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SUBSTANTIAL CHANGES TO THE SUPERANNUATION RULES TOOK EFFECT FROM 1 JULY 2017:

Have you investigated how the super changes will affect your estate planning?

As the saying goes, two things are certain in life – death and taxes! However, from 1 July 2017 the changes to the new Superannuation laws have significant impact on estate planning strategies for people now approaching retirement age. Depending on your current arrangements, you may want to consider what the super changes mean to you. It is essential that you consider what impact the changes might have on your estate planning.

How Murfett Legal can help

- We can work closely with you and your accountant, tax advisors and financial planners to ensure that your estate planning goals are achieved.
- We can review and update your Family Trust Deed to include a succession provision in the event of the death of the appointor/guardian.
- We can include superannuation streaming provisions in your Will (amongst many other leading contemporary provisions such as Testamentary Trusts, Equalisation provisions) that allows the taxable, tax-free and untaxed components of the superannuation death benefit to be streamed to your appropriate beneficiaries.
- We have extensive legal expertise and experience not only in Wills and Estate Planning but also with Insurances, Superannuation and Family & Unit Trusts. We are able to provide a straightforward but tailored, step by step approach to fulfil your estate planning goals taking into account the superannuation changes to achieve the best outcome and peace of mind for your family.

To help you understand the new laws and how they will impact your estate planning, we have put together a brief summary of the key issues (note: only from a legal and not a tax, accounting nor licensed financial advice perspective; in fact, this is all subject to such).

$1.6 Million Pension Cap

Effective from 1 July 2017, the Government has introduced a $1.6 million cap on the total amount of superannuation benefits that you can transfer into a tax-free retirement account. This limit is known as the Transfer Balance Cap (TBC). Superannuation benefits accumulated in excess of the cap can remain in the accumulation account, where the earnings will be taxed at up to 15%.

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So, for example, if the wife (with her own $1 million pension account) inherited $1 million from the husband, she would exceed her pension cap and any excess amount above the cap (e.g. $400k) would need to be commuted back to accumulation or be cashed out of the superannuation environment.

Who can receive a death benefit pension?

Under Superannuation laws, a death benefit dependent includes -

- a spouse of the deceased;
- a child of the deceased (less than 18 years of age, or financially dependent and less than 25 years of age, or has a disability);
- a personal financially dependent of the deceased; or
- a person in an interdependency relationship with the deceased.

Does the TBC impact on when a death benefit can be paid as a pension?

When a death benefit is being or is to be paid to a spouse the transfer must consider the balance cap of the beneficiary spouse, namely, whether paying a pension will cause the spouse to exceed their own TBC.

One reason a beneficiary spouse's TBC may be exceeded, is if they have their own transfer balance account.

So, if the receipt of the death benefit pension is likely to result in the spouse exceeding their cap, and the spouse has a capital which is funding a retirement phase pension, then they should consider commuting the excess funds out of their retirement phase account and into their accumulation account.

The death benefit pension can then be paid to the beneficiary spouse as a death benefit pension to the limit of the spouse's TBC. This means that:

- the spouse maximises the balance of their super accounts (and therefore any earnings on assets in these accounts will be taxed concessionally); and
- it minimises the amount which must be paid to the spouse as a death benefit lump-sum outside super.

What is a reversionary and non-reversionary pension

On the death of a member, there are two types of pension that can be paid to a dependent spouse as a beneficiary: reversionary or non-reversionary pension –

Reversionary	Non-reversionary
The beneficiary has no discretion as to the form of payment and the death benefit must be paid as an income stream (subject to the $1.6 million cap).	The beneficiary has discretion as to the form of payment (i.e. to take as a lump-sum or pension).

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Reversionary	Non-reversionary
Whilst the dependent spouse becomes entitled to the pension from the date of death, the credit to their transfer balance account does not occur until 12 months after the date of death.	A credit to the beneficiary's transfer balance account occurs on the day the trustee determines to pay the death benefit.
The amount of the credit is the balance in the deceased's account at the date of death (not 12 months later); therefore, any movement in the deceased's account over that following 12-month period does not count towards the beneficiary's $1.6 million cap and can stay within superannuation.	The amount of the credit is equal to the balance in the deceased's account on the date of death plus any earnings received between the date of death and pension commencement. So, if the total balance on commencement causes the recipient to exceed their $1.6 million cap, the excess must be taken as a lump sum and flow out of superannuation.

What if the death benefit pension breaches the TBC

If an individual exceeds their TBC, the ATO will issue a notice advising of the excess, which will also include an amount of 'notional earnings', calculated based on the 90-day bank bill rate plus 7%. The amount above the surviving spouse's TBC plus the 'notional earnings' must be removed from the death benefit pension account by way of a lump-sum benefit payment, that is, removed from superannuation.

Alternatively, an excess transfer balance tax is payable on the accrued notional earnings of the excess amount to neutralise any benefit received from having excess capital in the tax-free retirement phase. The excess transfer balance tax is assessed for the financial year in which a member breaches their TBC. The excess transfer balance tax is 15% on notional earnings for the first breach and 30% for second and subsequent breaches.

A good time to follow up

It will be necessary to review and update your relevant Superannuation Fund (retail or industry) details or your SMSF Deed, Wills and Binding Death Benefit nominations (lapsing and non-lapsing) in light of these changes:

- if Superannuation funds are required to be cashed out from the superannuation environment, this might impact your family's overall distribution of the estate and undo estate planning strategies previously put in place.
- binding death benefit nominations may need to be reviewed and amended as they may no longer be appropriate in light of the recent changes.
- binding death benefit nominations may need to be limited to ensure the surviving spouse's transfer balance cap is not affected.
- you may need to consider including a testamentary trust as part of your estate planning.

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- Superannuation trust deeds may require review and amendment to ensure there is maximum flexibility including the ability to execute (non-lapsing) binding death benefit nominations, and auto-reversionary pensions.

If you would like more information about your estate planning or changes to the superannuation rules, please contact Murfett Legal by telephone on +61 8 9388 3100, via our website at www.murfett.com.au or email one of the following directors:

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