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SMSFs ALIVE

BREAKFAST BRIEFINGS

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Let’s get ready

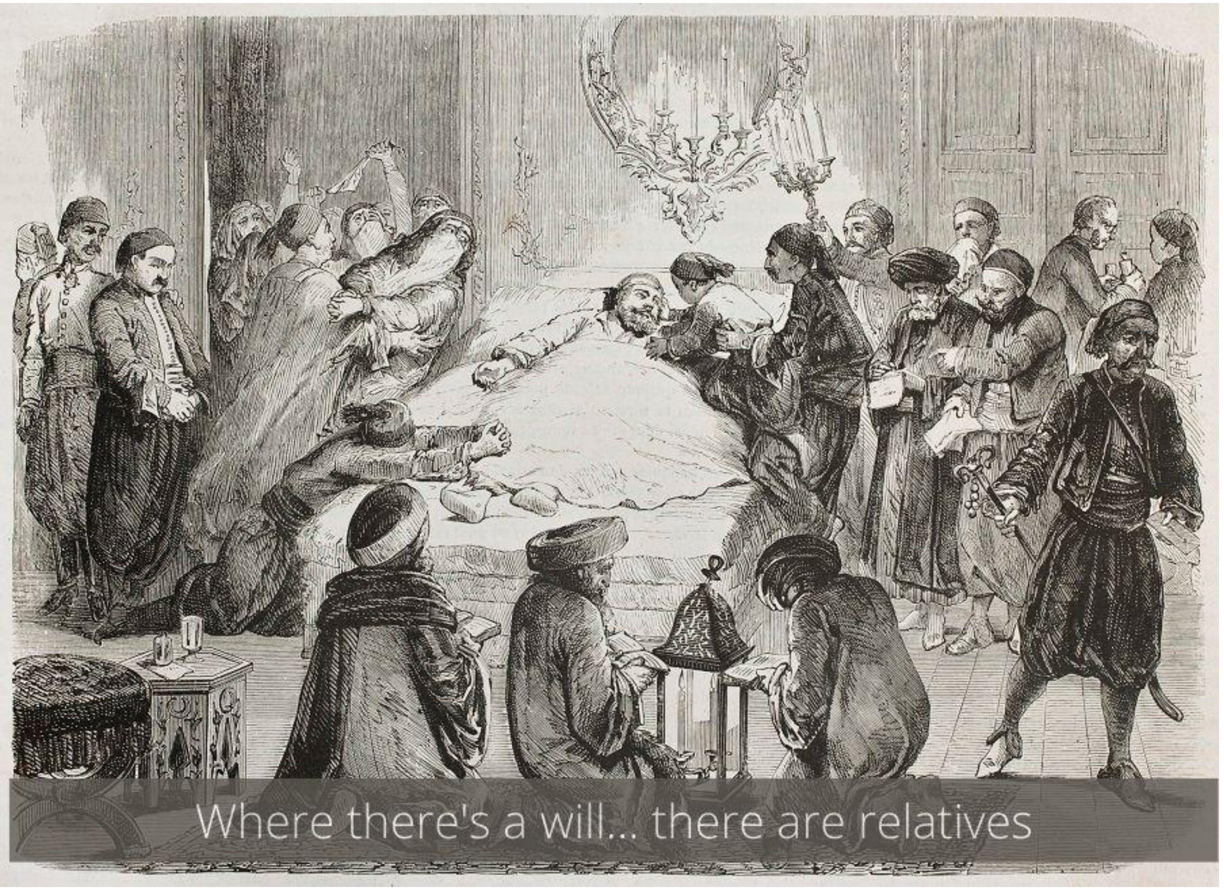
1. Death and SMSFs
2. Asset valuations
3. $3M balance cap
4. The technical issues
5. Q & A

DEATH AND SMSFS

Why this topic?

Ageing Client Base

No one wants to talk about it…



As Auditors, what are we seeing?

- Unexpected incapacitations
  - Large % and Active Trustee
- Materially increasing average member balance amongst older members
  - Illiquid assets / property
- Little to nil planning

Incapacitations

- Lack of EOPAs
- Cases of Active Trustee becoming incapacitated
- Remaining members:
  - Lack of knowledge
  - Not want to deal with running SMSFs
- Non-corporate Trustee

Death of Member

1. Search for documents
   - BDNs (binding/non–binding)
   - Pension Documents (Reversionary / Non–Reversionary)
   - Trust Deed – when last updated?

2. It just goes to the estate, doesn't it?
   - Mixed families
   - Dependents in the bush
   - Validity of BDNs

Death of Member

3. Illiquid assets / property
   - How do benefits get paid out?
   - Keep in the Fund to flow through to ongoing members?
   - Pay death benefit as pension rather than lump sum?

4. Death Tax
   - Non – tax dependent
     - Taxable component taxed at 17% / 32%
     - Estate doesn’t pay Medicare levy
     - Insurance Proceeds tax trap

What documents may be needed?

