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Dear Nikki,

The Tierney Family Trust

I have recently undertaken a review of the scheme and wanted to bring you, Brian and Susan up to date with my proposals going forward in it's conversion to a full family trust and the inheritance/income tax implications around this.

I have firstly completed the tax returns for the Pension Scheme and the affairs with HMRC are now fully up to date. You will recall that the pension scheme made an investment into the restaurant which was written down and triggered a tax enquiry by HMRC, who sought to raise a penalty assessment against the scheme for £28,483 plus interest. I have had quite lengthy correspondence with HMRC on this and whilst they have not confirmed in writing, they have accepted that basis of our defence over the phone and I do not expect them to now pursue this payment.

Given that Susan is the sole beneficiary member at this time, I have now taken off the scheme from the additional requirement to complete a return to the Pensions Regulator.

The pension scheme presently has now only Susan as the Trustee and Boutique Leisure Limited was the participating employer for the scheme, which is now dissolved. I need to put in a resolution formally transferring any powers in Boutique Leisure back to the Scheme.

If Susan were to be hit by the proverbial bus in the absence of a surviving trustee we would need to go through the court to appoint a trustee(s). I would therefore recommend that perhaps one or more of children is appointed as a second trustee or in the absence of this, I am happy to fulfil this function via our trustee company which sits on a number of schemes. This does not affect the scheme to operate or change any investment parameters of the scheme but it does ensure that there is a second trustee to deal with any distributions post Susan's death.

In respect of the split of assets in the scheme, presently the fund is allocated into two parts for Susan and I think it would be helpful to clarify the tax options in this respect. I am mindful that my colleague, Tony McCarney has provided calculations to Brian and whilst John did draw more from the fund that was allowed under the lump sum rules I have undertaken some internal adjustments to ensure that the allowance limits are not breached.

The share of fund for John as at April 2017 was £1,312,870 and this fund value I have historically treated as a fund in nil drawdown. This therefore means that the fund can be paid out free of tax to Susan within the next two years. Given that the movement of this money would be transferred to her estate, I would suggest that as the SSAS has tax registration and exemption status with HMRC that we create a "nominee account" within the SSAS. This will allow the fund to be paid out to the nominee account and allow Susan to retain the tax privileges with the scheme operating as a discretionary trust. This therefore means that the £1,312,870 does not need to be paid out within 2 years in order to be paid tax free to Susan or future family beneficiaries – it can be paid out over her lifetime or passed down to the children.

In respect of Susan's pot, this is divided as crystallised and uncrystallised. The crystallised fund is circa £222,100, and this can be paid out as a cash lump sum of £55,549 at any time before age 75. The balance of the funds in her pot would amount to £387,400 and if the lump sum is drawn, this can be paid as income to her, which would be taxed at the marginal income tax rate. I would recommend from a tax perspective that this is left untouched as this can be passed down to the children on her death in the same way as John's pot as per the "nominee route".

I do need to make an adjustment in respect of the loan which has been written off and propose to offset this from Susan's crystallised pot as this is the only pot which technically if drawn down would be subject to income tax at this time, which I would need Susan's agreement to.

In order to set up a nominee account within the scheme, I do need to undertake a scheme rule amendment which Susan will also need to agree to.

Do please give me your thoughts on this and the trustee issue and let me have your advice on how you, Brian and Susan wish to proceed.

With best wishes

Gavin McCloskey
For Pension Practitioner

c.c. Brian Potter



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