



Cutcher & Neale

ACCOUNTING AND
FINANCIAL SERVICES

Super isn't Super

Legal Aid NSW Family Law and Care and Protection Conference, September 2011

Presented by
Nick Gaudion – Director, Forensic Accounting



Innovative thinking. Traditional values.

Super isn't Super

Disclaimer

The material contained in this seminar is in the nature of general comment only, and neither purports, nor is intended to be advice on any particular matter. Persons should not act or rely upon any information contained in or implied by this seminar without seeking appropriate professional advice which relates specifically to his/her particular circumstances. Cutcher & Neale expressly disclaim all and any liability to any person, whether a client of Cutcher & Neale or not, who acts or fails to act as a consequence of reliance upon the whole or any part of this presentation.



Super isn't Super

1. Super is not basic – recap on the basic types of Super
2. When can my client get their money out of super?
3. How much tax will my client pay?
4. Why does a Flag look like a red octagon?
5. Why not knowing about the “Operative Date” is worse than going on a blind date?
6. How do you manage the split of a Self Managed Superannuation Fund?
7. What are State Super doing now?



Super isn't Super

The basic types of super?

- Accumulation
- Defined Benefit
- Self Managed Super Fund
 - Consider possible compliance issues
- Account based pension



Super isn't Super

When can my client get their money?

- What is meant by “retired”?
- What is meant by preservation age?
- Look at the preservation characteristics:
 - Unrestricted non-preserved
 - Restricted non-preserved
 - Preserved
- Characteristics get split proportionately



Super isn't Super

Will my client pay tax on their super?

- Tax free only after age 60
- Concessional tax treatment before age 60

Look at the taxation components:

- Tax free component
- Taxable component
- Must be taken in proportion
- Characteristics get split proportionally



Super isn't Super

Why does a Flag look like a red octagon?

- Whenever a splittable payment is payable
- Payment splits become interest splits
- A “Flag” stops any payments being made
- When should I fly the “STOP” flag?



Super isn't Super

Why not knowing about the “**Operative Date**” is worse than going on a **blind date**?

The Operative Date for these Orders is the 4th business day after the day on which a sealed copy of the Orders is served on the Trustee

So what does the Operative Date mean?



Super isn't Super

Consider the following:

- Mike and Judy separate in 2008
- Relatively amicable, 60/40 split to Mike
- Mike gets June 2008 member statements – balance \$200,000
- Orders for base amount of \$80,000 to Judy
- After implemented, Mike has balance of \$40,000. How did that happen?



Super isn't Super

- Mike had \$200,00 at June 2008
- Share market fell 40%
- The super interest decrease to \$120,000
- Orders for base amount of \$80,000 to Judy
- The trustee took out \$80,000 to pay Judy
- After implemented, Mike has balance of \$40,000 (\$120,000 less \$80,000).



Super isn't Super

What is the Operative Date and how does it work?

- It is the date from which the split occurs
- Base amounts are adjusted from the operative date
- How are base amounts adjusted (accumulation, defined benefit, SMSF)



Super isn't Super

Consider the following:

- Mike and Judy separate in 2009
- Relatively amicable, 60/40 split to Mike
- Mike gets June 2009 member statement – balance \$200,000
- Orders for base amount of \$80,000 to Judy
- After implemented, Mike has balance of \$180,000. How did that happen?



Super isn't Super

- Mike had \$200,000 at June 2009
- Share market rebounded 30%
- The super interest increased to \$260,000
- Orders for base amount of \$80,000 to Judy
- The trustee took out \$80,000 to pay Judy
- After implemented, Mike has balance of \$180,000 (\$260,000 less \$80,000).



Super isn't Super

Three suggestions for your next date

- Where possible, consider making the operative date the date of valuation.
- Obtain a valuation just prior to finalising the orders.
- Consider a percentage split.



Super isn't Super

How do you manage the split of a SMSF?

- Does the new spouse want a SMSF?
- Cash up and roll out?
- In Specie transfer?
- Consider if existing fund is complying?



Super isn't Super

So what is State Super doing now?

- Their own valuations
- Interest splits not payment splits
- Base amount only (not percentage split)
- Lump sum amounts rolled out to non-member

Is that the same for all defined benefit funds?



Super isn't Super

Oils ain't Oils and Super isn't Super

- Each superannuation can be very different – make sure you understand the fund
- Look at the preservation components to see if money can be taken out pre retirement
- Consider the age and taxation components as tax may be payable if taken out before 60
- Don't go on a blind date – think about the impact of the Operative Date.

