Death Benefits

Dealing with Superannuation Death Benefits

When a member of a superannuation fund passes away, any benefit they have within superannuation must be dealt with as soon as possible.

The rules for who can receive a death benefit and how it can be paid are outlined in superannuation legislation as well as the trust deed rules of the particular fund. The trustee must take both sets of rules into consideration. Sometimes the rules of the particular fund can be more restrictive than the legislation.

Who Can a Superannuation Death Benefit be paid to?

A superannuation death benefit may only be paid to dependents of the deceased (as defined by superannuation rules) or to the estate.

A dependent includes:

- The current spouse (including de facto and same-sex partners)
- Any child of the person (including adopted child or stepchild of a current relationship)
- A person with whom the deceased had an interdependency relationship at the time of death
- A person who was financially dependent on the deceased at the time of death

Another person can only be paid if there are no superannuation dependents or estate.

It is important to note that a stepchild who is a child of a former partner (following a relationship breakdown or death of the former partner) is no longer defined as a child of the person for the purposes of superannuation law and cannot receive a death benefit unless he/she was a financial dependent or had an interdependency relationship.

Two people are regarded as having an interdependency relationship if:

- They have a close personal relationship, and
- They live together (unless the separation is due to disability), and
- One or each of them provides the other with financial support, and
- One or each of them provides the other with domestic support and personal care

How Can a Death Benefit be paid?

A death benefit may be paid as a lump sum or an income stream, depending on the rules of the superannuation fund and the status of the beneficiary.

If the death benefit is paid to a child, a pension can only be paid if the child is under age 18, or aged 18-25 and financially dependent upon the deceased, or meets disability rules (as described in subsection 8(1) of the Disability Services Act 1986). Unless the child meets the disability rules, the pension will need to stop and be converted into a lump sum when the child reaches age 25. This will be a tax-free lump sum.

Death Benefit Nominations

There are two ways to nominate who is to be the beneficiary of a death benefit from the accumulation phase of a superannuation fund. These are:

- Binding death benefit nomination, or

- Non-binding death benefit nomination

The options available will depend on the options that are offered by the particular superannuation fund.

The general rule of superannuation is that the trustee has discretion to decide who to pay a death benefit to, but a binding or reversionary nomination can override this discretion. Provided the nomination is valid, the trustee will be bound to pay the benefit to the person(s) nominated.

For a binding death benefit nomination to be valid, certain conditions must be met including:

- The nomination must be made in writing, and the signature of the person must be witnessed by two witnesses over the age of 18, who are not beneficiaries
- The nominated beneficiaries must meet the superannuation definition of an allowable dependent
- The allocation of benefits to beneficiaries must be clear
- The nomination must be current (many funds require the nomination to be remade at least every three years although some funds offer non-lapsing binding nominations)

The rules for how a binding nomination is to be made for a self-managed fund may be different and will be governed by the rules in the fund's trust deed.

A non-binding death benefit nomination indicates the person's preference for how a death benefit should be paid but it is not binding on the trustee of the superannuation fund. The trustee may take the instructions into account but will ultimately exercise their own discretion in determining to whom, and in what form, a death benefit will be paid. In such cases it is usual for the trustee to undertake a 'claim staking' process to identify potential beneficiaries. If a binding nomination is invalid, it is treated in the same manner as a non-binding nomination.

If a beneficiary has been nominated as a reversionary pensioner, on the death of the original owner the income stream continues to be paid to the nominated reversionary pensioner.

Taxation of Superannuation Death Benefits

Superannuation death benefits paid as a lump sum are paid tax-free to a beneficiary who meets the tax dependency definition. This includes:

- The current or former spouse (including de facto and same-sex partners)
- A child under age 18 or 18-25 and in full-time education
- A person with whom the deceased had an interdependency relationship at the time of death
- A person who was financially dependent on the deceased at the time of death

If paid to the estate, the taxation depends on who is the ultimate beneficiary from the estate.

Superannuation death benefits paid to adult children of a deceased member will be taxable unless the beneficiary meets one of more of the conditions for tax dependency set out above.

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The following table sets out the tax rates payable on lump sum death benefits paid to a non-tax dependent beneficiary. Medicare Levy, where applicable, is additional if paid to the beneficiary directly by the deceased member's superannuation fund. Where a death benefit is paid to the deceased's estate, for the ultimate benefit of a non-tax dependent beneficiary, the Medicare Levy is not payable.

Component	Maximum Tax rate
Tax free	Tax-free
Taxable – taxed element	15%
Taxable – untaxed element	30%

A taxable component – untaxed element may arise where a death benefit is paid from an untaxed superannuation fund, including a Constitutional Protected Fund, or where the death benefit is paid from a taxed superannuation fund and the death benefit includes proceeds of life insurance held by the deceased within their superannuation fund.

Where the death benefit is paid as an income stream the income payments are tax free if either the deceased or the beneficiary is over age 60. If both are under age 60, the taxable portion of the income is taxed at the beneficiary's marginal tax rate, but a 15% tax offset applies. (Note: the tax rules may vary if the pension includes an element untaxed, e.g. as per some government superannuation funds.)