Practically Pensions in Every Way

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Jemma has a Bachelor of Commerce from UWA and is a Certified Financial Planner, a Specialist Member of the Self-Managed Superannuation Professionals Association of Australia (SMSFA), Chartered Tax Adviser and Trusts and Estate Practitioner. Jemma is a regular presenter on superannuation and SMSFs for the Taxation Institute, Institute of Chartered Accountants, CPA and SMSFA across Australia, and is the author of the popular publication “SMSF Guide”, published by the Taxation Institute, currently in its ninth edition and the author and convener of the Taxation Institute’s Graduate Diploma of Applied Tax Law Advanced Superannuation Unit. She was recently named as SMSF Adviser of the Year at the 2018 National Women in Finance awards for the second year running, and the 2018 SMSF Adviser of the Year at the WA SMSF and Accounting Awards.

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Agenda

1. TBAR – what’s the latest;
2. TRP – what’s required when a condition of release is satisfied;
3. Practicalities when a member dies;
   - Reversionary?
   - Not reversionary?
4. Pension payments greater than the minimum – what processes should you consider for your practice;

Transfer Balance Cap Reporting

Transfer Balance Cap Reporting

- Two rounds down now – September and December quarters;
- Are you quarterly or annually?
  - If all SMSF members have TSB <$1M at 30 June before first event occurs, TBAR is part of annual return (so at the latest by 15 May 2020 for an event that occurs in the 2018/2019 year);
  - If any member has TSB >$1M at 30 June before first event occurs, TBAR is 28 days after the end of the quarter of the event;
- Remember:
  - Only report events that impact the transfer balance account;
  - TB Credit (generally retirement income stream commences);
  - TB Debit (mainly retirement phase income stream ceases or partial commutation of retirement phase income stream);
  - Reporting was required of TSB for defined benefit income streams at 30 June 2017 by September 2018.

- For any events from 1 July 2017 to 30 June 2018:
  - Annual reporting – by 15 May 2019;
  - Not annual reporting – any event that occurred between 1 October 2018 and 31 December 2018 needs to have been reported by 28 January;
- RECOMMENDATION remains to lodge TBAR ASAP once the event occurs;
  - Especially if interaction with an APRA fund;
  - Also, what if excess as at 1 July 2018, but only gets reported on 15 May 2020? Penalties and interest would be horrible (daily interest accrual).
- Watch out – ATO guidance can be confusing for members where they believe they have quarterly reporting obligations, but they DON'T, as they are in accumulation phase, or no reportable events (like accumulation lump-sum etc).

- ATO rolling out access to TBA and TSB information to tax agents;
- Full rollout expected by the end of March;
- Will show details of all of the superannuation benefits of taxpayers, based on balances reported by the funds;
- Tax agents only – not the financial adviser;

TBAR Processes

- Who is responsible for reporting?
  - Adviser
  - Tax agent
  - EVERYONE is going to have to work together
- When to report
  - Recommendation – as you go, when pension commences, ceases or partial commutation;
  - Incorporate into pension documentation;
- Who can view the reporting?
  - Tax agent only
- How do you follow up to make sure that the reporting has been undertaken, and correctly?
  - Adviser – regular review process?
  - Tax agent – annual return?

TRP to RP

From TRP to RP

- Where a member satisfies a condition of release with a nil cashing restriction, does the TRP automatically become RP pension?
- ITAA 97 Section 307-80(2):
  - Income stream is in the "retirement phase" if the person has satisfied a condition of release (ie. Retirement);
  - So, upon 'retirement', TRP becomes RP (for TBC purposes)?
- Will members be aware?
  - If they are still working after age 65?
  - Cease an employment arrangement after age 60?
  - What are the reporting requirements?

