



Redchip

Plan to succeed



Yodal

Welcome

“Estate Planning”

25 May 2017

Speakers

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- SPEAKERS -



Dale Edwards – Partner and
Business Advisory Specialist
Advivo



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Estate Planning Specialist
Redchip



Gavin Barnes – Director
Redchip

NO ADVICE - Disclaimer:

The information contained in this presentation is general information only and has been prepared without taking into account your personal objectives, financial situation or needs. The information provides a high level summation of selected parts of legislation only. The legislation is complex and includes a number of conditions and overrides that may apply to individual situations. Interpretation and application of the information to your specific circumstances requires consultation with an accountant with a detailed understanding of your personal and taxation affairs and a qualified financial advisor before taking any action.

Death & Taxes

- Final tax return (“Date of death”)
 - Income for the year up until date of death.
 - Taxed at normal marginal tax rates
 - Normal tax free threshold even though only part year
- Estate tax return (if there is ongoing income from assets in the Estate)
 - Income for the year of death from date of death
 - Taxed at normal marginal tax rates & normal tax free threshold for that first part year and two full financial years thereafter
 - After the estate is fully administered income is taxed to beneficiaries presently entitled or to the estate if for minors
- Any other outstanding tax returns must be completed – ATO can issue arbitrary assessments
- Record keeping problems are a big hurdle
- LPR may be personally liable if they have failed to set aside enough funds from the estate to pay the tax liability.

What about the beneficiaries?

- Lump Sum insurance proceeds are tax free to owner of policy
- No inheritance tax in Australia but.....
- SMSF lump sum payments can be subject to tax depending on the circumstances.
- Non-cash assets received inherit cost base:
 - Pre 19/9/1985 at market value at date of death
 - Post 19/9/1985 at cost base of deceased
 - Problems? Record keeping & latent tax liability
- Beneficiaries who don't want assets in own name – high risk or high tax or both - consider in estate planning and talk with beneficiaries.

What about Superannuation

- Death benefit nominations
 - Default is at trustee discretion
 - correct drafting critical / don't let them lapse
- Lump sum payment or death benefit pension if no reversionary pension
- \$1.6m transfer balance cap problems
 - Only for the wealthy? (What about Life insurance payouts?)
 - Existing reversionary pensions may be unable to pass to spouse as a tax-free reversionary pension
 - May need to review death benefit nominations in light of changes
 - Accumulation balance in super better than assets outside super
 - Lumpy assets in Super

Case Study

Superannuation post-changes

Part 1

- Col has an SMSF with \$4m in balance. Col is the only member of the fund. Col is 68 years old and has his entire balance in pension. The fund is paying 0% tax on income and Col is paying 0% tax on the pension payments he receives from the fund.
- The SMSF has a corporate trustee of which Col is the sole shareholder.
- Col has just purchased a \$3m commercial property in the SMSF.
- Col would like his entire superannuation balance to go to his 2nd wife, Sue, who is 67.
- Col has a reversionary pension to Sue in place.
- Sue loves the new property that the SMSF has purchased and wishes to keep it after Col dies.
- From by 1 July Col will need to partially commute his balance back into accumulation, leaving at most \$1.6m in the pension account.
- So the SMSF will need to start to pay some tax. No other problems, right?

Case Study

Superannuation post-changes

WRONG!

Col's adult children from his first marriage are his executors and will inherit the remainder of his estate. The children do not get along with Sue.

Due to the superannuation changes, Col now has a number of issues to deal with.

Issue 1

His new accumulation balance of \$2.4m will not automatically go to Sue. The trustees of the fund (who will be his executors) will be able to decide who this is paid to.

Given that they don't like Sue – do you think that she will get anything?

Case Study

Superannuation post-changes

Issue 1 Solution

- Implement a binding death benefit nomination to Sue.
- Transfer the share in the corporate trustee from Col to Col & Sue in joint names. Under the rules of survivorship the share automatically passes to Sue and is not subject to the stepchildren challenging Col's will.

Case Study

Superannuation post-changes

Issue 2

When Col dies, his pension (\$1.6m today) will revert to Sue. Sue has no superannuation herself or other assets of significant value.

Sue also has a \$1.6m transfer balance cap. Sue will be able to continue Col's reversionary pension by using 100% of her own transfer balance cap.

The balance of Col's super, the \$2.4m accumulation account will need to be paid out to Sue as a lump sum.

What assets are there in the fund to do this?

A \$3m commercial property and \$1m of other assets that Sue is happy to convert to cash.

The fund can make an in-specie lump sum transfer to Sue to extinguish the balance (subject to the SMSF deed allowing this), however this may be subject to duty, CGT (for the fund), and the ongoing income subject to tax at Sue's marginal tax rate – reducing her ongoing after-tax revenue from the property to live on.

Sue is not happy.

Case Study

Superannuation post-changes

Part 2

Same facts as Part 1 except that:

Sue has \$1.6m in superannuation herself (post 1 July 2017) that is in pension – not in the SMSF with Col.

Solution

Sue could roll her balance into Col's SMSF and become a director of the corporate trustee.

When Col dies:

Sue has to either pay out Col's entire balance to herself, moving this out of superannuation (as she is already at her \$1.6m transfer balance cap), or

Sue can fully commute her own pension back to accumulation phase, keeping her \$1.6m in superannuation – taxed on earnings at 15%.

She can then accept and retain the reversionary pension from Col. The balance of Col's super (his accumulation account) needs to be paid out to Sue.

