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WEALTH & SUPER MATTERS

Superannuation strategies and your personal guide to wealth creation

IN THIS ISSUE:

- *New Superannuation Laws Around Divorce Evening The Split*
- *Using Superannuation To Pay The Mortgage - Is It A Good Idea?*
- *Director Identification Numbers & Corporate SMSF Trustees*
- *Stapling Super For Young Employees*
- *And More...*

New Superannuation Laws Around Divorce Evening The Split

Superannuation is one of the major assets that most Australians have in their possession. It's also often an asset that often gets overlooked during divorce proceedings, especially with its lack of physical presence.

During a divorce, it's important that both parties get their fair share of available super.
However, not all divorces are clean. When there is animosity between the parties, family law proceedings are in effect, or one party is being dishonest or evasive about their available super, the process can become far more complicated as a result.

In September, a new law was passed by the federal government that promotes the visibility of superannuation assets in family law proceedings. The new law — contained in the ***Treasury Laws Amendment (2021 Measure No. 6) Bill 2021*** that received Royal Assent on 13 September — provides an information-sharing mechanism between court registries and the ATO to improve the visibility of superannuation assets.

The Aim

The primary aim is to allow for more partners to receive back what is rightfully theirs in the event of a difficult or messy divorce, and to split super on a more just and equitable basis.

It is believed that more than 60% of women suffer from financial hardships within 12 months of separation as a result of a lack of disclosure by a former partner about their financial situation.

This means that women, who often have less super as a result of circumstances (such as taking time off work to care for children) receive a smaller share of the property (particularly superannuation) than they are entitled to.

Specifically, the amendment was designed with the intent to alleviate the hardships often faced by parties who experience significant drops in disposable income after divorce, particularly for women and domestic and family violence victims.

The amendments should make it harder for parties to hide or under disclose their superannuation assets.

What Is Involved?

The Australian Taxation Office (under the ATO) will be allowed to release super information to a family law court upon request as a result of this legislation.

To obtain the information, an applicant would have to be a party to a family law property proceeding and apply to the court registry to request their former partner's super information, which is held by the ATO.

The information may only be accessed by relevant parties and for the purpose of permitted family law proceedings.

Splitting The Difference

While the super pool held between two parties is considered joint property, it does not get split 50/50 in the event of a divorce. Each case will be examined to determine what is fair and equitable by parties. Considerations should include what was brought into the marriage, what was contributed during the marriage, capacity after the marriage and number of dependents.

Both de facto and married relationships will have this lens applied to them, however, de facto couples in Western Australia are an exception to these rules. Are you concerned about your superannuation in the event of a divorce, and looking for advice or more information? Speak with us.

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Transferring Your Property To Your Super Fund

Often superannuation can be a great structure for people to hold their property in. It is usually a lower tax environment and offers protection against bankruptcy.
But sometimes, you may feel that a property that you own in your own name would be better off in your SMSF. In that case, what do you need to consider if you would like to move the property into your SMSF?

The Rules

Only certain properties can be transferred to your super fund. Usually, only a property that is wholly and exclusively used in one or more businesses is able to be transferred to your own SMSF. For example, if you were in possession of a residential rental property, you would not be able to move it into your super fund. A shop on the other hand could be transferred into a super fund.

Transferring an eligible property to an SMSF is considered a sale, which means that capital gains tax (CGT) may apply. You need to consider what your CGT obligations may be and if you are entitled to any small business concessions to reduce that gain.

You will also need to consider whether stamp duty is applicable to the property. Some states (Victoria, NSW & WA) offer concessions on transferring property from your own name to your SMSF in certain circumstances. And of course, SA has no stamp duty on commercial property.

You may also need to undertake financial modelling to confirm that you would be financially better off transferring your property to your SMSF. If this is something that you would like to do, please contact us so that we can assist you.

Using Superannuation To Pay The Mortgage – Is It A Good Idea?

A relationship has been established around superannuation and mortgage debt that could impact the stability of your retirement.

As prospective Australian retirees approach their preservation ages and retirement, those who are yet to own their own homes may struggle to maintain a comfortable retirement.

Housing is quickly becoming a critical aspect of retirement, alongside the pension, super and voluntary savings as the main means of ensuring a comfortable retirement.

