primetime
Your "one stop shop" for planning retirement life

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Media release-Longer term forward planning a must for retirees who have private companies and discretionary trusts

In a recent case, a retired couple had a discretionary trust with $10 in recorded net assets however the Centrelink Complex Assessments team assessed the asset value for means testing at around $160,000. The couple didn't get any clarity of how the value was arrived at and getting information was, and is, difficult.

Discretionary trusts and private companies are used extensively by small and medium sized business owners and families. They have been proven to provide tax effective strategies during business and working lives but there are implications in retirement around means testing including age pensions and fees for aged care.

When recently advising this retired couple who were seeking to do part time work to supplement their age pension, the complexity and assessment rules in them having in place a discretionary trust created significant issues that impacted on their means tested benefits.

When applying for means tested pensions or benefits if there are private companies or trusts involved then the assessment is referred to the Complex Assessments Section where a "Complex Assessment Officer" makes the assessment. The assessors scrutinise the details and history of the structures for 5 years or more. In my client's case the Centrelink Complex Assessment team took approximately a year to make an assessment on their discretionary trust about the value of assets in the trust. Repeated requests were made for more information as the department sought to delve deeply into what was a fairly standard discretionary trust structure. One government audit report indicated that Complex Assessments made up about 8 percent of all aged pension assessments.

Here are some of the issues that can be encountered:

- **Control test**
  When applying for means tested benefits scrutiny is applied to determine who is "attributed" the assets, and corresponding income. This can be an appointor, trustee, beneficiary or someone who might be considered to have influence. If a person is assessed to have control then they will be deemed a controller and have a portion or all of the assets and income attributed to them.

  Retirees may pass on the benefits of the trust to others such as family but then find themselves still assessed as having control. This is a big problem.
- **Source test**
  If assets are loaned into a trust then they can have the effect of the trust asset being counted as an asset of the individual and the loan being counted a financial asset under the deeming rules in the hands of the individual. In other words the asset is counted twice.

- **Trust income**
    - Trust income may be apportioned 100% to the controller(s) even if the distributions are to other beneficiaries with the amount distributed to the other beneficiaries deemed a gift and subject to deprivation rules.
    - Trust income is used in estimating entitlements for the following year. If trust income is higher than that assessed for the previous twelve months then there may be a requirement to repay some, or all, of any pension received. In comparison salary and wage income is assessed for the fortnight earned which corresponds to that pension fortnight.
    - Trust income is not eligible to be applied as part of the work bonus scheme even if the income is from income producing activities, such as consulting fees for example. The work bonus refers to Employment income which specifically excludes income from self-employment or business income. Pensioners who are self-employed or running a business are not entitled to the Work Bonus.
    - Deeming provisions don't apply and only actual income is assessed. This is a significant planning matter to determine a positive or negative factor in means testing.

- **Changing Trusts and Deprivation**
  Attempts made to change control or structure of assets within the trust, may deem assets and corresponding income to be gifted and subject to deprivation rules where some or all of the assets and income are still counted in means testing for 5 years.

- **Beneficiary of a trust you don't control**
  Retirees may be beneficiaries but not have control over a trust. For example as part of an adult child's tax strategy. This can be problematic for the retirees when looking at means testing where income is distributed via the trust.

So how do you plan for this in retirement?

The above points don't even scratch the surface of the issues and complexity around discretionary trust and private companies.

So in summary, to plan for retirement where there are trusts or companies in place:

- The key is to start planning at least 5 years out from retirement where possible.
- Involve professionals to get good advice and develop a strategy that deals with:
    - the structure and history of the trusts and companies;
    - income and assets needs in retirement;
    - means testing issues;
    - welfare and benefits options.

And remember review circumstances regularly and update planning where required

About Primetime

Peter Tyndall has spent over 25 years helping businesses and families with financial and lifestyle plans. He is particularly passionate about ensuring retirees have the systems and support in place so they can enjoy peace of mind through retired life through proactive planning cope including planning for future trigger event such as health shocks.

Peter has drawn on his significant experience to develop Primetime, an online, integrated, personal planning system. Primetime helps individuals and couples evaluate their circumstances and planning, provide feedback, strategies and recommendations, and offers vital tools and services to help retirees and their families, advisors and support organisations plan for their future.

Peter is available for interview about many of the broader and interrelated issues facing retirement such as financial management, health management, lifestyle choices, accommodation choices, care and support and elder abuse.

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