- ✓ Trust Deed (including prior versions)
- ✓ Member Benefit Nominations (binding/non-binding)
- ✓ Pension commencement documentation
- ✓ Prior year financial statements/prior yearly minutes
- ✓ Investment Strategy
- ✓ Details of life insurance policies held by the Fund

Appointing New Trustees?

Section 17A Definition of a SMSF

- An Executor can act as Trustee on behalf of deceased.
- They should be officially appointed.
- Once benefits are cashed review ongoing trustee structure for 17A compliance.

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How long do you have to pay out the death benefit?

Regulation 6.21

- As soon as practical after the member dies
- ATO rule of thumb – 6 months
- Can be longer if appropriate circumstances
  - Contesting of benefit payments
  - Non – liquid assets
  - Illness of remaining Trustees

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How can benefits be paid?

Regulation 6.21

- One or more lump sums
- One or more death benefit income streams
- Cannot just be transferred to a remaining members accumulation account.

Who can benefits be paid to?

Your super does not automatically get paid out in line with your Will

Depends on:

- Terms of Trust Deed
- Binding Death Nominations
- Who is a SIS Dependent

Who can benefits be paid to?

Who is a SIS dependent?

Section 10 SIS Act - Dependants include:

- your spouse (including de facto and same sex partners but *not* former spouses)
- Your children (any age)
- a person in an interdependency relationship with you (this is a close personal relationship between two people who live together, where one or both provides for the financial, domestic and personal support of the other) Section 10A SIS Act
- The Executor of your estate

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How are benefits taxed?

Depends who is a tax dependent?

Your “death benefits dependants” for tax purposes include:

- your spouse or de facto;
- your <u>former</u> spouse or de facto;
- your child under the age of 18;
- a person financially dependent on you; or
- a person in an interdependency relationship with the deceased. s302-200
- Section 302-195 ITAA 1997

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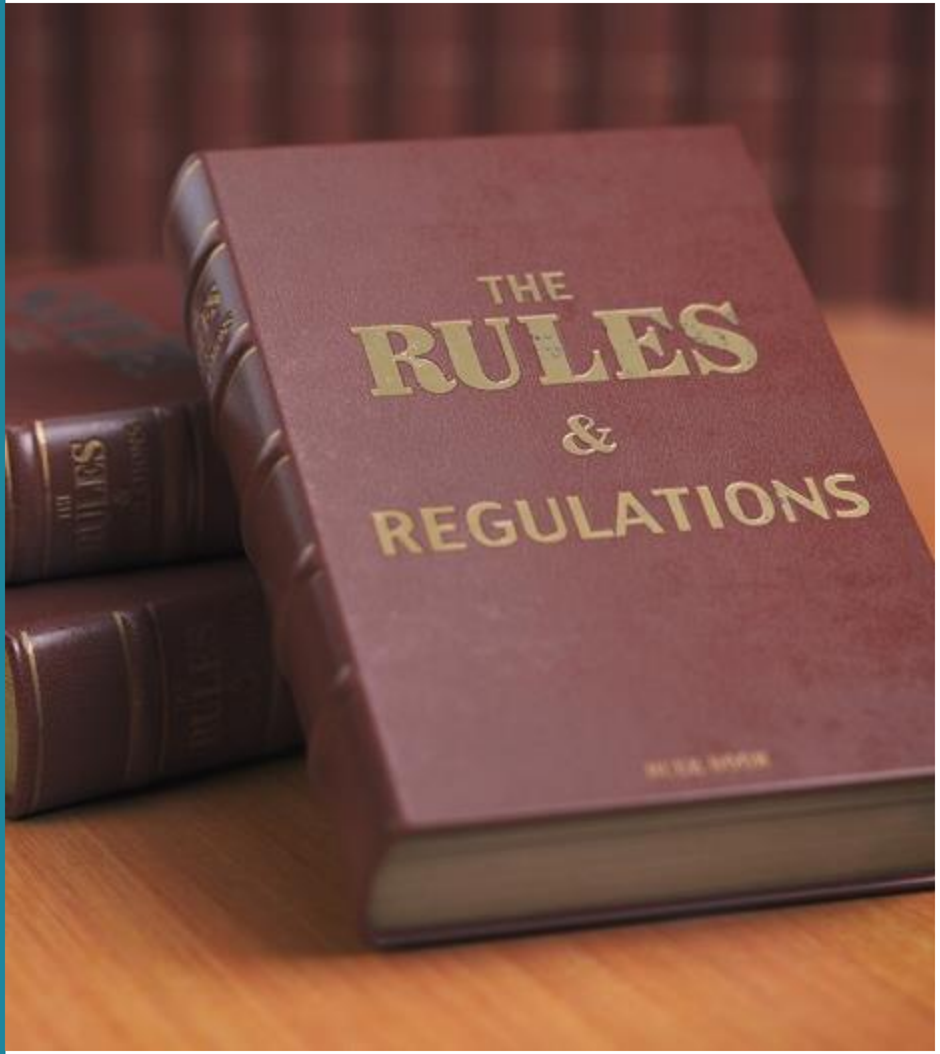
What about the grandkids?



