WELCOME

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ESTATE PLANNING FOR SUPER

25 October 2017

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Session Overview

- What is Estate Planning?
- What are the tools in the toolkit?
  - What can the Will do?
  - Assets not in the Estate
- What happens to your Super?
  - Can I nominate who gets my Benefit?
  - Who takes control of the SMSF?
- Estate Planning for Accumulation Accounts
  - Options within the Will
- Estate Planning for Pensions
  - Auto-Reversionary Pensions
- Certainty vs Flexibility
- WGC Role & Questions

What Is Estate Planning?

- Is the way that you anticipate and arrange for your assets to be passed onto your beneficiaries in the most financially efficient and tax effective way

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What does Estate Planning Involve?

- **Incorporates strategies, processes, documentation and actions, focussed on the preservation and transfer of your wealth for your designated successors**

YOU Want:

- To get it right as to avoid post death family disputes and litigation
- To maximise asset protection for your beneficiaries
- To minimise tax consequences for your beneficiaries

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Tools in the Toolkit

- Will
- Letter of Wishes
- Testamentary Trusts
- Superannuation Proceeds Trust
- Binding Death Benefit Nominations
- Reversionary Superannuation Pensions

What can the Will do?

A Will is a legal document that sets out your wishes for the distribution of your assets after your death.

- **Multiple and substitute executors**
- **Multiple Testamentary Trusts, separate beneficiaries and appointors**
- **Appointment of a guardian for the children**
- **Appointment of an adjudicator and professional advisors**
- **Specific bequests to beneficiaries**
- **Passing control of Family Trusts/SMSF**
- **Quarantine superannuation death benefits**
- **Ability for Executor to adjust beneficiaries entitlements to equalise between beneficiaries**

Assets that are not part of your Estate

- **Assets held in joint names - for example**
  - Family Home
  - Joint Bank Accounts/Investments

    - Will automatically pass to the survivor

- **Assets held in a Family Trust**
  - Deal with control of the trust through the provisions in the deed including the trustee, appointor, guardian

- **Assets held in a Superannuation Fund**
  - Deal with control of the Fund - Trustee
  - Binding Death Benefit Nominations (BDBN)
  - Reversionary Pensions

What happens to your Super?

- The Superannuation Account of a deceased must be cashed out either as a lump sum or as an income stream, as soon as practicable after death

- Only a SIS dependant of the deceased can receive a death benefit from Super:-
  - A Spouse
  - A Child
  - A Person with whom the deceased has an interdependency relationship (close relationship, live together, with financial & domestic support)
  - A Financial Dependant

  AND - your Legal Personal Representative - (your Estate)

What happens to your Super?

- Only a child under 18 (or between 18 & 25 if still dependent) can receive a Death Benefit income stream from their parent. An adult child can only receive the super benefit as a lump sum

- Once a child who is in receipt of a death benefit income stream turns 18 (or 25 if dependent), they must pay out the balance as a lump sum

Can I nominate who gets my benefit?

- **Non-Binding Death Benefit Nominations**
  - **Provides guidance to the Trustee only (??? worth)**
- **Binding Death Benefit Nominations (BDBN)**
  - **Binds the Trustee to follow your instructions**
  - **Watch the terms of the deed to ensure validity**
  - Retail Funds (certainty important)
  - SMSFs (flexibility v certainty)
- **BDBN instructions to either SIS beneficiaries direct or to your LPR (your Estate)**
  - **Will can either direct the Super monies to a Testamentary Trust or Superannuation Proceeds Trust**

Important who takes control the SMSF!

- Who takes control of the SMSF on death is the key to maximising certainty and minimising disputes
- Individual vs Corporate Trustee
  - Surviving member of SMSF will remain a Trustee
  - Individual Trustee - LPR (Executor) or the Deed?
  - Corporate Trustee - who becomes the Director?
    - The SMSF Trust Deed provisions or Corporate Constitution
      - Successor Director Provisions in the Constitution
      - Death benefit clauses in the SMSF Trust Deed
    - Leave the shares in Corporate Trustee in your Will to the individual you wish to deal with the death benefit

CONNOR SUPERANNUATION FUND

Estate Planning - 100% Accumulation

	Accumulation 15%	Retirement 0%
Mark Died 25/10/17	$500,000 $1,000,000 Insurance	0
Leanne	$200,000	$1,500,000

OR
$1,500,000

- Testamentary Trusts?
- Super Proceeds Trust?
- Spouse's name?

