SMSF Estate Planning Masterclass – 12 November 2020

Case Study

Summary of Current Position

- SMSF with elderly husband and wife own a commercial premises from which they used to operate their business. It is currently valued at $1,000,000. No other assets are held in the fund except for $100,000 cash.
- The husband passed away a number of years ago, leaving his balance in the fund to his wife via a reversionary pension.
- His wife remained the sole individual trustee.
- His wife has now died.
- They have 3 sons. Ian, a solicitor at a large firm in the CBD of a capital city; John, who is an engineer and operates the business he took over from the deceased parents (and still uses the commercial property within their SMSF), and Leon, who is long term unemployed and somewhat estranged from the rest of the family.

Other Details

- Given his legal background, the deceased had appointed Ian as the sole executor of their respective estates (after appointing each other in the first instance).
- Each of the deceased had a reversionary nomination to each other with no other documentation with respect to the treatment of their SMSF balances on death.
- John currently has $700,000 in his own SMSF, invested in cash and shares.
- Ian also has a SMSF, but he has $1.2 million invested in cash and shares.
- There is little knowledge of Leon's financial situation.
- The only other asset owned by the deceased was their residence, valued at approximately $400,000.

The Objectives

- John would like to take an ownership interest in the commercial property and would prefer to keep the property in the superannuation environment.
- Ian believes the property has significant growth potential and has been trying to identify a commercial property to acquire in his SMSF for many years.
- The will of their deceased mother simply states that the assets of her estate are to be divided equally between the three brothers, with Leon's share to be held in a Testamentary Trust with Ian and John as the trustees of that trust.
- Ian and John are on speaking terms, but do not like each other's company. They have no problem abiding by the terms of their mother's will, but are also happy to take advantage of any opportunity they can to maximise their financial position provided it i s compliant with all legal requirements.

The Intended Strategy – From John's Perspective

- John has been been working with an adviser for many years to be in a position to acquire the commercial property owned in his parents' SMSF. The adviser has asked on a number of occasions to look over the parent's estate planning documentation but John has assured the adviser that everything has been attended to by a reputable legal firm and there will be no problem.
- John has accumulated $700,000 in his SMSF, and his wife has accumulated $500,000 in a savings account.
- The plan is for each of them to make a $250,000 non concessional contribution to superannuation to give a total balance of $1.2 million
- They would then use their SMSF to acquire the property from John's parent's SMSF.
- Their $500,000 in savings would be replenished by their 1/3rd of the estate.
- Following the mother's death, they proceeded with the contribution strategy.

Not So Quick

- John has arranged to meet with his brother Ian to discuss the administration of their mother's estate.
- John goes into the meeting with the preconceived idea that Ian would be relieved to hear that the process of liquidating the property will be so straightforward.
- Upon floating the idea, Ian explains to John that he has been looking for an opportunity to buy a commercial property with growth potential and believes the parent's property represents a great opportunity. Ian plans to take ownership of the property himself.

Where do they Stand

- Can Ian determine how the property in the SMSF is dealt with? Who controls the SMSF and makes decisions with respect to its asset base?
- To save stamp duty, Ian comes up with the idea of rolling his balance into the parent's SMSF. The injection of liquidity from his rollover will cover the parent's member balance. The property doesn't need to change ownership. Can he do this? Any potential pitfalls?
- What needs to happen to the parent's balance?
- Who controls how their balance is paid out? Is it possible that Ian can pay the entire balance to himself? Ultimately funded by his rollover…
- What can John and his wife do about the money they have contributed and now subject to preservation at 46 years of age?

What if?

- Suppose the brothers negotiated and agreed to operate a SMSF together with the property being the main asset of the fund.
- What problems can be encountered in the future?
    - One brother wants to sell the property…
    - One brother is divorced and a super splitting order is enforced…
    - One brother dies…