Death Taxes?

Depends on who, what and how

Death Taxes

Lump Sums

If paid to a tax dependant –

No Tax Payable

Lump Sums to non-dependants

- Tax Fee Component - No tax
- Taxed element of Taxable component – 15% + 2% ML
- Un-taxed element of Taxable component – 30% +2% ML

(note: these are maximum rates the SMSF is obligated to withhold)

What if the lump sum is paid to the estate?

- No withholding requirements for the SMSF
- The executor or administrator must include the taxed and untaxed elements in the deceased estate’s trust return as assessable income when these amounts are on paid to a non-tax dependant. The Trustee must determine beneficiary status.
- Tax is paid by the Trustee
- Same tax rates apply but no Medicare levy
- Beneficiary does not include amounts in their tax returns.

What if the lump sum is paid to the estate?

- ➔ Weigh up pros and cons of paying benefits to non-dependents through the estate rather than direct.

- ➔ May assist high income beneficiaries

- ➔ Open up benefit for challenges to estate.

A good example:

https://www.moneymanagement.com.au/features/tools-guides/tax-super-death-benefits-paid-estate-v-beneficiary

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Death Taxes

Death Benefit Income Streams

(note: we are not covering defined benefit pensions in this seminar)

- Can only be paid to a SIS Dependent
- Special rules apply when paid to a child of the deceased
- SIS Regulation 6.21

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Death Taxes

Death Benefit Income Streams

(note: we are not covering defined benefit pensions in this seminar)

A DBIS can only be paid to a child of the deceased member where at date of death:

- under 18 years old or,
- between 18 and 25 years old and was financially dependent on the deceased or,
- living with a permanent disability.

- And must be commuted and a lump sum taken when the child turns 25 unless they are living with a permanent disability.

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If you are a dependant and you receive a death benefit that is an account-based income stream		
Age of beneficiary and deceased (at the time of death)	Type of super	Effective tax rate (including Medicare levy)
Beneficiary is more than 60 years old or the deceased was 60 years old or older	Tax-free component	Tax-free (non-assessable, non-exempt income)
Beneficiary is 60 years old or older or the deceased was 60 years old or older	Taxable component – taxed element	Tax-free (non-assessable, non-exempt income)
Beneficiary is more than 60 years old or the deceased was 60 years old or older	Taxable component – untaxed element	Your marginal tax rate less 10% tax offset
Both beneficiary and deceased are under 60 years old	Tax-free component	Tax-free (non-assessable, non-exempt income)
Both beneficiary and deceased are under 60 years old	Taxable component – taxed element	Your marginal tax rate less 15% tax offset
Both beneficiary and deceased are under 60 years old	Taxable component – untaxed element	Your marginal tax rate

TBC considerations with paying DBIS ?

- Reversionary Pension
  - A credit occurs to the recipients TBC 12 months after death based on pension account value at date of death.

- Non – reversionary
  - A credit occurs to the recipients TBC at the time the DBIS is commenced.

- - Special rules apply to DBIS paid to children of the deceased.

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TBC considerations with paying DBIS ?

- Take care to not exceed the beneficiaries TBC when commencing DBIS.
- May need to commute beneficiaries existing income streams back to accumulation.
- Part of deceased members benefit may need to be cashed out as a lump sum.

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Deceased member with existing account-based pension

Is minimum payment required in year of death?

- Non-Reversionary Pension
  - No
- Reversionary Pension
  - Yes, as the pension is not deemed to have ceased.
  - Minimum Based on deceased members age at start of year.

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Deceased member with existing account-based pension

Does ECPI continue to apply until benefit is paid?

- ATO Guidance – Yes it does

- As long as the benefit is paid as soon as practically possible.

- Allows assets to be sold down to pay benefit with tax relief.

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Life Insurance Proceeds

- Non-Assessable to the Fund

- If premiums have been claimed as a tax deduction the proceeds may become an untaxed component to the deceased member's account.

- Lump sum benefit payments to non-tax dependents subject to higher tax rate.

- Review untaxed element formulae.

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In-specie payment of Lump Sum

- Stamp Duty implications on real property transfers. Check your state rules.

- Creates CGT event – deemed to be transferred at market value. ECPI will apply.

- Can assets be maintained in Fund by bringing in new members?

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Pre “Event” Ideas…

- Review SMSF Documents / Estate Planning / EOPAs
- Get all Members involved in Fund operations
- From experience it can open can of worms

Pre "Event" Ideas…

- Sticky Assets / Property
  - Will they need to be sold to pay death benefits?
  - In-specied out to beneficiaries – what costs?
  - Gradual sell down
- Bring in new members/funds to allow asset to remain in Fund
  - Six Member SMSFs

Pre "Event" Ideas…

- Removing member benefits "pre-event"
  - Last member standing
  - Remove tax on benefit payments to non-tax dependents
  - Beneficial for large taxable components
  - How does this fit in with estate planning?

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