

FUTURE

READY

FPA Professionals
CONGRESS

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FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

TAX EFFECTIVE ESTATE PLANNING

Scott Hay-Bartlem
Partner, Cooper Grace Ward



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CONTENTS



Case Study



Family trusts v testamentary trusts in
estate planning



SMSFs, 2016 Budget announcements
and estate planning



CASE STUDY

Charles and Camilla

- Charles – late 60s, 2 children
 - William, mid 30s, professional, 2 young children, non-working spouse
 - Harry, early 30s, wild, no children
- Camilla – late 60s, 2 children
 - Tom, early 40s, author and TV, married, 1 child
 - Laura, 30s, arty, married, 1 child



FAMILY TRUST V TESTAMENTARY TRUST

Family

- Set up deliberately while alive
- Separate trust deed
- Assets transferred/gifted/loaned in
- Wide range of beneficiaries
- Very flexible
- Rarely tailored
- Not part of estate (control)

Testamentary

- Set up under Will
- Terms are part of Will
- Assets gifted under Will
- Typically narrow blood descendant beneficiaries
- Tend to be less flexible
- Usually tailored as part of estate planning
- Assets have to get through estate first



FAMILY TRUST V TESTAMENTARY TRUST

Family

- Income taxed to recipient at marginal tax rate
- Under 18s taxed at top marginal rate
- Assets transferred to beneficiaries triggers CGT event and often duty

Testamentary

- Income taxed to recipient at marginal tax rate
- Under 18s taxed at normal adult tax rates
- Assets transferred to beneficiaries usually does not trigger CGT event and may not attract duty



UNDER 18 BENEFICIARIES

Income from trusts usually taxed at top marginal rate

'excepted trust income'

- Earnings from assets inherited as a result of death
- Taxed to the beneficiary at normal adult tax rates

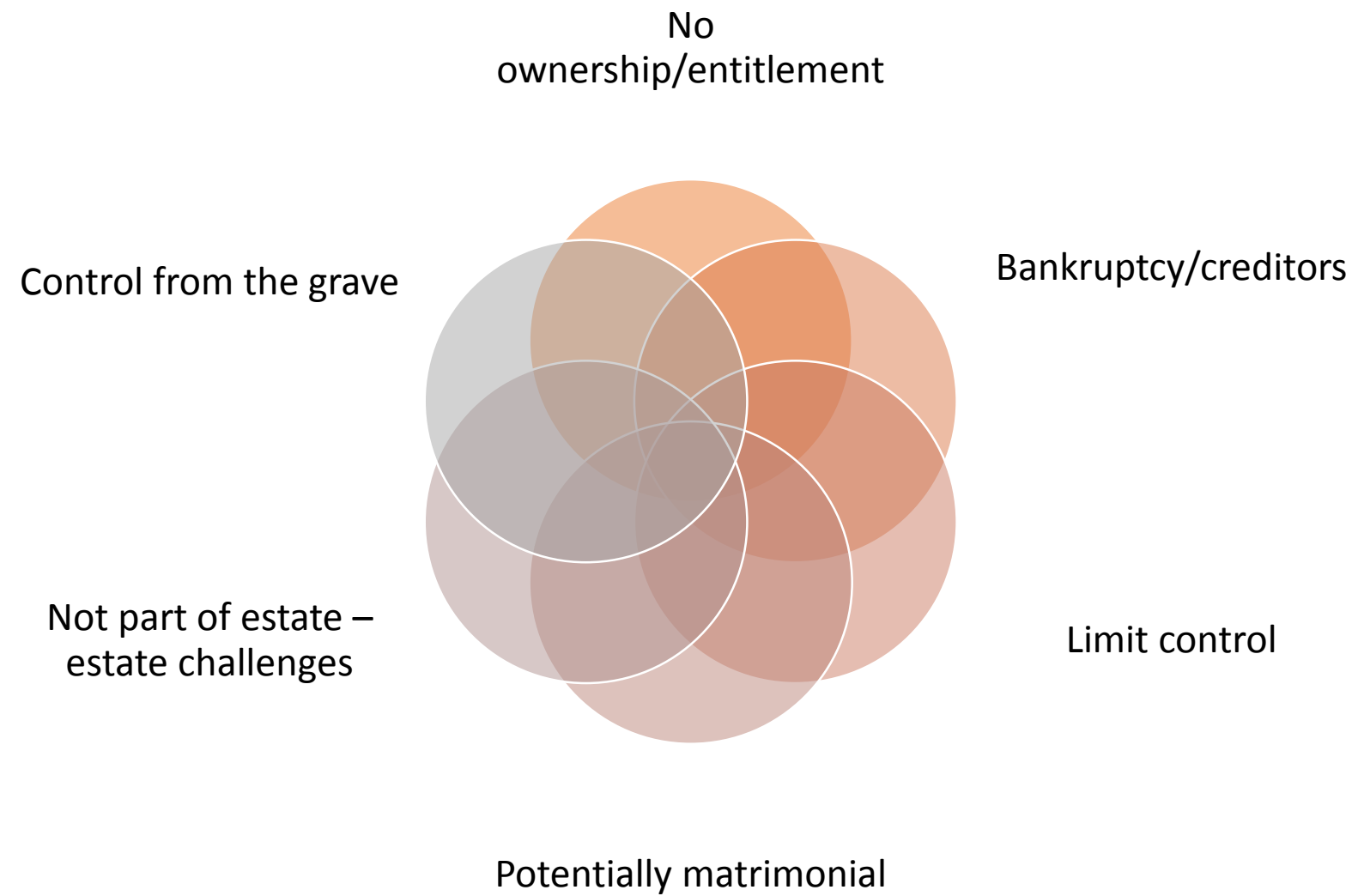
No magic in how the trust was established

