DBA Butler Pty Ltd Lawyers

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Crystallisation

As a result of our May 2007 article, we have received numerous queries regarding 'crystallisation' and wish to address these below as well as clarifying some comments made in our prior article.

From 1 July 2007, all superannuation interests may be comprised of tax free and taxable components. The tax free component is comprised of the crystallised segment and the contributions segment (ie, non-concessional contributions).

Once calculated, the crystallised segment is a fixed dollar amount going forward, whereas the contributions segment can increase over time as further contributions are made.

Note that accumulation accounts (as grouped together) and each pension account are considered separate superannuation interests for the purposes of calculating the crystallised segment.

When does the crystallised segment get calculated?

For members with accumulation interests, the pre-July 83 component must be crystallised at 30 June 2007 (although the trustee has until 30 June 2008 to calculate the crystallised pre-July 83 component).

If a member was in pension phase, although had not received a pension payment before 1 July 2007, the pre-July 83 component must also be crystallised at 30 June 2007. This is regardless of how old the pensioner was at 30 June 2007.

However, if a member did receive a pension payment prior to 1 July 2007, then the pre-July 83 component is not crystallised until a 'triggering event' occurs.

What are the Triggering Events?

As outlined in our May 2007 article, the triggering events are:

- commuting all or part of the pension to a lump sum
- being 60 years of age or more at 1 July 2007
- attaining age 60
- death

How does it work?

For example, if a member was in receipt of a pension at 30 June 2007 and a pension payment had been made prior to 1 July 2007, then that member would only calculate their crystallised segment if they satisfied a triggering event.

If the member was 60 or over at 1 July 2007 a triggering event is satisfied and that member would need to calculate their crystallised segment as at 1 July 2007 for their pension interest.

However, if the same member was under 60 years of age at 1 July 2007, then crystallisation would not occur until the member satisfied a triggering event.

In summary, we note the following:

Superannuation Interest	Calculation Date
Accumulation	30 June 2007
Pension – Pension Payment **was not made** pre 1 July 2007	30 June 2007
Pension – Pension Payment **was made** pre 1 July 2007	Satisfy a triggering event.

DBA offers a Crystallisation Kit which provides practical guidance for calculating and documenting the crystallised segment and includes worked examples and draft trustee resolutions.

Should I upgrade my deed? Seven 'must know' questions

We have received numerous questions about the *Simpler Super* reforms and whether SMSF deeds should be upgraded. As a general guide, we recommend that all deeds be reviewed as many now contain problematic provisions (eg, the old compulsory cashing and pension rules). DBA's latest SMSF deed, PDS and related documents were only recently updated for the latest changes.

To assist advisers we have listed seven 'must know' questions. This is not a complete list but includes some critical questions.

1. Are the new pensions allowed?

The fund's deed *must* allow for pensions to be paid. Because the regulations providing for Account-Based Pensions and Transition to Retirement Income Streams were only finalised in April 2007, many older deeds do not allow for these.

An express power is preferable. Otherwise, the deed should at least provide a general power to pay other benefits, provided detailed documents (which incorporate the new regulations) are used to commence the pension. In our view, a general deeming clause which ensures a fund remains within superannuation rules is not, by itself, sufficient.

2. Does the deed force compulsory cashing?

Compulsory cashing rules have been abolished (apart from on death) so there is no longer any requirement for retired members over 64 years to cash their benefits. However, many older deeds still force compulsory cashing.

3. Does it permit all types of contributions?

The deed should reflect the new contributions rules for persons aged 65 to 74 and limit contributions for those 75+ to mandated employer contributions.

It should also permit strategies such as contribution splitting and government co-contributions, which older deeds often do not.

4. Is estate planning properly catered for?

Most people will have substantial assets in super on death. It is therefore vital that the deed allows for binding death benefit nominations that can last indefinitely (many automatically expire after 3 years), flexibility in payment of benefits on death (eg, as a pension and/or lump sum) and it should allow benefits to be paid to those who qualify as 'dependants'.

5. Does it allow internal roll-overs?

This is necessary in order to 'turn off' a pension and return the pension account to accumulation mode or to commence a new pension. Many deeds only allow roll-overs to other funds.

6. Does it allow release of excess contributions?

Excess contributions can attract significant penalties and the deed should therefore authorise the release or rejection of excess contributions. It should also allow the fund to pay any excess contributions tax on behalf of the member.

7. Should I upgrade a deed via the web?

Some providers offer 'online' deeds of variation. Note that these carry significant risks:

- Many upgrade without examining a fund's document trail. The upgrade may therefore be invalid, which can have serious consequences. This may result in, eg, binding nominations made after the upgrade also being invalid. Other planning strategies may also be at risk.
- Online deeds may not adequately reflect current laws as they are often not prepared by lawyers with sound knowledge of super laws and regulations.

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Pension documentation

Pension Kits ($440 per kit *) comprise all the pro-forma documentation needed to commence a pension for an SMSF. Each kit includes a PDS, resolutions, summary for member, checklist, member application form, ATO forms and more.

Account-Based Pension ☐ *Conversion Kit* ☐

Transition to Retirement Income Stream ☐ *Crystallisation Kit ($330 *)* ☐

* Single use licence. If you would like to purchase multiple use licences, please contact Ian Waters or Bryce Figot at our office.

Name of person ordering _____ Firm_____

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All prices include GST but exclude courier costs. Payment upon receipt of invoice.

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