of the Actuarial Cert in this case?

Comments
The requirement to have an actuarial certificate where the fund has disregarded small fund assets is solely due to the changes in the legislation from 1 July 2017. Currently, the government is considering dispensing with this requirement.

Here is a link to the government's announcement and the current consultation paper concerning the changes to the requirements for actuarial certificates:

Reducing red tape for superannuation funds – ECPI measures | Treasury.gov.au

Q/2.
When will Parliament pass the ruling to not need an actuarial certificate for disregarded small fund assets?

Comments
We are still waiting for the legislation to be passed concerning when the changes to actuarial certificates will commence. The answer to the previous question covers the draft legislation concerning these changes.

Q/3.
Do you have documentation on how to close down an SMSF and transfer assets to an Industry fund?

Comments
We do have documentation for closing down an SMSF. However, the specific documentation required depends on the provisions of the fund's trust deed and what is required in relation to trustee or member resolutions to wind up the fund. Once this has been done the remainder of the work involves liquidating the fund's assets, preparation of accounts and if the fund has a corporate trustee winding it up, if required.

Q/4.
Is the pension amount half in the 22/23 fin year? Make that 21/22

Comments
At the time of the webinar it was considered that there would be no reduction in the minimum pension rates for the 21/22 financial year. However, on 29 May the Prime Minister announced that the 50% reduction in the minimum pension rate would continue for the 2021/22 financial year.

https://www.pm.gov.au/media/supporting-retirees-extension-temporary-reduction-superannuation-minimum-drawdown-rates

Q/5.
What would be an example of an acceptable reason for choosing to take 50% pension?

Comments
There are probably a number of reasons for choosing to take a reduced pension in line with the reductions announced by the government. These could include:

- a defensive measure due to a reduction in investment returns and to retain as much as possible in superannuation;
- a reduction due to be more aligned with living expenses, or;
- greater reliance on private savings.

Q/6.
When we have uploaded all documentation for the audit how do we notify Super Concepts that the audit can proceed?

Comments
Once the documentation is uploaded you can send an email to your client manager to let them know. Otherwise the system will notify your client manager who will arrange for the documentation to be sent for audit.

Q/7.
I have funds in an accumulation account which was excess to my pension account. I have received the full pension amount due for the current year. I am interested to withdraw an amount from the accumulation account prior to 30 June. Please advise the implications and is tax payable on withdrawal.

Comments
This will depend on your circumstances such as your age. However, assuming that you are 60 years of age or older any amount withdrawn as a lump sum from your SMSF will be tax free.

Q/8.
What is happening with the Transfer Balance Cap this year? Is it inflated above $1.6m?

Comments
Since 1 July 2017 the Transfer Balance Cap has been set at $1.6 million and from 1 July 2021 it is indexed to $1.7 million. However, not everyone will receive the full benefit of the indexation.

Anyone who has already accessed the full amount of the Transfer Balance Cap, which is $1.6 million will not get access to any of the indexation as they have used up 100% of the Cap available.

Anyone who has used up part of their Transfer Balance Cap will have access to a portion of the indexed amount. For example, assume a person has commenced a pension with $1.2 million on 1 July 2019. They will have used up 75% of their Transfer Balance Cap ($1.2 million/$1.6 million). From 1 July 2021 they will be entitled to an indexed amount equal to the unused proportion of their cap which is equal to 25% of the increase or $25,000. Therefore, from 1 July 2021 that person's Transfer Balance Cap will increase to $1,625,000.

Anyone who did not have a pension in place on 1 July 2017 or has commenced a pension since that time will have a Transfer Balance Cap of $1.7 million from 1 July 2021 as they have not used any of their Cap.

Q/9.
Is it true an in-specie transfer must be completely assigned to one or another member of a two-member fund?

Comments
We are not aware that an in-specie transfer of an asset is required to be completely assigned to one or another member of a two-member fund. However, it would depend on who the owner of the property is, and the nature of the contribution made by the fund. This can be illustrated in the following examples:

Example 1

Petra is Robert's spouse and wishes to make an in-specie contribution to their SMSF by the transfer of listed shares. She transfers 1000 shares to the fund which are valued at $10,000. 500 of the shares are to be made as a personal non-concessional contribution for Petra and the remaining 500 shares are to be made as spouse non-concessional contributions for Robert. This would be permitted as it is permissible for a contributor to make non-concessional contributions for themselves and for their spouse.

Example 2

Marilyn and Tom own a block of land as tenants in common in equal shares and wish to transfer it to their SMSF as an in-specie contribution. The value of the land is $200,000 and they wish to credit each of their accumulation accounts in the fund with $100,000. This would be permitted as the equivalent value in relation to their share of the property is being credited to their accumulation accounts.

Example 3

Dan and Julie own a block of land as tenants in common in equal shares and wish to transfer it to their SMSF, but the value of the land will be credited to Dan's accumulation account. This may be acceptable, however, the value of the equivalent portion of the property owned by Julie would be considered as a contribution in respect of Dan.

Q/10.
Our fund is totally in pension mode. Total Super Balances were less than $1.6M but have grown above $1.6M. Do we need an Actuarial Certificate?

