KNOWLEDGE FOR SERIOUS INVESTORS

Death Taxes & Pensions (Aug 2011)

The ATO recently clarified that a superannuation pension is considered to have ceased on the death of the pensioner. The implication is that if a benefit is paid as a lump sum to beneficiary/ies capital gains tax could apply to the payment. This strategy paper looks at ways to manage this risk.

When a pensioner dies the tax exempt status for the pension fund ceases and superannuation tax rates apply. The implication is that if these assets were then to be paid out as a lump sum death benefit, requiring the selling or transfer of assets, there is potential for significant capital gains tax liabilities.

One of the potential ways to remove this risk is to establish the superannuation fund as a **Reversionary** pension. A reversionary pension is, as the name suggests, one which reverts to another person on death. The continuation of the superannuation pension allows the pension's tax-exempt status to continue. Even though the superannuation benefit must be transferred to the beneficiary as a pension (ie income stream) it does not preclude the individual (beneficiary) from taking a lump sum payment shortly after.

Reversionary pensions have possible downsides.

- Reversion is only limited to dependants such as a spouse or children with a significant disability ("reversionary nominee").
- The reversionary pension is established at commencement of the pension and is binding on the trustee of the fund (The trustee has no discretion to change the nature of the payment or who it is paid too, which may reduce flexibility for the estate)

The ATO clarification received significant press coverage which at times implied that without the use of a reversionary pension, the sale/transfer of assets within the fund to pay beneficiaries would be taxable. This however is not the case with a range of other strategies also available to managed tax implications on upon death including:

- Transferring or selling assets with large capital gains prior to death.
- The surviving spouse (dependant) can choose to commence a pension after the death of the original pension. If this is the preferred option, ensure it happens quickly to minimise taxable income in the fund before the pension is commenced.
- If the spouse wants to take a lump sum, start a pension and sell assets during the tax-exempt pension phase.

The above shows that with foresight and forward planning the tax implications for your estate can controlled maximising the remaining assets for your beneficiaries.

If you would like to discuss this article please contact your adviser.

Entrust Private Wealth Management Pty Ltd (Entrust) A.B.N. 80 100 088 168, AFSL No. 222152, does not accept any liability for loss or damage suffered or incurred by any person however caused (including negligence) relating in any way to this Presentation including, without limitation, the information contained in it, any errors or omissions however caused or any person placing any reliance on this presentation, its accuracy, completeness or reliability.

Entrust and its affiliates or any of its directors, agents, officers or employees do not make any representation or warranty, express or implied, as to or endorsement of, the accuracy or completeness of any information, statements, representations or forecasts contained in this Presentation, and they do not accept any liability for any statement made in, or omitted from, this Presentation. Entrust accepts no obligation to correct or update the information in this Presentation.

This Presentation is intended only to provide a summary and general overview of matters of interest. The Presentation is not financial product advice, whether personal or general, for the purposes of Section 766B of the Corporations Act. The Presentation does not involve or imply a recommendation or a statement of opinion in respect of whether to buy, sell or hold a financial product. The information in this Presentation does

not take into account the objectives, financial situation or needs of any person. You should not act on or rely on the contents of this Presentation before first obtaining professional advice specific to your circumstances.

This Presentation and contents has been made available in confidence and may not be reproduced or disclosed to third parties or made public in any way without the express written permission of the Fund or Entrust Private Wealth Management Limited.