- Issue – TB Credit arises upon the member starting to "be the retirement phase recipient of a superannuation income stream" (ITAA 294-25);
- ATO has indicated:
  - Attaining age 65 – automatic TB Credit;
  - Other COR satisfied – when the Trustee is notified is when the TB Credit arises;
- Planning for clients:
  - Timing is really important;
  - Age 65 – we are likely to be on top of:
    - Running reports (that show all clients approaching 65);
    - Not many TRPs in place in any event;
  - Ceasing employment after age 60 – potentially less likely to be aware unless the client notifies us;
    - Requires written notification to the trustee, so not automatic TBCredit;
    - Generally want the underlying assets to be exempt ASAP, so would look at conversion to RP as soon as aware;

Jack and Marilyn

- Jack continues to work, and receives TRP pension income;
- His 65th birthday is approaching (27 August 2022);
- Benefits in SMSF at 30 June 2022:

	Jack TRP $	%	Jack Accum'n $	%
Tax-Free Component	96,000	4%	0	0%
Taxable Component	2,304,000	96%	145,000	100%
Total	**2,400,000**	**100%**	**145,000**	**100%**

- At age 65, if nothing has been done to restructure his account:
  - TBCredit of $2,400,000 (ish);
  - Excess of $800,000 (assuming no indexation);
  - Reportable by 28 October 2022;

- Leading up to age 65 – Jack to restructure;
  - Partial commutation to get back to $1,600,000;
  - TBCredit of $1,600,000 at age 65;
  - No excess;
  - 2022/2023 pension payment before or after 65th birthday?
    - Minimum payment needs to be made from the TRP based on 1 July 2022 balance (as partial commutation);
    - Before restructure – no further payments required from pension in 2022/2023;
    - After restructure – minimum on $2.4M (if not already) of up to $96,000 needs to come out before 30 June 2023;
    - To retain maximum value in ABP, take out the payment before commutation.

- Alternative restructure:
  - Cease full pension and recommence ABP with $1,600,000;
  - Tax components aggregated (not enormous difference);
  - Pro-rated minimum pension required over the year from commencement;
  - Have to wait until age 65 to restructure to ABP, as that is when COR is satisfied;
  - Pro-rated TRP payments made prior to restructure?
    - Otherwise pension standards not met and all payments would be lump-sums;
    - Administration in processing lump-sums;
    - Condition of release not met for the lump-sums.

- Therefore, very important:
  - That we are on top of this for our clients;
  - If retirement prior to age 65, less of an issue as notification to the Trustee is the trigger, so time to restructure;
  - Also need to consider valuations, interim financials etc:
    - What is the TRP worth at the trigger date?
    - Want to keep at $1.6M maximum, so paperwork can be drafted along those lines;
    - What if the member has ABP already and TRP and approaching the trigger date?
      - Need to ensure the paperwork addresses the TRP conversion and any amounts that may be in excess of TBC at the time;

TRP to RP Checklist

- ❑ TRP in place;
- ❑ Approaching age 65?
- ❑ Ceasing employment / an employment arrangement?
- ❑ When will TBCredit be?
  - ❑ Age 65
  - ❑ Trustee notification
- ❑ Restructure required?
  - ❑ Partial commutation?
  - ❑ Full commutation and recommencement?
  - ❑ Implications for tax components?
  - ❑ Other pension accounts in place?

- ❑ Pension payments
  - ❑ Pro-rated required?
    - ❑ Full commutation
    - ❑ Partial commutation
  - ❑ Pay out minimum before commutation / condition of release satisfied
  - ❑ Pay out minimum after commutation / condition of release satisfied

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- ❑ Paperwork / documentation required
  - ❑ Letter confirmation from member of condition of release satisfied and intended restructure
  - ❑ Automatic conversion from TRP to ABP?
    - ❑ What do original docs say?
    - ❑ Confirmation resolution of the conversion
    - ❑ Does the deed require full commutation and recommencement?
    - ❑ Reliance on pension in RP (for TBC), but still TRP conditions;
  - ❑ Partial commutation resolutions
  - ❑ Full commutation and new pension commencement resolutions
  - ❑ TBAR - timing
  - ❑ Interim financial statements?

Reversionary

Reversionary or Not?

