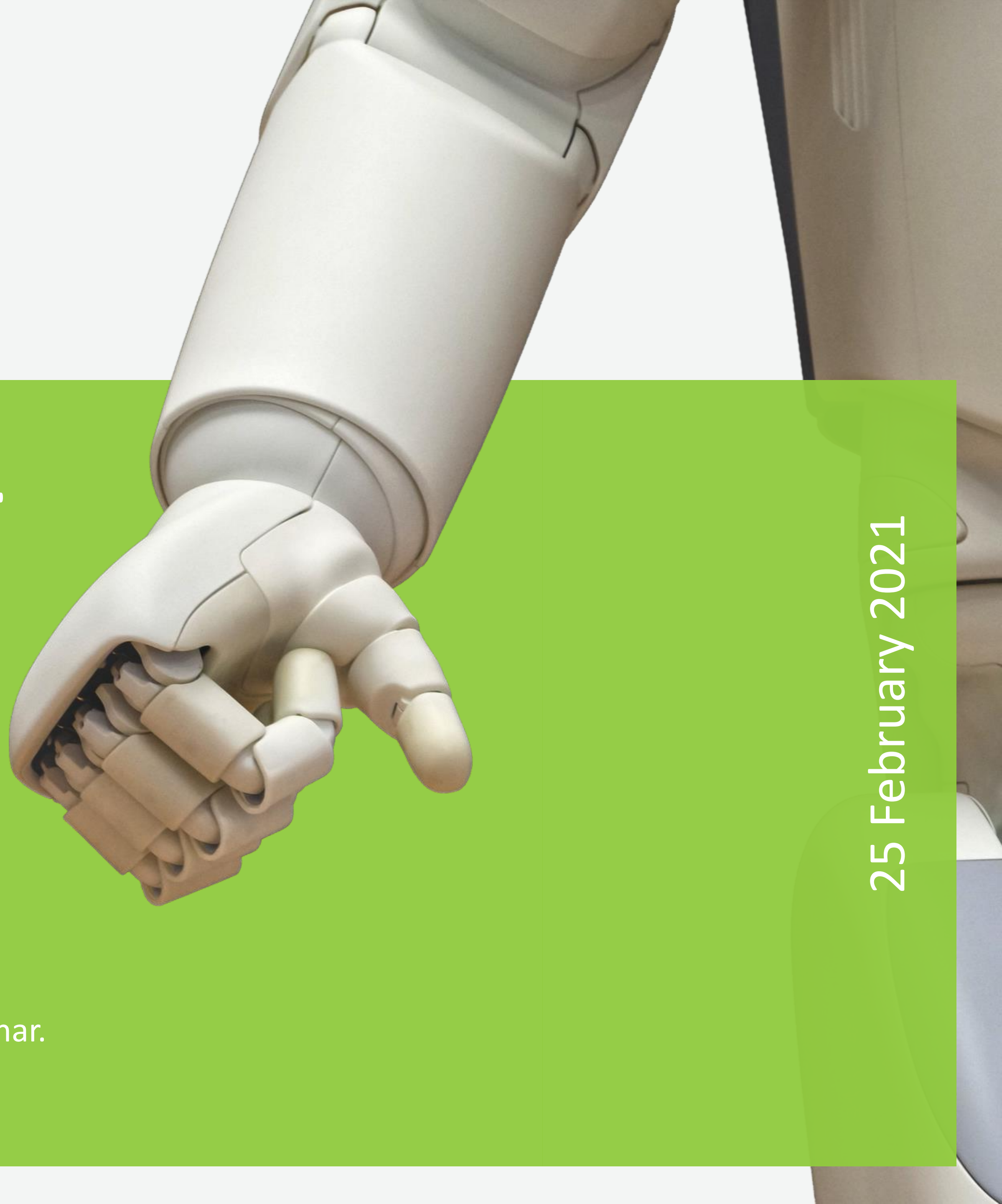
LightYear DOCS

The LightYear Docs Auto-Reversionary Pension

Deep Dive & Training Session

This webinar will commence at 12.30pm ADST.

Please use the chat feature to ask any questions throughout the webinar.