Gift in Will to existing family trust can give rise to 'excepted trust income'

- Track?
- Mix/keep separate
- Tidier in a separate trust



OTHER BENEFITS OF TRUSTS



WHEN USE TESTAMENTARY TRUSTS?

Spouses with risk issues

Children with risk issues

Don't like the in-laws...

Protect from estate claims down the line

Under 18 potential beneficiaries – children/grandchildren/further

Life interests

Limit access to assets

Limit control

Control from the grave

Foundations/charities/family legacies



CASE STUDY

Charles' estate
planning

Should he use
testamentary
trusts?



SO WHAT IF I HAVE A FAMILY TRUST?

Assets not part of an estate so does not go into a testamentary trust when I die

Any amount owed to me is an estate asset

So any amounts owed from the family trust to me

- Estate asset
- Gifted to testamentary trust
- Can pull assets through from family trust to testamentary trust
- Could charge interest



CASE STUDY

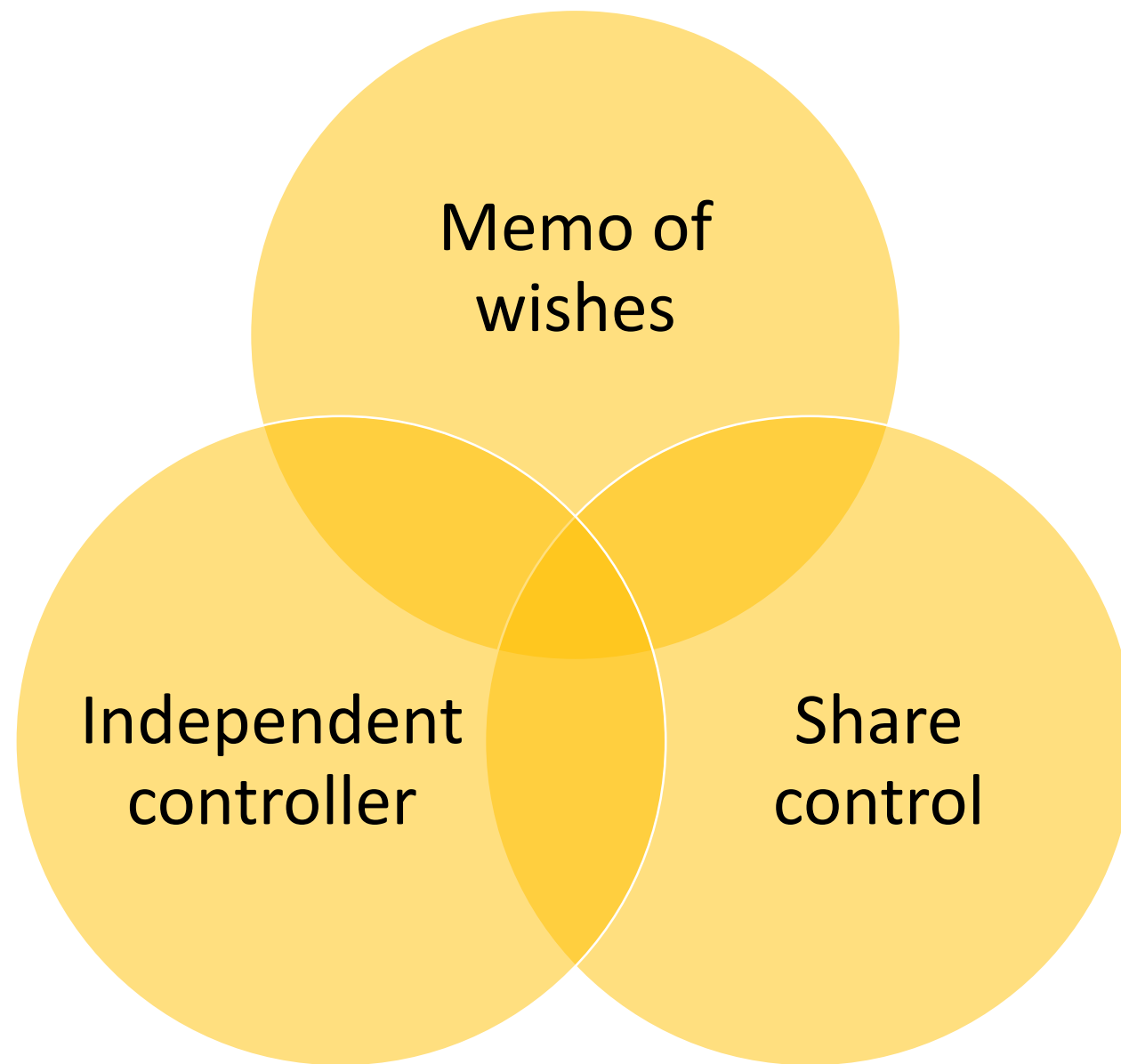
Charles' assets predominantly in a family trust

Wants to divide estate between Camilla (40%) and William and Harry (30% each)

No fixed entitlement from family trust



CASE STUDY



CASE STUDY

If Charles is owed money from the family trust

- Pass that through estate to beneficiary
 - Testamentary trusts for William/Harry?
 - Rules for payment
- Camilla gets control of family trust
 - Under Will?
 - Hardwire?
 - Shares in trustee company as joint tenants?

Create debt through capital distribution?

- Revalue assets?
- Interim capital distribution
- Rules for payment
- Some traps – requires care!



