Superannuation and Master Wealth Control

At present the law is such that no one (including the government or any other creditor) can touch assets held in a Self-Managed Superannuation Fund (SMSF) or funds you have invested in an industry superannuation fund, and all assets are exempt from distribution in the case of a bankruptcy.

As an additional layer of protection where you own a SMSF, we can mortgage the fund and/or its assets to the Vestey Trust. Notwithstanding the legislative protections that currently exist, should the Government decide to pirate superannuation benefits in future, then you have a fund that you control that has no equity because all of its assets are mortgaged to the Vesty trust. By such a mechanism the equity you have in your fund could be charged with debt leaving you and your trustee in charge of decisions that need to be made.

The government does not like SMSF's as they lose control when it is privately owned – it is much easier for them to legislate and dictate over fund managers and skim that way (if that is their strategy). With a SMSF having funds tied up in its own assets it will be harder to legislate in respect of any mandatory acquisition or levy.

If you have invested your superannuation in an industry superannuation fund, then these benefits may be more vulnerable if the government changed the law to allow it to draw money held by such institutions. In such cases you have no control over the fund manager. While the current law remains in force, your superannuation is protected, however as additional protection we can list your investment in the schedule of assets along with other items to be protected.

You will be advised and protected accordingly should there be any changes to the law flagged. These would need to be tabled in Parliament before being enacted and would be a matter of public record. May clients have asked whether they should continue to invest with an industry superannuation fund or set up their own SMSF. There are pros and cons for each, but I am not qualified to give you advice. You may wish to speak to a qualified industry professional to assess whether you could benefit from having your funds invested in a SMSF. You can find a list of certified financial planners by visiting an industry site such as the Financial Planning Association of Australia (www.fpa.com.au).

While the assets in your superannuation fund are technically protected, if you have significant cash investments (eg term deposits or bank accounts) in your SMSF, then for maximum protection, you can transfer the cash to a bank account in the name of Trust (this of course will not apply to individual superannuation accounts with industry superannuation funds). For ease of record keeping, you may wish to set up a separate bank account to keep track of separate investments.

The principle is the same as when you pay your wages, rents, dividends etc into the trust bank account – the ownership of the money does not change. The funds you have transferred from your SMSF to the trust bank account still belong to the SMSF – the Trustee is simply holding it in 'neutral territory' for you. The interest earned on the money invested does not belong to the trust, but to your SMSF – the trust is operating only as a conduit of your money. You will need to look at your individual circumstances and weigh up whether this step is worth implementing.