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## Summary

The Department of Families, Housing, Community Services and Indigenous Affairs announces further relief for people with 100% assets test exempt income streams being paid through a SMSF.

## Asset Test Exemption Relief for Self Managed Super Funds

Where a SMSF provides a member with a defined benefit pension that complies with the requirements of section 9A and 9B of the Social Security Act, and the pension commenced before 20 September 2004, the pension qualified of 100% exemption from the assets test.

Such pensions were popular with members seeking to reduce their assets for assets testing purposes and for those seeking to manage a potential excess RBL position. This discussion focuses on assets test exemption for Social Security purposes

One requirement of paying a defined benefit pension through a SMSF is the need to obtain an actuarial certificate on an annual basis that certifies the fund has a high probability of meeting its pension liabilities.

With the impact of the Global Financial Crisis resulting in the fall in the value of many superannuation fund assets, some SMSF trustees have found that their fund no longer meet the high probability test.

Under "normal" circumstances, a fund that does not meet the high probability test would traditionally lose access to 100% assets test exemption. The pension would be regarded as never having been exempt from assets testing, resulting in a potential debt resulting from over paid Social Security benefits.

Earlier this year, the Government announced that where a SMSF did not meet the high probability test, in certain circumstances, a debt would not arise. The options available where:

- Restructure the pension to an equivalent 100% assets test exempt income stream offered by a retail provider - in which case the assets test exemption would remain and no debt would be incurred, or
- retain in the SMSF pension with the hope of an improvement in investment markets that would see a return to the high probability test being achieved - the exemption would be lost but no debt would arise

This relief is to remain until 30 June 2010.

The Government has now announced a further enhancement to the relief:

- A SMSF will be able to restructure a 100% assets test exempt income stream to a market linked income stream (i.e. a Term Allocated Pension) within the original SMSF. The 100% assets test exemption will be lost but the debt that would otherwise arise will be waived. As with the initial relief, this restructuring opportunity is only available until 30 June 2010

For those members of SMSFs that are receiving payments by way of a 100% assets test exempt income stream that commenced before 20 September 2004, and the pension fails to meet the high probability test, three options are now available that will result in Social Security debt being waived:

1. transfer the pension to a 100% assets test exempt retail offering - the assets test exemption will be maintained;
2. retain the current pension with a hope it will meet the high probability test at a future date - 100% assets test exemption will be lost; or
3. convert the current pension to a market linked pension within the same SMSF - access to the 100% assets test exemption will be lost

Commuting an existing defined benefit pension and rolling the proceeds to a retail fund, or to a market linked income stream within the same SMSF, can be complex transactions to execute. In the first instance, the SMSF's governing rules will need to be reviewed to ensure the relevant transactions can be effected. In addition, where the commutation will involve the allocation of funds from reserves (as will inevitably be the case) caution will need to be exercised in determining the appropriate level of allocation so as to avoid having the allocation assessed as a contribution.

Now is the time to be reviewing clients receiving 100% assets test exempt defined benefit pensions from their SMSF.

This Technical Update only relates to 100% assets test exempt pensions. That is, pensions that commenced to be paid prior to 20 September 2004.

Regards

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