LOAN V GIFT TO FAMILY TRUST

So every time money goes into a family trust, estate planning decision

Consequences of loaning v gifting quite fundamental

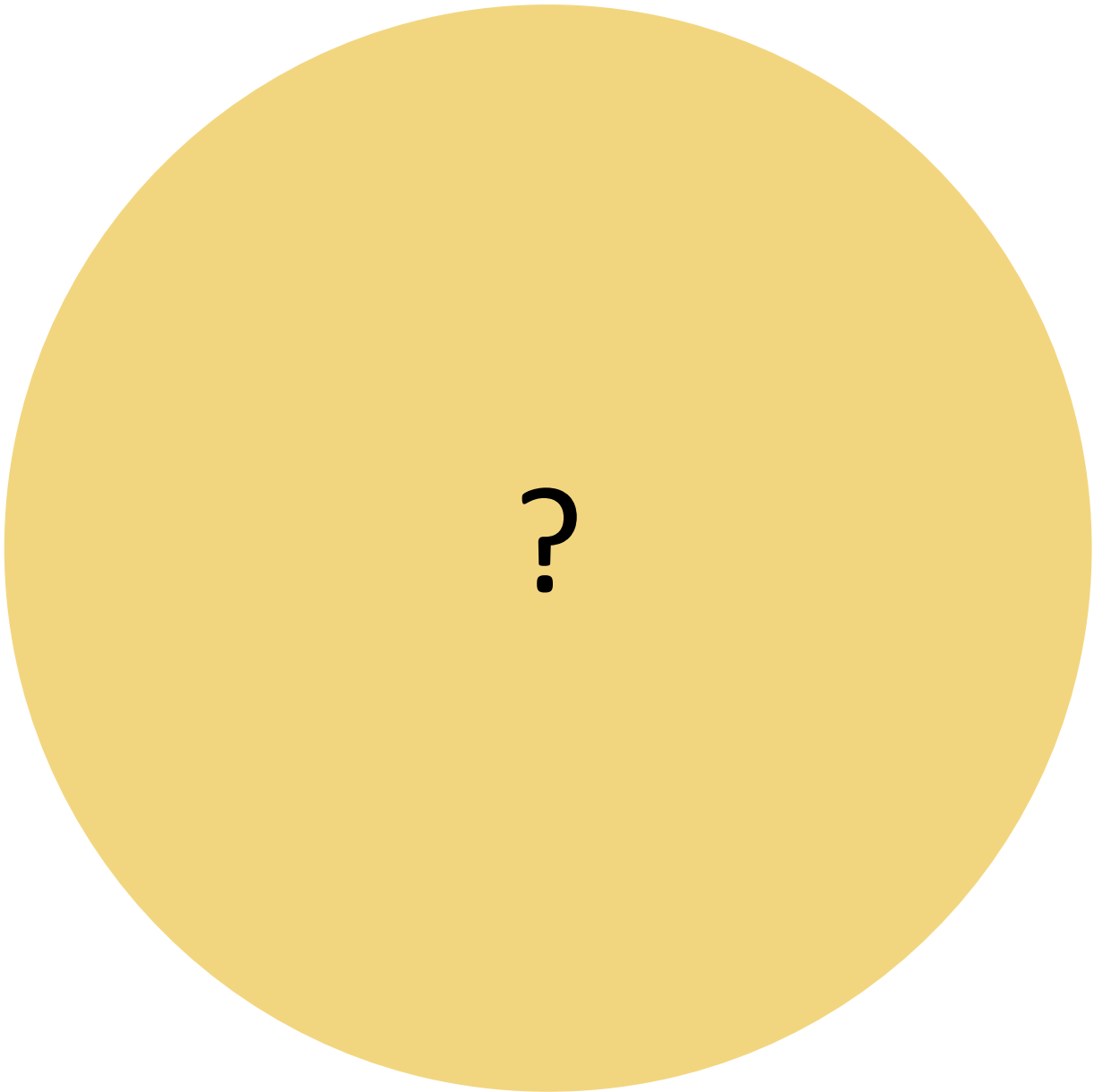
- Asset belongs to lender – creditors/estate
- Asset is gone!

Can mess up the best planning

- Remember Clark v Inglis



QUESTIONS?