Transfer entire death benefit to spouse as a DB income stream

Post 1/7/2017 - Receipt of $1.5M DB income stream is a credit to Leanne's Transfer Balance cap account = within TBC limit

Limits to Income Stream

LEANNE'S

TRANSFER BALANCE CAP ACCOUNT

DEBIT	CREDIT	
	25/10/17 DB Pension $1,500,000	87.5%
	? New Pension $ 100,000 (when Leanne retires)	

Taxation of Death Benefits

Age of Deceased at time of death	Type of Death Benefit	Age of Recipient	Taxation of Taxable Component Taxed Element	Untaxed Element
Any age	Lump sum	Any age	Tax-Free	Tax-Free
Age 60 and above	Income stream	Any age	Tax-Free	MTR less 10% tax offset
Below age 60	Income stream	Age 60 and above	Tax-Free	MTR less 10% tax offset
Below age 60	Income stream	Below age 60	MTR less 15% tax offset	MTR (no tax offset)

* MTR - Marginal Tax Rate

Options within the Will

- **Ability to pay directly to non SIS dependants**
- **Superannuation Proceeds Trust (SPT)** - subject to Deed
  - Quarantines super monies to ensure capital can only be paid to SIS & Death Benefit (tax) dependants
  - Avoids 15% top-up tax on taxable components and 30% untaxed components
  - Many consider income from SPT may be accumulated or paid to non-tax dependants (i.e. adult children & grandchildren)
  - Capital can be withdrawn at any time to tax-dependants (i.e. spouse) without adverse tax
  - SPT may continue until the death of the last surviving death benefit dependant (measured at the time of death)
- **Testamentary Trusts**
  - Flexibility on distribution of income and capital
  - 15% top-up tax payable on taxable components

Options within the Will

Connor SMSF

Real Property
Cash

Option 1

Direct to Spouse

Death Benefit dependant = Tax Free

Adult Child
Pays 15% tax on taxable components (plus 2% medicare if paid direct)

Option 2

To LPR
Then SPT

Super Proceeds Trust

Capital
Eg. Spouse
Minor Children

Income
Arguably no restrictions

CONNOR SUPERANNUATION FUND

Estate Planning – 100% Pension

	Accumulation 15%	Retirement 0%
Mark Died 25/10/17	$0	$2,000,000 Non-Reversionary Pension
Leanne	$200,000 $1,600,000	$1,600,000 $(1,600,000) $1,600,000

$400,000

- Testamentary Trusts?
- Super Proceeds Trust?
- Spouse's name?

At the time new Pension commences ASAP

Surviving spouse transfer Pension to accumulation account

Transfer up to Spouse 's transfer balance cap to a DB income stream

Comments on Pension Changes

WHAT HAPPENS TO PENSION ON DEATH?

- **Do death benefit income streams count towards the reversionary beneficiary's $1.6M cap?**

Yes - if the recipient of the death benefit income stream already has a $1.6M plus Pension, they will need to roll back their own Pension or pay out the death benefit as a lump sum (if auto-reversionary-within 12 months, or as soon as practicable)

Death benefit recipients may need to roll back their own Pension/s and use their reset $1.6M cap to start the death benefit income stream = more money left in Super

Limits to Income Stream

LEANNE'S

TRANSFER BALANCE CAP ACCOUNT

DEBIT	CREDIT	
01/01/18 Commutation $1,600,000	01/07/17 Pension ABP $1,600,000	100%
	01/01/18 Commutation ($1,600,000)	
	01/01/18 DB Pension $1,600,000 (valued at 1/1/18)	

Auto-Reversionary Pensions

So what if it's an Auto- Reversionary Pension?

An Auto-Reversionary Pension is a Pension that was set up to automatically be paid as an income stream to a beneficiary on the death of a member (generally a spouse) and the trustee has no authority to amend it.

