

SMSF: When a member has a terminal medical condition

When an SMSF member is diagnosed with a terminal medical condition, it is not only devastating news to them but also to those close to them. With perhaps little time left, planning for their loved ones is usually paramount.

Let's take Gary for example. Gary is the sole member of the Miller Superannuation Fund ("Fund") which was established in 2000. He is also the sole director of Miller Pty Ltd ("Trustee") which acts as the trustee of the Fund. Recently Gary was diagnosed with stage 4 pancreatic cancer and his chances of surviving are slim. He now needs to get his SMSF affairs in order to make sure a loved one gets his SMSF benefits.

As the Fund was established a long time ago and its deed has never been amended, it is recommended to have the deed reviewed and updated to be compliant to the current legislation. The deed should be updated to contain important provisions such as allowing a member who has terminal medical condition to be entitled to their SMSF benefits and authorising the Trustee to provide the benefits either as a lump sum or pension, reversionary or non-reversionary.

If all of Gary's SMSF benefits are in the accumulation phase, he can execute a binding death benefit nomination (if he has not already prepared a binding death benefit nomination or a nomination he has executed had already lapsed - not common for an SMSF but possible nonetheless) and nominate his wife, Hilary, to receive all or part of them.

He can also nominate his legal estate to receive all or part of his SMSF benefits after he passes away if he intends for his executor to distribute his SMSF benefits in accordance with his will to relatives such as adult children, grandchildren or nephews and nieces who would either need to pay tax on the taxable component of the benefit received or not be able to receive those benefits directly from the Fund by virtue of not being his dependants.

As Gary has a terminal medical condition, he becomes eligible to access his SMSF benefits. To access these benefits, Gary must submit to the Trustee a certification from two (2) registered medical practitioners (where at least one of them is a specialist practicing in an area related to the terminal illness) that he is likely to die from his illness within 24 months from the date of certification.

Once the Trustee is satisfied of Gary's terminal medical condition, Gary can access his SMSF benefits and has the following options:

- (a) He could withdraw all his SMSF benefits as a lump sum tax free and spend it in any way he chooses such as to pay for his treatments for example. He would also have more freedom to give part of the lump sum to non-dependents such as grandchildren who would otherwise not be entitled to receive SMSF benefits directly from the Fund. This would be recommended if he wants to wind up the Fund and knows that his eligible beneficiaries won't have the capacity to run the Fund after he passes away.
- (b) He can also commence a pension and make it reversionary to Hilary after he passes away. After Gary passes away, his SMSF benefits would continue to earn income and retain the benefits of a superannuation environment. It would be recommended if she is appointed as a director of the Trustee and admitted as a member of the Fund while Gary is still alive.

Depending on the ages of Gary and Hilary, and the amount of taxable component and tax-free component in Gary's SMSF benefits, the reversionary pension will either be exempt from tax or concessional tax. More tax will be paid if both Gary and Hilary were under 60 years of age at Gary's death and Gary had a significant taxable component in his SMSF benefits.

- (c) He can withdraw all his SMSF benefits as a lump sum tax free and make a non-concessional contribution of the same to the Fund provided he has not maxed out on his non-concessional contribution cap. Using this strategy, Gary will be able to increase the tax-free component and decrease the taxable component of his SMSF benefits and accordingly lessen the taxes to be paid on the reversionary pension.

If a member wishes to implement one of the options above, professional assistance should be sought to be sure that the selected option is appropriate and applicable to the member's circumstances and that proper documentation is prepared.

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