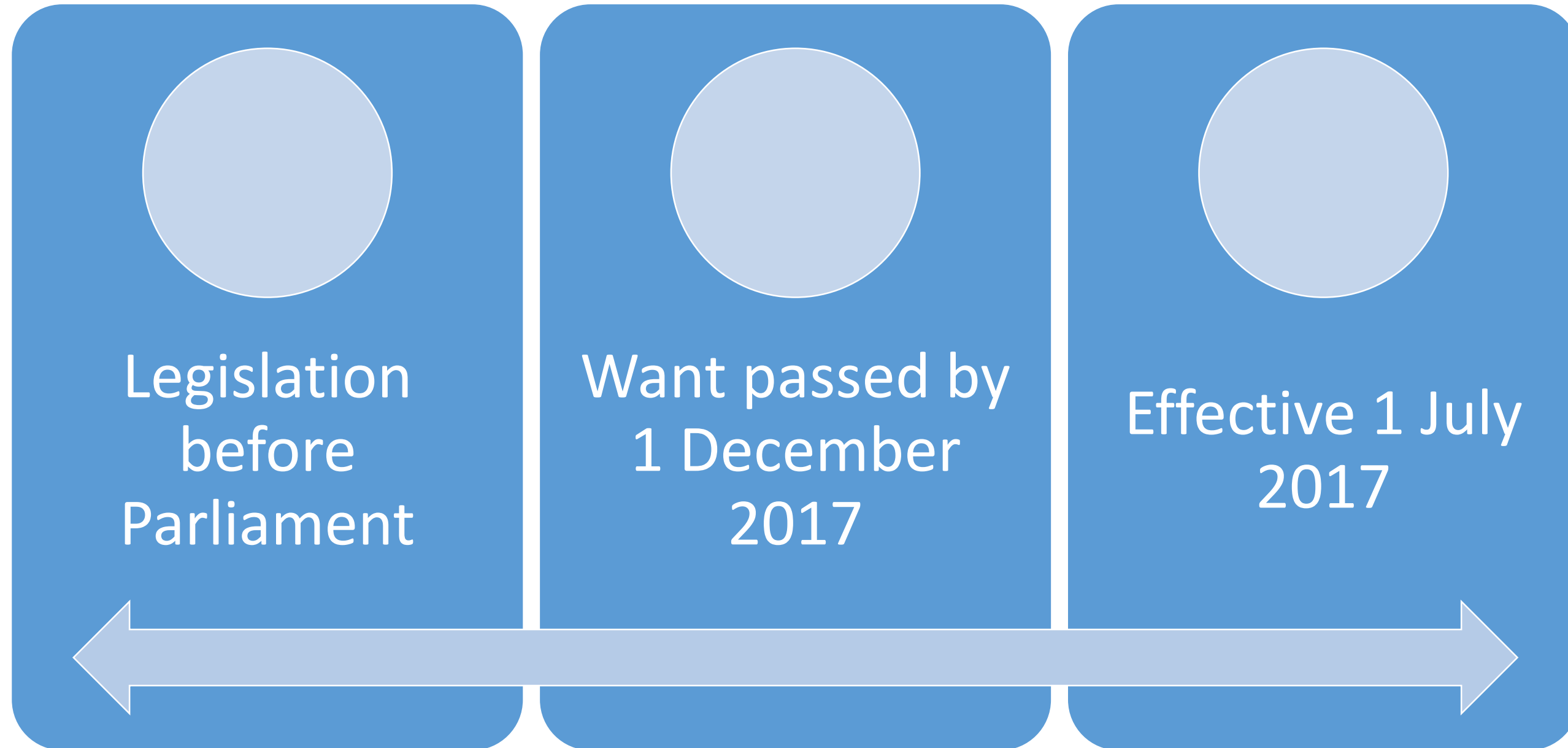


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2016 BUDGET, SMSFS AND ESTATE PLANNING



2016 BUDGET, SMSFS AND ESTATE PLANNING

What has not changed

- Must pay the death benefit
- Trustee discretion
- Potential recipients
- Who can receive a death benefit pension
- How BDBNs work



2016 BUDGET, SMSFS AND ESTATE PLANNING

Some important changes

- \$1.6m transfer balance cap for pensions
- Members move funds back into accumulation accounts
- Death benefit pension counts to recipient's TBC
- Death benefits can be rolled over
- Special TBC rules for child pensions

This means...

- Reversionary pension strategies must be reviewed
- Paying a death benefit pension counts to recipients TBC
- Even if auto-reversionary
- Has spouse used theirs?
- 12 months to sort out reversionary



2016 BUDGET, SMSFS AND ESTATE PLANNING

We need to think about

- Child pensions
- Which pension goes?
- Death benefit must still be paid, so if not as pension then lump sum
- Maybe commute recipient's own pension back so it can stay in the super system
- Deal with reversionary pensions within 12 months of death
- Is the pension 'reversionary'?



CASE STUDY

Charles and Camilla each have \$1.2m in a pension

- Camilla dies
- If pension moves to Charles, he is over his TBC
 - \$1.2m already
 - \$1.2m from Camilla



CASE STUDY

Charles and Camilla each have \$1.2m in a pension

- Camilla dies
- If pension moves to Charles, he is over his TBC
 - \$1.2m already
 - \$1.2m from Camilla

Options

- Take Camilla's benefit
 - \$400,000 pension
 - \$800,000 lump sum
- Commute part of his pension back to accumulation and Camilla's benefit as pension
- A combination
- If reversionary, 12 months



2016 BUDGET, SMSFS AND ESTATE PLANNING

Child pensions

- Under 18, or under 25 and dependant, or disabled
- Separate TBC, but still limits
- Must commute at 25, so maybe not whole interest
- Spend funds for their benefit, so surviving parent still benefits
- Do existing BDBNs/reversions mean we cannot – don't limit?



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QUESTIONS?



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