Mortgage debt and the threat of continued payments to pay it off is something that workers must now take into consideration when looking into their retirement, as Australians struggle to pay off their homes. Can it be paid off without the extra income earned from their work?

As more and more Australians retire with healthy superannuation balances, the allure of using that money to pay down a mortgage is strong.

Factors that may be affecting retiree's mortgage debts could include:

- Higher property prices (now ten times the average wage as compared with three or four times two decades ago).
- A delayed entry into the property market as they save a deposit, leaving fewer working years to pay off the loan.
- Record low-interest rates - currently, every dollar used to pay down a mortgage is saving less than 3% on interest, while in superannuation that same dollar has the potential to return 7 or 8 per cent.

Paying down a mortgage is a growing problem for retirees who are increasingly leaving the workforce with mortgage debt, which is far from the norm among middle-income Australians as recent as a decade ago. Among retirees, homeowners in the years prior to retirement (ages 55-64) had dropped from 72% in 1995 to 42% in 2015-16.

However, those who began their working careers prior to the 1990s face another challenge as they move closer to their preservation age; the superannuation guarantee was only introduced in 1992, which means that many may have accumulated less superannuation than other generations after.

It is understandable that for those approaching retirement, preferencing super over mortgage could seem like a logical move, as the extra funds generated can be diverted back into property on retirement. Using superannuation to pay a mortgage can make some tax sense - in an assets test, a primary residence is exempt while superannuation is not.

This may become a more common approach for retirees and those looking to retire within the next few years. However, you should consider what the best approach is for your situation, and whether paying off the mortgage with your super is worth it in the long run.

What Happens If I Die Without A Will?

If you were to pass away unexpectedly and did not have a valid will in place, the law decides who is the beneficiary of your assets. This is what is known as **'dying intestate'.**

These rules apply to everyone and do not take into account an individual's wishes or specific situation (as a valid will would).

If you were to die without a will or a valid will, then an application for a Grant of Letters of Administration will need to be made to the Supreme Court of your state or territory. In most instances, the grant is made to the next of kin of the deceased (e.g. the spouse, domestic partner or a child of the deceased).

The Supreme Court that you apply to will depend on the state/territory of your death, or where you lived or where the assets of your estate are located.

For example, if you died in NSW and the majority of your assets are within NSW, you would apply to the NSW Supreme Court. If the assets however were situated in Western Australia, the application would need to be made to the Western Australian Supreme Court.

There are specific rules regarding the distribution of a person's estate if a Will was not left. If the person died and left behind a partner, then all of the estate goes to them. If the deceased person had children from a previous relationship, some of the estate may also go to them (depending on the amount left in the estate),

If the person had no partner or children, the order that the estate is bequeathed to (without a valid will in place) is:

1. Parents
2. Siblings
3. Grandparents
4. Uncles & Aunts
5. Cousins

If you are involved in a de facto relationship, there are specific conditions that need to be met for your partner to receive your estate if there is no valid will in place. These conditions include:

- Lived in a domestic or de facto relationship for two years or
- Have a child together or
- Have formally registered your relationship

The best way to ensure that your estate is left to the people you want to inherit it is to create a valid Will. Speak with a legal professional for assistance with sorting out your affairs.

Stapling Super For Young Employees

The new change to the way in which superannuation is handled for new to the workforce employees could dramatically affect their eventual retirement nest egg.

Over the course of their working life, an employee with multiple super accounts may have missed out on thousands of dollars due to fees or because they have 'lost' super in accounts long-forgotten.

This means that if you were charged, for example, $10 per month in fees for the super fund, and in the transition to a new job had a second super fund opened that also charged $10 per month in fees, you would be paying $20 in fees all up.

New employees to the workforce will not have to worry about this, as a stapled super fund will now be their constant companion throughout their working life. Introduced 1 November 2021, 'stapled super funds' are an existing super account that is linked (or stapled) to an individual employee so that it follows them as they switch jobs.

This move aims to reduce account fees and avoid the creation of multiple new super accounts.

So, if you started work in a position where you receive superannuation contributions from your employer at the age of 18, and changed jobs at 19 to another position that has super paid into it, your employers would have to pay those contributions into the same fund 'stapled' to you. This means you would only be paying fees for one super fund rather than multiple, and are at less risk of possessing multiple super accounts.