Comments
If a member who is in retirement phase has a Total Superannuation Balance as at 30 June in the previous financial year greater than $1.6 million then an actuarial certificate will be required. These are referred to as 'disregarded small fund assets'.

Therefore, if a member's Total Super Balance had grown to more than $1.6 million on 30 June in the previous financial year and one or more members were in retirement phase, an actuarial certificate will be required.

Q/11.
Will you be covering Disregarded Small Fund Assets? Thanks

Comments
Please refer to the answer in the previous question.

Q/12.
If you have a Single Member SMSF both in Pension and Accumulation mode, can you pay the fees out of the Accumulation component?

Comments
The Superannuation Industry (Supervision) Act and Regulations (SIS Regulation 5.03) require that income and expenses relating to the fund are credited or debited to member's benefits in a way;

> 'that is fair and reasonable as between:
>
> (a) all the members of the fund; and
>
> (b) the various kinds of benefits of each member of the fund.'

Q/13.
My fund is totally in Pension phase. I have an ETF domiciled in US, withholding 15% tax. Can I get back the tax under any treaty between US and Australia because my fund should be tax free?

Comments
Withholding tax that is paid to the U.S. government is not refundable by the Australian government. However, the Australian government does provide a tax credit on these amounts if the superannuation fund has included the overseas income in its Australian taxable income. Where the superannuation fund is not required to pay tax on its taxable income, for example, where the fund is totally in pension phase, then no Australian tax credit is allowed, and it is not refundable.

I understand that it is possible to obtain a refund of tax from the IRS in the U.S., but this requires specialist taxation advice to see whether it is possible.

Q/14.
Can an account-based pension be paid as a single payment (as ABP not lump sum)?

Comments
An account-based pension can be paid just once in a financial year or more frequently if requested by the member.

However, the ATO's Taxation Ruling on starting and stopping a pension in para 58 of TR 2013/5 states that where a pension is designed to consist of just one payment it will not be considered a pension. To be a pension it must provide that there will be more than one payment and there is no requirement that they are paid at pre-determined intervals.

TR 2013/5 | Legal database (ato.gov.au)

Q/15.
What is the latest on DIN Director Identification Numbers for corporate trustees?

Comments
Australian company directors will have until the end of 2022 to apply for a director identification number (DIN). According to draft legislative instruments the deadline for new and existing company directors to apply for a director ID will be November 30, 2022.

Directors of Indigenous companies will be given an additional 12 months to apply for a director ID number under the proposed timeline, with a separate deadline of November 30, 2023 applied to those businesses.

Q/16.
Could you please cover tax position where a member dies and he has both funds in Pension phase and Accumulation? What is the tax liability to beneficiaries?

Comments
On the death of a member who was in receipt of a pension and also had an accumulation at the time of death taxation on the benefits depends on a number of factors. However, if it is assumed that the deceased was age 60 or older at the date of death then the tax liability to beneficiaries would be:

- If the beneficiary is the spouse of the deceased, then any lump sum or pension paid from the fund will be tax free.

- If the beneficiary is a person who is:
    - dependent upon the person for support at the time of death, or;
    - is a child of the deceased under age 18, or;
    - a child of the deceased who is between age 18 and 25 and dependent on the deceased for support, or;
    - a child who is disabled for purposes of the Disability Services Act 1986

  the amount is tax free.

  - If the person is a child of the deceased and is not covered by the previous dot points:
    - the tax-free component of the death benefit lump sum is tax free, and;
    - the taxable component of the death benefit lump sum is taxed at 15% plus Medicare.

  it is not possible to pay a death benefit pension to the child covered by this category.

Q/17.
The amount shown in member balance as unrestricted being a defined death benefit. Can it be withdrawn at any time prior to year-end?

Comments
It is not clear what is meant by a defined death benefit. However, as a general rule on the death of a member it is compulsory for death benefits to be paid as death benefit lump sums or as death benefit pensions as provided in the Superannuation Industry (Supervision) Act and Regulations. Therefore, the superannuation benefit of a deceased member becomes unrestricted non-preserved at the time of the person's death.

Q/18.
Our fund auditor sought a GS007 report in respect of our corporate bond holdings. This requirement is causing the NAB (our bond broker) a major problem. After 6 months they couldn't provide it, so we went ahead without it and got our 2020 accounts qualified. I've started the argument for 2021 already and am hitting my head again. Is the auditor being difficult, or is the NAB being incompetent?

Comments
In auditing investments of this type, irrespective of who has provided the corporate bond holdings, the auditor must be satisfied that the investment exists and is backed up by suitable assets. This is usually supported by the assets backing the bond being audited or the auditor undertaking the audit themselves which is usually considered impracticable. Where neither of these tasks has been undertaken the auditor will usually make a Part A qualification of the fund accounts. A Part A qualification does not indicate a breach of the Superannuation Industry (Supervision) Act and Regulations.

Here is a link to what the ATO says about Part A qualifications:

Financial audit | Australian Taxation Office (ato.gov.au)

Q/19.
FIIG and BGC no longer provide Audit Reports that are requested by the SC Auditor. What can I do, as my hands are tied?

Comments
Please refer to the answer in the previous question.

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