- **Is provided for in the Pension commencement documentation**
- **Can only be converted to auto-reversionary if expressly allowed for in the SMSF deed (ATO view)**
- **Ensure that BDBN & Reversionary instructions are consistent - avoid contradictions**

Auto-Reversionary Pensions

Benefits of Auto-Reversionary

- The beneficiary of an Auto-Reversionary Pension has 12 months to test the Pension against their own Transfer Balance Cap - i.e. roll back their own Pension and/or payout the balance as a lump sum
- The value of an Auto-Reversionary Pension that is tested is at date of death
- If not Auto-Reversionary - the recipient must commence DB Pension ASAP and test against Transfer Balance Cap at the time of commencement for it's current value

Downside of Auto-Reversionary

- Less flexibility - although spouse could commute and payout benefit - but only to themselves, not to the Estate
- Any reversionary Pension in excess of the beneficiary's transfer balance cap must be paid to the beneficiary, not Estate

Limits to Income Stream

LEANNE'S
TRANSFER BALANCE CAP ACCOUNT

DEBIT	CREDIT	
01/01/18 Commutation $1,600,000	01/07/17 Pension ABP $1,600,000	100%
	25/10/18 Commutation ($1,600,000)	
	25/10/18 DB Pension $1,600,000 (valued at 25/10/17 - DoD assets MV $1.8M at 25/10/18)	

Certainty vs Flexibility

Super rules make it inherently difficult to control where and how your Superannuation monies pass on your death.

- Often a trade off between achieving certainty about who and how beneficiaries receive death benefits and providing flexibility for the recipient to receive the benefits in the manner appropriate at the time.

Example

- **May provide more flexibility for a surviving spouse to retain death benefit in super or payout as lump sum / Pension**
  - Use of Reversionary Pensions and need for a BDBN
  - “Floosie”/Toy Boy factor or Dementia - re: surviving spouse
  - Control of Fund would remain with surviving member
- **May want more certainty on who takes control of the Fund on the death of the surviving spouse and where the benefits are directed**
  - Control of Trustee - all children who will benefit - Executors - leave shares in Corporate Trustee in the will
  - Use of BDBN to ensure Super finds its way into the Estate and SPT or TT
  - One child can not benefit at the expense of others

"Perfect" Answer

At the risk of breaching the "one size doesn't fit all" argument, the perfect arithmetic answer could be:-

- On the death of the first spouse
  - Leave as much in Super by commuting survivor's existing Pensions and paying DB Pensions to their transfer balance cap (if required) and directing the balance of the benefit (if any) into a SPT in the Estate

- On the death of the remaining spouse, the Fund must be wound up (if no remaining members)
  - Leave control of the SMSF to the intended beneficiaries of the super benefit
    - All children or the Executor/s
  - Execute a BDBN to ensure that the Trustees direct the benefits to the Estate and into a SPT

HOWEVER - you must take into account your personal circumstances

- Family dynamics
- Personal Preferences & Size of the Estate
- "Floosie Factor/Toy Boy" or Dementia

In WGC's experience, it is never a "one size fits all" approach, so it is essential you talk to us about what is right for you

WGC Role

1. We have a deep understanding of your circumstances and are ideally placed to facilitate your estate plan
2. You can discuss your family situation with us and be frank with someone you trust
3. Lawyers tend not to get out and see their clients, whereas we are keen to meet with you in our office or your home to ensure that after a detailed fact find, we understand the wishes of both spouses, and then meet with you and the lawyer to have the documents prepared.

WGC Role

4. We understand your beneficiaries' positions, with younger experienced Chartered Accountants, in conjunction with the SMSF specialists, in our office with whom your children can relate
5. Our ability to coordinate what is required from you, your financial planner and lawyer ensures that the estate plan happens in a timely manner.
6. Because of our ongoing role with you, we can ensure that the estate plan is reviewed regularly when your family or financial circumstances change significantly.

Final Comments

- You must have an Estate Plan
- The Estate Plan must be tailored to your family circumstances
- You need to ensure that your existing Estate Plan accommodates the new Pension limitations
- You need to review your estate plan with us as soon as possible

QUESTIONS?

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