Checking For Unpaid Super – The Checklist

Do you trust that your employer is paying you the right amount of superannuation, just because it says so on your payslip?

Every year, thousands of employers fail to pay their staff the correct amount of superannuation, costing those workers billions of dollars every year. In many instances, it's an honest mistake and easily rectified. However, there are malicious employers out there who are looking to avoid having to pay you the correct super guarantee.

You may not have realised it either if you are trusting the information on your payslip.

How Do I Check?

Checking for unpaid superannuation is very simple. You can:

- Call your superannuation fund directly or
- Check your statement online

If you are unsure of the amount of superannuation owed, you can also contact the Australian Taxation Office (ATO) to chase down the unpaid superannuation. They will be able to determine if there has been an offence committed, and will be able to punish them.

However, if a company is going through insolvency proceedings and you haven't been paid superannuation, it can get a little more tricky. The ATO in this instance won't pursue the unpaid super, but you will be able to legally pursue the company directors in court.

Director Identification Numbers & Corporate SMSF Trustees

Following the Government's Digital Business Plan, the full implementation of the Modernising Business Registers Program has been announced.

When you are in business, you are required to register with multiple agencies such as the ATO, ASIC, Fair Trading, etc. The government is trying to streamline how you register, view and maintain your information with them.

As part of this program, the Government has established the Australian Business Registry Service ('ABRS'), which will progressively roll out until 2024 and bring together the Australian Business Register and more than 30 of ASIC's business registers.

As part of the establishment of the ABRS, the Government has introduced a single identification number for directors of Australian companies. This number is known as your Director Identification Number or DIN for short.

Every Australian company director must have a DIN by 30th November 2022 except for directors of Indigenous Corporations (who have until 30th November 2023).

The DINs will also help stamp out phoenixing activities whereby unscrupulous people set up companies using fake directors, rack up substantial debts and leave creditors with incredible financial losses.

The requirement to get a DIN extends to directors of companies that act solely as trustees of Self Managed Superannuation Funds. Even though these companies do not operate a business, their directors must still comply and obtain their DIN before the cut-off date of 30th November next year (where it applies to them).

How Do You Get Your Director Identification Number?

The fastest way to obtain a DIN is by applying online but you will need a MyGov ID account. The first step is to ensure that you have a MyGovID account. If you do not already have a MyGovID account, you will need to allow for time to have your identity confirmed.

You will require your tax file number and will need more evidence (such as the reference number on your last Notice of Assessment for you personally - not your SMSF). You should have the bank account details that your tax refund is deposited into. Another option to have is to have the details of your last PAYG payment summary. You should get this information together before applying for your DIN to make the process easier.

Once you have the supporting evidence, just go to the ABRS website (www.ABRS.gov.au) and click on the "Apply for your Director ID" box. The site will then take you through setting up your DIN, and you will receive it immediately.

If you don't have a MyGovID account, you can still apply for a DIN by filling out a paper form and posting it to the ABRS. You will need to find someone to certify your identification documents for you. You can also apply over the phone (13 62 50) between 8 am and 6 pm.
You will need to have the same documents as listed before to verify your identity.
If you need any help or have any questions, consult with us.

What Are Negative Interest Rates?

An interest rate is effectively the cost of borrowing, which the major central bank determines. This means that the lender charges a borrower interest when they take out a type of debt.

However, a negative interest rate environment is where those lenders may end up paying borrowers when they take out a loan.

Interest rates tell you how valuable money is today compared to the same amount of money in the future. A positive interest rate implies that your money today is worth more than it will be tomorrow. Inflation, economic growth and investment spending contribute to this outlook. However, a negative interest rate implies that your money will be worth less, rather than more, in the future.

In a negative interest rate:

- Savers would have to pay interest to their bank, rather than receive it.
- Borrowers would be paid to do so instead of paying their lender.

This would promote consumption and investment instead of saving.

Central banks in Europe, Scandinavia and Japan have implemented a negative interest rate policy on excess bank reserves in the financial system over the past two decades.

A negative interest policy sets the nominal target interest rates with a negative value below the theoretical lower threshold of 0%.

While unorthodox, this tool aims to spur economic growth through spending and investment, rather than through hoarding. The NIRP is a way to incentivise corporate borrowing and investment and discourage the hoarding of cash when the economy performs poorly (especially during periods of economic recession or depressions).

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