- Reversionary - 12 months to deal with, otherwise TBC assessment;
  - The amount assessed towards the TBC is the value at the date of death, not the amount that was assessed towards the deceased pensioner's own TBC;
- If NOT reversionary:
  - SISR 6.21(1) requires "cashing" as soon as practicably;
  - Which can also be new pension commencement;
  - That's when the amount would count towards the beneficiary's TBC, and value at that time;
  - 6, 9, 12 or 18 months? What is as soon as practicably?
- So:
  - Value at date of death versus value at decision;
  - Admin. ease – requirements for reversionary.

Practical considerations

- Pension reverts:
  - Payments continue to the spouse;
  - ECPI continues with respect to the pension account for 12 months;
  - Have to receive minimum payments on reversionary benefit in relevant financial year;
  - Value of the reversionary income stream needs to be determined and reported to ATO potentially within 28 days after the end of the quarter of death;
  - No TBCredit until 12 months, but reportable sooner;
  - Interim financial statements at date of death?
  - Depending on their particular situation, may require interim financial statements at 12 months also to determine how much to commute of own account;

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- Pension doesn't revert:
  - Payments cease – ECPI continues with respect to the pension account for "as soon as practicably";
  - Value of the income stream can be determined and action taken with an effective date of the next 30 June;
  - TBCredit is reported 28 days after the end of the quarter of the benefit being dealt with;
    - Is the value at the date being dealt with;
  - 1 July of the relevant year can be the trigger date for new pension commencement, dealing with the beneficiary's own benefits, and determining whether any lump-sums are required out of super;

Jack – Reversionary or not?

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- Jack is looking to start his TRP;
- He is trying to decide whether to have his pension revert to Marilyn or not;
- What should Jack do?
- What are the pros and cons?
- Does he want it to revert for the right reasons?
  - To get the valuation benefit for TBC, not to leave benefits to Marilyn necessarily;
  - He actually wants his money to go to Jack and Pat;
  - What are the wider EP implications?

Pros	Cons
Automatically continues to be paid to the beneficiary	Minimum pension payment has to be made in the year of reversion
Reversion generally takes precedence over BDBN, so more certainty regarding who receives benefits (depends on the deed)	Is the intention that the beneficiary actually gets the money? Reversionary beneficiary may not be the intended recipient
TBC benefit – value at the date of death is the TB Credit, even though TBCredit doesn't occur for 12 months from the date of death	Administratively more cumbersome to deal with upon passing re TBC and reporting of the value – interim financial statements to report to the ATO within 28 days after the end of the relevant quarter of member passing
Retain ECPI for 12 month period of time until TBCredit arises in the reversionary beneficiary's TBC	Administratively cumbersome to restructure mid-year after the 12 months, depending on the circumstances of the individuals
	ECPI could be available for longer than 12 months (within reason)
	Could be easier to restructure effective at the next 30 June / 1 July after the date of death

- The BIGGEST consideration with reversionary is
  WHETHER THAT IS INTENDED!!
- Many pensioners set up reversionary pensions when they want the money to go to their children and not spouses – can easily result in conflict;
- Very important that clients are clear on that front – who they want to get the money;
- Tax considerations is another reason the many put in place reversionary pensions:
  - Transfer balance credit – valuation at date of death;
  - ECPI – applies for 12 months;

Jack - Reversionary

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- When Jack started his TRP, the account was reversionary to Marilyn;
- Benefits in SMSF at 30 June 2022 upon him attaining age 65:

	Jack ABP $	%	Jack Accum'n $	%
Tax-Free Component	64,000	4%	32,000	3.39%
Taxable Component	1,536,000	96%	145,000	96.61%
Total	**1,600,000**	**100%**	**945,000**	**100%**

- When Jack restructured his TRP and partially commuted back to accumulation, no further arrangements were put in place regarding his benefits upon his passing;

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- Marilyn has her own benefits at 30 June 2022:

	Pension #1 $	%	Pension #2 $	%
Tax-Free Component	99,960	11.76%	400,000	100%
Taxable Component	750,040	88.24%	0	0
Total	**850,000**	**100%**	**400,000**	**100%**

- Jack passes away on 6 November 2022, where the total fund is worth $4,000,000;

- Revised accounts at 6 November 2022:

	Jack Pension $
Jack Pension	1,700,000
Jack Accumulation	950,000
Marilyn Pension #1	885,000
Marilyn Pension #2	460,000
Total	**4,000,000**

- What needs to happen?

