



Superannuation Proceeds Trusts

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The level of wealth contained in superannuation funds has significantly increased exponentially over the last decade. The generous tax concessions available for both contributions and the payment of tax free death benefits to dependants of members of superannuation funds, has increased the importance of planning appropriately for the payment of superannuation death benefits in the event of death. A superannuation proceeds Trust (SPT) is a Trust that is able to receive lump sum superannuation death benefits on behalf of a dependant of a deceased fund member tax free. SPTs are usually prepared by Deed after death but prior to the payment of superannuation death benefits. Alternatively, Wills may make provision for the establishment of a SPT. This has the effect of holding any superannuation death benefits that are paid to the Estate of the deceased. In this case, the terms of the SPT are outlined in the Will itself.

Furthermore the Income Assessment Tax Act (ITAA) allows for concessional treatment of income generated from the investment of superannuation death benefits by the Trustee of a Trust. As with Testamentary Trusts, Child Maintenance Trusts and Estate Proceeds Trusts (Proceeds Trusts), income distributed to minors from an SPT is taxed at ordinary adult marginal tax rates and not the penalty tax rates that would otherwise apply to unearned income.

What follows is an overview of SPTs.

Determination by Trustee of payment of superannuation benefits

In the absence of a binding death benefit nomination, the decision as to how superannuation death benefits are distributed typically rests with the Superannuation Trust Deed and the discretion of the Trustee of the superannuation fund.

In order to create an SPT, it is necessary for the Trustee of the superannuation fund to agree to pay the proceeds directly to the Trustee of the SPT. This requires a formal determination to pay it to the Trustee of the SPT.

Therefore the requirements of the superannuation fund prior to finalising the Trust deed of the superannuation fund should be understood so that the SPT deed is acceptable to the Trustee prior to death benefits being paid. As part of this process, a determination whether or not a binding death benefit nomination has been made by the deceased fund member needs to be considered. If such a nomination exists, the Trustee does not have the discretion to pay other than as directed in the nomination.

Definition of Dependant Beneficiaries

The definition of the term 'Beneficiaries' in the Trust deed must be drafted carefully so as to avoid tax being withheld for the death benefit paid to the Trustee of the SPT, which comprises the taxable component of the lump sum Benefit.

The definition of Beneficiaries contained in the Trust deed of



the superannuation fund should be limited to those people who are death benefits dependants as outlined in the ITAA. A distribution of the death benefit from the superannuation fund to the superannuation proceeds Trust will then be free of superannuation death benefits tax.

Distribution of income

As with Beneficiary-controlled Testamentary Trusts, and Estate Proceeds Trusts, the income generated from the investment of the superannuation death benefits by the Trustee of the Trust can generally be distributed to the Beneficiaries of the Trust. By selecting Beneficiaries on low marginal tax rates, the Trustee can minimise income tax. The ability of minor children to utilise the adult tax-free threshold and the subsequent marginal tax rates makes the SPT a potentially attractive Estate - Planning Tool.

Capital requirement

The same capital requirements that apply to the other proceeds Trusts also apply to the SPT. The capital of the Trust must ultimately pass to the concessional tax Beneficiaries of the Trust (usually the children). While this may appear to be a problem, like any other Trust, an SPT has a lifespan of up to 80 years. The decision to distribute the capital from the Trust rests with the Trustee of the Trust. Therefore, the Beneficiaries cannot receive the capital until the Trustee

exercises its discretion to wind up the Trust and distribute the capital.

The Trustee may choose to advance all or part of the capital to a Beneficiary prior to the vesting date, provided that the Trust deed permits capital to be distributed prior to vesting.

When to create a Superannuation Proceeds Trust

As the Beneficiaries of an SPT Trust must be death benefits dependants a SPT should only be created where there are a number of death benefit dependants in respect to the member of the superannuation fund. The most obvious situation in which an SPT may be established is where children who are under the age of 18 years at the date of death are nominated to receive death payments. This will enable the excepted Trust income generated by the Trust to be distributed to the children at adult marginal tax rates.

If there are no minor dependant beneficiaries, there may be little or no value in establishing such a SPT and alternative options should be considered.

For more information in respect to the next ili workshop covering Family Provision Planning incorporating Superannuation Proceeds Trusts visit the ili website www.ili.com.au.

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