25 February 2021

Reversionary pensions started life as annuities hundreds of years ago as a form of reward for soldiers who fought for King and country in England. If our valiant soldier made it back to his beloved country, the King would provide him with a lifetime annuity and if the soldier died it would continue on in the name of his wife. The same system operates for our current Parliamentary pensions and also for many public servants – although it is not an annuity (these are only offered by Life Insurance companies) but a pension offered by a superannuation fund.

At the SMSF level, the Commissioner of Taxation provides that the type and style of pension offered is dependant upon the trust deed and governing rules of the Fund. Importantly any pension documentation or addition to a pension (as long as it is not capital) will form part of the Governing Rules of the Fund.

BDBN or Reversionary Pension – which applies?

"There are no SIS Act or SISR provisions that are relevant to determining which nomination an SMSF trustee is to give precedence where a deceased pension member had both a valid reversionary nomination and a valid BDBN in existence at the same time of the member's death.While section 59 of the SIS Act and Regulation 6.17A of the SISR place restrictions on superannuation entity trustees accepting BDBNs from a member, as explained in SMSF Determination SMSFD 2008/3, the Commissioner is of the view that those provisions do not have any application to SMSFs.

It must also be remembered that section 59 of the SIS Act and regulation 6.17A of the SISR are necessary because of the general trust law principle that beneficiaries cannot direct trustees in the performance of their trust.

The ATO's view is that a pension that is a genuine reversionary pension, that is, one which under the terms and conditions established at the commencement of the pension reverts to a nominated (or determinable) beneficiary must be paid to the reversioner. It is only where a trustee may exercise its discretion as to which beneficiary is paid the deceased member's benefits and/or the form in which the benefits are payable that a death benefit nomination is relevant.“

Source: The Commissioner of Taxation – March 2010 NTLG meeting

The Legal Side of an Auto-Reversion

- It is built into the pension documentation provided the trust deed allows – it is a contract between the Trustee and the pension member and reversionary beneficiary
- It is contingent upon the reversionary beneficiary being alive at the time
- An auto-reversionary to a spouse has 12 months to fall into their TBAR
- An auto-reversionary to a financial dependant if allowed and taken as a pension is tested against their TBAR
  - Adult child aged 40 non-dependant in receipt of auto-reversionary pension – what happens?
  - Any grandchildren of my lineage at the time of my death who are dependant are to continue my pension jointly and severally
  - The income stream continues on to the Replacement Trustee or Director upon the death of the pension member and no reversionary beneficiary

Let’s do a deeper dive

- The Commissioner’s ruling – TR 2013/5 to find out when a pension ceases and the **DANGERS** of not having a reversion
- Let’s review the LightYear Docs SMSF deed to see pension and addition of reversion to pension requirements:

6.7 Pension Variations not a new Pension

Where a Pension does not have a reversionary pension member, the Member may, with the agreement of the Trustee add one or more reversionary pension beneficiaries (including relevant terms and conditions) to the existing Pension without it becoming a new Pension but a variation of the current Pension.

Case Study

- John Smith is 70 years old and is married to Sally who is aged 58. John has a pension, with a TBAR of $1.4M plus no reversion. Sally has an accumulation account of $650,000.
- John has two adult children – Sebastian and estranged daughter Marie who has threatened to go to Court for John's money if he leaves it to Sebastian.
- Sebastian has two children – Marco aged 9 and Polo aged 7 for which John pays school fees.
- What do you advise?

Case Study solutions

- We need to build reversionary pension benefits for Sally and then perhaps bypass Sebastian
- Particularly after Marie's threats
- Remember a reversion pension is owned by the beneficiary not the deceased so it defeats any family provisions claim by aggrieved family members
- The pension could revert to financially dependant children and as John was receiving tax free pension income they will also. Importantly Sebastian as their guardian will control the pension payments for school, education, phones, outings, holidays, etc.

Upcoming

- One Day Strategy Day covering strategies in the SMSF, Tax, Asset Protection and Estate Planning fields
- To be held in late March in Brisbane but streamed across Australia with 6 CPD hours
- Watch for the release of the IP Protector which is an assignment and license back suite of documents that are exclusive to LightYear Docs

LightYear DOCS

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