- Jack has two distinct benefits to be dealt with, one of which is his **pension**
  - Payments continue to be made to Marilyn;
  - Minimum payments made in 2022/2023;
  - Balance to be reported to ATO by 28 January 2023 for TBAR
  - Held in suspense account (for TBCredit purposes) until November 2023;
  - What is the value at 22 November for TBAR purposes?
    - Interim financial statements?
    - Can be done as part of 2022/2023 financials?
    - What is reported to the ATO by 28 January 2023?
    - Also need the value for TBC purposes when restructuring in the lead up to 22 November 2023;

- On the basis Marilyn wants to optimise her total superannuation:
  - She stops her own pensions totaling $1,345,000;
  - Previous TBC of $1.1M, so will have negative TBC of $245,000;
  - Will be able to keep Jack's $1.7M pension account, plus an additional $145,000 of his accumulation in pension phase;
  - Balance of Jack's accum'n account out to her as lump-sum ($805,000)
  - If reversionary:
    - $1.7M needs to be reported by 28 January 2023 (interim financials);
    - Can restructure her own accounts in lead up to November 2023;
    - What if her own balances change substantially?
    - Do we need interim financials leading up to November 2023?
    - Assets appreciate in value – can keep more of his accum'n?
    - Assets depreciate in value – keep less of his accum'n?

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- Marilyn's TB Account (ignoring any indexation):

	Event Date	$	TBCredit	TBDebit	TB Account	Excess
Pension Commencement	February 2019	800,000	800,000	-	800,000	(800,000)
Pension Commencement	February 2019	300,000	300,000	-	1,100,000	(500,000)
Commutation	November 2023	1,345,000	-	1,345,000	(245,000)	(1,845,000)
Reversionary Pension	November 2023	1,700,000	1,700,000	-	(1,455,000)	(145,000)
New Pension Commencement	November 2023	145,000	145,000	-	(1,600,000)	-

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- Overall administration:
  - Value at date of death – interim financials;
  - Reporting for TBAR by 28 January 2023;
  - 30 June 2023 financial statements;
  - Interim financials leading up to 6 November 2023 to determine most appropriate restructure?
  - Is it all worthwhile (the pension being reversionary)?
    - Certainty for Marilyn;
    - Jack's children can't contest the reversionary status (depending on the deed);
    - Could have benefit of date of death value is TBCredit – more exempt from tax in the longer term (depending on asset performance).

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- What if the pension wasn't reversionary?
  - 1 July 2023 could be an appropriate date to consider restructuring for Marilyn;
  - As soon as practicably, and more than practical for determining value;
  - ECPI continues to apply until the benefit is dealt with;
  - No min. payments required to be made between Nov and June 2023;
  - Marilyn can restructure her benefits leading up to 1 July 2023, and the relevant paperwork can be drafted to that effect;
  - TBAR required by 28 October 2023;
  - More likely to have a complete picture with 30 June 2023 financials;
  - Missing out on several months of ECPI, and valuation at DOD rather than 30 June 2023 – could be a substantial difference, or perhaps not;

- Should we be changing existing pensions?
- NO – other considerations (tax components, Centrelink, CSHCC etc);
- For consideration into the future with new pensions;
- FIRST AND FOREMOST – who do they want to get the $$?
- Is more than a mere check box in an application – can have much wider considerations and implications;
  - Just need to see recent cases and increasing disputes.

- Also need to consider what is happening with Jack's **accumulation**;
- Common that pensions were set up to revert to the spouse, but now we have many clients with pension and accumulation, and the documentation doesn't address it;
- BDBN?
- Is it valid?
- Who decides?
- What might the intentions be?

