Death, like taxes and childbirth, never comes at a convenient time. It's in your interest to protect your business and use tax concessions to their full potential.

Ok, in English please? Unfortunately, the *Tax Act* becomes more, rather than less complicated here, requiring segregated current pension assets to be 'assets invested, held or otherwise being dealt with, for the sole purpose of enabling the fund to discharge the whole or part of its current pension liabilities as they become due.' 'Current pension liabilities' are then defined to mean a liability, or contingent liability, of the fund to make payments in respect of a pension payable by the fund at a particular time.

What this essentially means is, where a fund stops paying a pension to a member because they have passed away, the reason for the tax concession ceases to be too and those assets no longer enjoy tax-free status.

What impact does this have on the Superannuation Fund?

Following the death of a member, the assets that previously supported payment of their pension will cease to be current pension assets. Where the assets are then sold (or transferred) to assist with payment of the member's death benefit to beneficiaries (family members), any gain on disposal would be subject to capital gains tax.

If assets, such as property, have been owned by the fund for many years, this could mean a very big tax bill for loved ones.

So, how do I plan to avoid a 'very big tax bill'?

There are various ways this issue could be managed. Superannuation funds holding real property could sell the asset at some point after the business owner starts a pension. This may also be sensible in terms of providing liquidity to pay pension benefits.

What if a member of my family is carrying on with the family business?

Where the property is used as part of a business operated by another family member, it may be appropriate to restructure the holding to another family entity following the commencement of a pension. Assets that are listed market assets can be more easily monitored and managed as part of the portfolio management process.

This is a complex area of tax legislation that requires careful planning to ensure that unnecessary and substantial tax liabilities are avoided.

If you have a self managed superannuation fund and are planning to retire, or even if you are currently drawing a pension, you should carefully consider how best to manage this issue to avoid the loss of substantial family wealth. Your taxation or financial advisor should be well placed to explain the options available to you. If not, before you shuffle off your mortal coil, you should seek the advice of someone who can help you protect a lifetime of work, sweat and toil. ●

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