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DEATH TAXES ARE ALIVE AND WELL!

As crazy as it may seem, without good advice and careful planning, a person who worked hard, saved hard and used the government's own superannuation system to maximise the benefits may inadvertently leave a 16.5% Death Tax for their estate to pay (possibly after as much as 15% Capital gains tax has already been deducted by the super fund trustees) if they die after age 60.

However, with good financial advice "The only certainty in life now is death, tax is optional." says Adelaide based financial strategist Theo Marinis.

"This anomaly particularly affects those without financial dependants, which is a growing sector of the community as life expectancy increases," he said.

"One way around this government Death Duty trap is to withdraw funds prior to death - tax free - rather than leaving it in super… so long as you know when you are going to die!"

"A more sensible approach is for a person over 60 with superannuation benefits to provide an enduring power of attorney for a close friend or relative, so when their health deteriorates into the final phase of life a simple administrative procedure can be undertaken to withdraw the funds. Once the superannuant has drawn their final breath it is simply too late and the tax - $16,500 per $100,000 in super – must be paid by the estate to the government."

"A separate approach to this 'deathbed switch' is for the superannuant to withdraw tax free lump sums of up to $150,000 ($450,000 over three years is the maximum allowed for this if under age 65) and to recontribute it to a super fund.

"This money would now be considered tax free and after death would be transferable to a non-dependant without incurring tax. Bear in mind, a non-dependant could be an adult child living separately.

The Australian Tax Office has indicated that it does not view this 'Cash out and Recontribute' strategy as a breach of the infamous Part IVA tax avoidance legislation, although as always, tread carefully.

A person over 65 would need to still satisfy the government's work test in order to benefit from the same strategy, working at least 40 hours over a 30-day period.

"A Financial Adviser is the best placed professional to advise on how to structure your financial affairs to possibly avoid this unnecessary tax payment for your beneficiaries."

"At Marinis Financial Group, we have been recommending and implementing such Estate planning strategies for the benefit of our clients since this became possible, with the announcement of the Better Super regime in May 2006."

"Certainly, as this anomaly affects most people who are living outside a traditional Mum, Dad and two young kids family structure, it would be likely the new Federal Government would address this issue as the Labor party has highlighted many of the unintended inconsistencies in retirement legislation.

Theo Marinis is Managing Director of Marinis Financial Group

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For further information, please contact:

Theo Marinis B.A., B.Ec., CPA., CFP®
Financial Strategies (SA) Pty Ltd
Trading as Marinis Financial Group
T 08 8130 5130
F 08 8331 9161
E admin@marinisgroup.com.au
W marinisgroup.com.au
A 49 Beulah Road
NORWOOD SA 5067

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