

Superannuation Q&A

By Andrew Quinn

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This week:

- When a member/trustee dies
- Fees disclosure.
- Will the 2% revert to 4%?
- So many fees!

Unforeseen circumstances

In the event of one trustee/member dying, I understand the remaining trustee would either choose how to distribute super money to the beneficiaries or distribute it in accordance with a binding nomination if it exists. In the example of an SMSF with two trustees (husband and wife), what happens if both trustees die at the same time? If there's no remaining trustee to allocate the death benefit, and no trustee to ensure that a binding nomination is followed, the question is: who nominates which money is to be received by whom? Is it the executor of the respective trustees' wills? While these circumstances are awful to contemplate and extremely unlikely to ever happen, we do travel a lot. This is a "just-in-case" question, so any light you can shed on this would be very helpful.

The first point to note is that superannuation death benefits are dealt with by the trustees of the fund. For an SMSF, the deceased member's executor or legal personal representative will usually act as trustee until the death benefit is paid, but this is not always the case.

You should also be aware that super fund benefits do not form part of the deceased's estate and will be administered separately unless the member has a binding death benefit nomination or an SMSF will that specifies how their super is to be paid. Even if you specify in your personal will that you wish your superannuation benefits to be divided in a particular way, this may not be effective.

In *Katz v Grossman* [2005] NSWSC 934, a recent case that has attracted widespread public interest, a member of the fund died, leaving two children – a daughter who was a trustee of the SMSF and a son who was not a member. The father left about \$1 million in superannuation benefits with a direction in his will that it be split equally between the two children.

Shortly after his death, the daughter appointed her husband as additional trustee and paid the entire benefit to herself. The brother challenged the husband's appointment in the NSW Supreme Court but it was held that she was entitled to exercise this power and the son ended up not receiving any of his father's superannuation benefit.

This case highlights the importance of having an up-to-date binding death benefit nomination or an SMSF will to ensure that your wishes are followed. This is a complex area of superannuation law so it is strongly recommended that you seek professional legal advice that takes into account your personal situation.

Full disclosure

My husband and I are both working and have a self-managed superannuation fund. This is going very well but the portfolio was set up for us in 2007 by our financial adviser, who manages it for us. We pay a fee of 1% of the value of the portfolio for this and for his advice, which is not always especially useful. I have two questions: how do we know what additional trailing fees are attached to some of the investments; and how can managing your own SMSF be made simpler for those of us who are time-poor? We would also relish any hints on the pitfalls of managing a SMSF as we intend to do it ourselves one we retire.

Trailing fees are gradually becoming less popular, but they are still paid on many products and your adviser has an obligation to provide you with concise information on what fees are being paid and what proportion of the total

payment he is receiving. Next time you speak with him, mention you are reviewing the overall cost of administering your portfolio and would like a full break-up of all fees and charges. If you push a little harder, he might even be prepared to re-negotiate on the 1% he is billing you.

Managing your SMSF investments by yourselves is a very feasible and cost-effective option for many retirees, especially if they are in good health and have a strong interest in financial markets. Often they enjoy the task of researching various investment alternatives and find the management role intellectually stimulating.

However, there are also important risks to consider. The main one is that the partner who is mainly responsible for managing the fund dies or is incapacitated. It can then be a challenge to find professional help to manage the portfolio until their health improves or to appoint a replacement trustee. Other changes may also be required.

Some advisers offer a portfolio review service at a fixed cost with no ongoing fees. This might be worth exploring if you would like to get a financial 'second opinion' from time to time. At the very least, I would recommend having a plan B so that if you are no longer able to manage the portfolio yourselves, you have a support network in place.

Fractions of the whole

My husband and I have an SMSF in pension mode and take the 2% minimum annual payment. We will be able to take the same minimum payment in 2009-10 but after this it is unclear whether the government will continue with these lower rates. Although we have a mixture of property, shares and term deposits, we do not generate sufficient income from the investments to meet the higher rates of 4–5%. If the higher rates are reintroduced then we will have to eat into our capital by selling some shares or taking cash from the term deposits. We don't want to do this as it simply means reducing the base of capital that can earn an income for us. I am not aware of the government's intention beyond 2009-10; could you shed any light on what might happen?

It is difficult to know whether the 50% reduction in minimum annual pension payments will be extended beyond 2009-10, but I would be very surprised if it continues unless there is a second downward leg in financial markets. The key thing to remember is that retirement savings that are held in pension accounts are supposed to be used up.

In broad terms, the government has taken a carrot and stick approach. The carrot is the generous tax treatment given to superannuation savings; the stick is the minimum pension drawdown percentages which increase quite rapidly after age 75. If you do not need 4% or 5% of your pension account balance for living expenses, you can always hold these assets outside super, or roll back a portion of your pension into an accumulation account and draw a smaller annual pension.

More for less

I am increasingly disturbed by the range of fees that are being collected by the provider of my account-based pension fund. For example: custodial fee, account-keeping fee, adviser service fee, administration fee, expense recovery fee, brokerage fee. I currently have 45 direct stocks and six managed funds in my portfolio mix. Is there any information about my options for reducing fees but maintaining control over what I invest in? I have just opened an account with an online broker for my non-pension assets and it has a referral to an SMSF administration/taxation provider but their fees escalate once I go over about 15 stocks, from memory.

Management and administration fees can quickly add up if you are not careful and vigilant. Most SMSF administrators have a sliding scale based on the number of investments you have in your fund or the number of transactions you make during the course of the financial year. Transactions can be very widely defined; for example, some include making a bank deposit as a transaction. However, there are flat fee administration systems in the marketplace, which I won't mention by name, and you will be able to locate with some basic research.

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