Pension Payments Greater than the Minimum

Pension Payments > Minimum

- Are all payments from the fund pension payments?
  - Members withdraw > minimum;
  - If they have accumulation – lump-sum withdrawal?
  - If they don't have accumulation – partial commutation?
  - Do we even bother?
    - Depends on the amount;
    - Depends on the number of actual payments.
    - What is the cost of implementing?
    - Quarterly considerations / touch point with clients.

Jack and Marilyn

- Benefits in SMSF:

	$	Minimum $
Jack Pension	1,600,000	64,000
Jack Accumulation	650,000	-
Marilyn Pension #1	800,000	32,000
Marilyn Pension #2	300,000	12,000
Total	**3,350,000**	**108,000**

- They have both retired;
- Want to take out $200,000 per annum from the fund;
- How should the additional $92,000 be treated?

Outcome over five years (5% pa earnings rate):

1. Pension payments:
   - Exempt proportion reduces from 80.6% to 73.4%
   - Overall difference in value is ~$10,000 between options 1 and 3, so $2,000 pa. Depends on the rate of return;
   - What is the annual cost of implementation?
2. Partial commutation:
   - Exempt proportion increases from 80.6% to 88%
   - Ongoing administration, depending on the number of transactions – TBAR, commutation docs, new pension commencement;
3. Lump-sum withdrawals:
   - Exempt proportion increases from 80.6% to 92%
   - Ongoing admin, depending on the number of transactions.

LS from Accumulation

Procedure:

- ❑ Paperwork to reflect withdrawal from accumulation:
  - ❑ Put in place request from member and resolution at year start that any payments > minimum to be treated as lump-sums;
  - ❑ Paperwork for each lump-sum payment;
    - ❑ Need to know accum'n balance at date of withdrawal;
    - ❑ Calc. of tax-free component depends on the proportion that TF comprises the total accum'n at w/d date;
- ❑ Could do one resolution for the year that confirms all of the lump-sum withdrawals and outlines the taxation components;
    - ❑ Still need to process each lump-sum through system, which is the time consuming part, to get the accumulation balance;
- ❑ No TBAR required.

Partial Commutation

Procedure:

- ❑ Letter request from member to treat payments as partial commutation from pension is required BEFORE withdrawal;
- ❑ Could be request that covers the whole year, or even multiple future years – must be prospective;
- ❑ Tax-free component easy to calculate – proportion at pension commencement;
- ❑ TBAR required within 28 days after the end of the quarter of the commutation;
- ❑ May wish to start new pension at 1 July each year with the value of the commutations from the prior year

Summary

Pension Commencement and Management

Commencement:

- ❑ TRP or ABP
- ❑ Reversionary or not
- ❑ Withdrawal and recontribution
  - ❑ Multiple pension commencements
- ❑ TBAR – do as you go when pension docs signed
- ❑ PAYGW registration (if required)
- ❑ Pensions greater than the minimum – prospective paperwork

Pension Commencement and Management

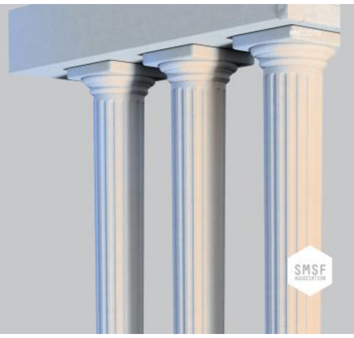
Ongoing:

- ❑ Lump sum withdrawals:
  - ❑ Prospective requests and resolutions
  - ❑ Accumulation account calculations
  - ❑ Limit the number of payments
- ❑ Partial commutations:
  - ❑ Prospective requests and resolutions
  - ❑ TBAR as you go
  - ❑ Limit the number of payments
- ❑ PAYGW – quarterly reporting (if required)

Summary

- Pensions now more than ever require additional considerations;
- Just the decision to revert or not can be significant and have widespread implications;
- We need to be educating our clients about the implications of taking money out of super greater than the minimum, where they want to optimise any exemptions;
  - Take out fewer payments, so less administration;
  - Alert us when they take additional amounts out of super;

Questions



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