SMSF ESTATE PLANNING - DON'T SET AND FORGET

Estate planning is an exercise which requires not only the establishment of a plan but ongoing review and revision.

This article uses a case study scenario to illustrate the problems which can arise without a proper, and regular, review of estate plans.

Joe

Joe is a single parent who has recently turned 60 years of age.

He has 2 adult children, Peter & Claire, from his first relationship, both of whom have generated significant wealth from owning and operating successful businesses, and a 15 year old son, Tim, from a relationship which has also ended. Joe has full custody of Tim.

Joe has a significant balance in his superannuation, which forms a large part of his overall wealth. He is the sole director of the corporate trustee of his SMSF.

Joe has been advised to commence drawing a Transition to Retirement Income Stream, particularly as the pension payments will be tax free.

Because of the different financial positions between Peter & Claire and Tim, Joe's Adviser suggests to him, as part of an Estate Planning exercise, to:

- establish the Transition to Retirement Income Stream with an automatic reversion to Tim, on the basis that Tim can receive the pension if he is 25 or younger at the time of Joe's death; and
- prepare a Will leaving his estate to pass equally between all 3 children.

Joe is pleased with the suggestion, as he feels that divides his wealth in quite appropriate proportions, based on individual needs. He proceeds with:

- the commencement of the Transition to Retirement Income Stream;
- the automatic reversion of the Income Stream to Tim; and
- the drafting of a Will, with Peter & Claire as Executors.

He then forwards copies of all documents to his Adviser for his records.

Appreciates advice

Each year, Joe draws his minimum pension amount, and continues to be pleased with the arrangements he put in place on the suggestion of his Adviser. He documents that appreciation for each annual meeting with the Adviser.

Also pleasing for Joe is the fact that Tim, now aged 22, has completed his apprenticeship and is running his own house with his fiancée.

However, Joe discovers he has a terminal illness. In his final meeting with his Adviser, Joe is assured that his estate plan is still effective, so he passes away in the belief that he has looked after his family appropriately.

> *"Estate planning, including Automatic Pension Reversion Nominations and Binding Death Benefit Nominations must not be a 'set and forget' exercise."*

Executors

Peter & Claire, as Executors of Joe's Will, step in as directors of

Current as at 6 May 2014.
Please note this article is for information purposes only and does not constitute legal or financial advice.

the corporate trustee of Joe's SMSF.

They seek advice from their solicitor in regards to the automatic reversion of the pension.

Automatic Pension Reversion

After detailing Tim's age and living arrangements, they are advised that the automatic reversion is invalid as Tim, being between the ages of 18 and 25, must have been a financial dependant of Joe at the time of Joe's death for the automatic reversion to be effective.

On the basis that the automatic reversion to Tim cannot occur, Peter & Claire need to consider how the SMSF will treat the superannuation death benefit.

In the absence of a Binding Death Benefit Nomination, and after checking that they have discretion under the SMSF trust deed, they resolve to pay the balance of the SMSF to Joe's estate.

Under the terms of Joe's Will, his estate is divided equally between Peter, Claire & Tim.

For Peter & Claire, that means they receive some of the benefit originally destined for Tim.

For Tim, he effectively receives 1/3rd of the superannuation balance, rather than the total amount.

Tim decides to discuss the position with his solicitor who, once armed with copies of relevant documents going back to the time of Joe's Estate Planning exercise, advises Tim:

- Peter & Claire have carried out their roles as required; and
- the Adviser has a number of potential areas of fault, including:
    - not initially pointing out to Joe the limitation of the Automatic Pension Reversion option;
    - not advising that Joe initiate a Binding Death Benefit Nomination in favour of Tim as a 'fallback'; and
    - not picking up Tim's situation when conducting the annual reviews of Joe's structure and investments.

Following that advice, Tim engages the solicitor to pursue his lost entitlement, and is eventually successful.

Conclusion

Estate Planning, including Automatic Pension Reversion Nominations and Binding Death Benefit Nominations, must not be a 'set and forget' exercise.

A regular review of the entitlements of potential beneficiaries, and the validity of the documentation in place, can save much wasted time and money at a later date.

More information

Should you have any queries, or require more information, please contact the team at Topdocs on 1300 659 242.

Current as at 6 May 2014.

Please note this article is for information purposes only and does not constitute legal or financial advice.