This leave Sue with \$3.2m in her superannuation balance – enough to retain the commercial property in the low tax superannuation environment.

Sue is happy.

Case Study

Superannuation post-changes

Part 3

Same facts as Part 2 except that:

The commercial property cost and is still worth \$4m when Col dies.

Issue

Sue's maximum balance in super is \$3.2m – her \$1.6m that she can revert to accumulation phase plus Col's \$1.6m reversionary pension.

Therefore the property needs to be moved out of Superannuation (at least partially).

There is no way Sue can keep the commercial property in superannuation after Col dies.

What to do?

- Review existing estate planning arrangements in conjunction with accountant, solicitor and financial advisor.
- Don't forget:
 - Business succession agreements
 - Enduring powers of attorney
 - Advanced Health Directives
- Review and change Death Benefit Nominations if needed
- Review existing reversionary pensions to see if still appropriate
- Update SMSF trust deeds to ensure that they comply with current legislation and enable required binding death benefit nominations and pension commutations.
- If something changes (new entity or new assets) consider impact on Estate Plan

How to do it?

We can help!

We are best placed to know about your circumstances and structures.

Fixed price upfront

We are well positioned to identify changes to your business circumstances that may trigger the need to review your estate plan

We want to ensure that your personal goals are met as well as your business goals.

Our interest is aligned with yours because we want you to have your affairs organised and tidy – because we have to play a part in trying to sort out any mess you leave



Seamless, Streamlined, Simple Estate Planning



Click below link to play video
<https://vimeo.com/185818206>

Questionnaire for Charles Pitworth and Cindy Pitworth

Questionnaire for Charles Pitworth

SAVE

SUBMIT

[Go to Questionnaire for Cindy Pitworth](#)

NEXT

- YOUR DETAILS
- CHILDREN DETAILS
- ASSETS AND LIABILITIES
- GIFTS
- BENEFICIARIES
- EXECUTORS
- GUARDIANS
- FINANCIAL ATTORNEY
- PERSONAL ATTORNEY
- ENTITIES

	Client
First Name	Charles
Middle Name	Enter Middle Name
Last Name	Pitworth
Residential Address Line 1 ?	100 Ann Street
Residential Address Line 2 ?	Brisbane City
Residential Address State ?	QLD ▾
Residential Address Postcode ?	4000
Postal Address Line 1 ?	

Questionnaire for Charles Pitworth and Cindy Pitworth

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PREVIOUS

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YOUR DETAILS

CHILDREN DETAILS

ASSETS AND LIABILITIES

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BENEFICIARIES

EXECUTORS

GUARDIANS

FINANCIAL ATTORNEY

PERSONAL ATTORNEY

ENTITIES

In the table below, please list the people who you would like to act as executor of your estate. The executor of your estate should be a trusted member of your family or a friend, as they will have the responsibility of administering your affairs and finalising your estate.

EXECUTOR1

[ADD NEW](#)

DELETE EXECUTOR

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The below fields have been designed to allow you to select who will receive the residue of your estate once any specific gifts have been distributed.

☒ Check this box if in the first instance, you wish to leave all of your estate to your spouse or partner.

Please now make a selection from the drop down list below

To my spouse, but if he/she predeceases me, then equally between our children

To my spouse, but if he/she predeceases me, then equally into testamentary trusts for our children

To my spouse, but if he/she predeceases me, then 50% to my family and 50% to my spouse's family

To my spouse, but if he/she predeceases me then equally between my siblings

Custom

Questionnaire for Charles Pitworth and Cindy Pitworth

Questionnaire for Charles Pitworth

[Go to Questionnaire for Cindy Pitworth](#)

PREVIOUS

YOUR DETAILS

CHILDREN DETAILS

ASSETS AND LIABILITIES

GIFTS

BENEFICIARIES

EXECUTORS

GUARDIANS

FINANCIAL ATTORNEY

PERSONAL ATTORNEY

ENTITIES

If you are involved in an entity or structure, please provide details of the type of entity or structure below.

Please enter the name of any trust you are involved in.

TRUST1

[ADD NEW](#)

Name of trust

DELETE TRUST

Please enter the name (including the ACN) of any company you are involved in. This may be as a Director or a Shareholder.

COMPANY1

[ADD NEW](#)

Name of company

Scenario 1

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**All of my wealth is tied up in the trust I have with my brother.
My family can just split that. I know my brother will do the
right thing.**



Example – asset protection strategy



- Client was 45 years old, single and never married
- He established a family trust within which he purchased two properties
- The family trust was structured with the client's brother as Trustee, Principal and Primary beneficiary
- The client was not named in the trust deed at all and had no legal control
- The client trusted his brother completely and his brother consulted with the client in relation to all matters associated with the family trust
- This arrangement worked well until sadly, the brother died in a car accident.

Scenario 2

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I'm young and I don't have much, so there isn't any point in preparing a Will



A Recent Example



- A 24-year-old male signed a Contract to purchase a unit off the plan
- He died unexpectedly prior to the Contract completion
- He had no Estate Plan
- His parents were left dealing with the property developer as the deceased estate remained contractually bound to buy the property

Your Accountant as the Project Manager

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- Accountants have a trusted relationship with their client.
- They already have a lot of the relevant information to get the client's Estate Planning underway.
- Accountants have a relationship with the lawyer so they are best placed to get in touch with the lawyer and drive the Estate Planning process.

QUESTIONS?

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