

WHO IS A SUPERANNUATION DEPENDANT UNDER TAXATION LAW?

The SIS Act tells a trustee to whom a death benefit may be paid. The Tax Act tells the trustee how that benefit is to be taxed. This article looks at the implications.

Differing taxation implications apply to individuals entitled to receive superannuation death benefits following the passing of a member and the disbursement of their superannuation death benefits.

Taxation of Superannuation Death Benefits

A superannuation fund member's benefits are recorded under one or both of two categories:

- taxable component; and/or;
- tax-free component,

depending mainly on the types of contributions made to super for the member.

When paid to beneficiaries as a lump sum, all superannuation death benefits are paid free of tax to those classified as 'tax dependants'.

When paid to beneficiaries who are not 'tax dependants':

- the tax-free component is not subject to tax; but
- the taxable component is taxed at 15% plus Medicare levy.

Definition of 'tax dependant'

A 'death benefits dependant', commonly known as a 'tax dependant', is defined in the Income Tax Assessment Act 1997 (ITAA 97) as:

- spouse or former spouse¹;
- child, aged less than 18 years;
- any other person with whom the deceased person had an interdependency relationship just before he or she died; or
- any other person who was a dependant of the deceased person just before he or she died.

¹ *Spouse includes de facto and same sex spouses.*

The Superannuation Industry (Supervision) Act 1993 ('SIS Act') lists three main categories of persons who may be classified as a dependant of a deceased member ('SIS dependant'). It can be noted that the tax definition of dependant differs to some extent from the SIS definition.

Spouse

The tax definition is the same as the SIS definition, with the addition of 'former spouse'.

A trustee cannot pay a death benefit to a former spouse simply because they are a former spouse. However, if the former spouse meets a definition of dependant under SIS legislation, such as financial dependency, any payment made by the trustee to that former spouse would be treated as a payment to a spouse for tax purposes.

Child

The tax definition of child is the same as the SIS definition, except for a distinction between minor children and those over 18 years of age.

Under the tax definition, a child is considered to be a dependant of the deceased only if he or she is under age 18. If the child is over 18 years of age, he or she would need to meet one of the other definitions of tax dependant, such as financial dependency or interdependency, to be treated as a dependant for tax purposes.

This means that a trustee is able to pay a death benefit to a child of the deceased who is over 18 years of age but, with one exception, the payment will be treated as a death benefit payment to a non-dependant for

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tax purposes, unless that child meets the tax definitions for financial dependency or interdependency.

The exception referred to occurs when the child has been receiving an income stream from the death benefits of a deceased member and, upon reaching 25 years at the latest, the benefit is paid as a lump sum to the child as required under the SIS legislation. That benefit will be paid tax-free.

Interdependency Relationship

An interdependency relationship exists between two people when they have a close personal relationship and:

- they live together; and
- one or each of them provides the other with financial support, domestic support and personal care.

The tax definition of an interdependency relationship is the same as the SIS definition.

Financial Dependency

Financial dependency is not defined in ITAA 97. The ATO, in an Interpretative Decision ID 2002/731 (although somewhat out of date), provides a summary of the ATO's view of financial dependency, to be considered when determining whether a person was financially dependent on a deceased member of a superannuation fund.

Whilst the ATO will look for 'substantial' financial support, the Superannuation Complaints Tribunal has taken a broader view of what constitutes financial dependency, when applying provisions of the SIS Act.

Therefore, in rare cases, it may be that a trustee could determine that a person was financially dependent on the deceased under the SIS definition, but not a dependant under the tax definition. In other words, the trustee would be able to pay a death benefit to such a person, but the benefit may be taxed as a payment to a non-dependant for tax purposes.

Minor payments, such as the payment of school fees for grandchildren, are unlikely to make those children financial dependants of the fund member.

Test as to actual relationship occurs at date of death of deceased member

As with the definitions under the SIS Act, the test to determine if the relevant individuals meet the tax definition of dependant will be applied at the time of the death of the member.

There is also another test to meet

For trustees attending to the payment of death benefits from a SMSF, the first consideration is to determine who may or may not be classified as a SIS dependant.

The issue of taxation of the benefits paid to recipients of the deceased's superannuation then needs to be considered.

For members and advisers involved in planning for the eventual passing of a member, both the SIS definition and the tax definition of dependant should be taken into account as a vital component of the planning process.

It is important for trustees of SMSFs, and their advisers, not only to understand the range of individuals who may be entitled to receive superannuation death benefits, but the tax consequences in paying benefits to dependants of the deceased member.

A separate paper deals with individuals who may be classified as SIS dependants. [You can reference it here.](#)

More information

Should you have any queries or require more information, please contact the team at Topdocs on 1300 659 242.

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