Super Easy News!

News and information for the clients of
Superannuation Services Pty Ltd

Superannuation Services
Trust, Ethics, Dedication

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February 2018

DEATH BENEFITS

They say death and taxes are the two things that can't be avoided. In this newsletter we will look at both, plus a range of other issues regarding death benefits.

BENEFICIARY

Nominating a beneficiary can take many forms and has an impact on the final decision of the surviving Trustee / Director as to whom they should pay the death benefit.

Generally, unless the Fund's Trust Deed limits the options, a death benefit must be paid to:

- The member's legal personal representative (ie their estate); or
- One or more of the member's SIS dependants

Most Self Managed Super Fund's (SMSF's) paperwork includes a Nomination of Beneficiary form. This is a guide to the Trustee of your intentions. It is not binding on the Trustee but another piece of information that will be used in the decision making process regarding who will receive the death benefit.

What is binding on the Trustee is a "Binding Death Nomination" (BDN). A BDN should be drawn up by a legal practitioner and is an instruction to the Trustee on who should receive the death benefit and, in some cases, how the death benefit will be paid. A BDN can be lapsing or non-lapsing. A lapsing BDN usually has a three (3) year term, after that time a new BDN is required. ...

BENEFICIARY CONT ....

...A non-lapsing BDN is allowed for SMSFs and they have no end date and stay in force until they are revoked.

Another way a beneficiary can be nominated is with a reversionary pension. When the terms and conditions of the pension are established a reversionary beneficiary can be nominated. On the member's death the pension would automatically revert to the nominated beneficiary. This type of pension is commonly referred to as a 'death benefit pension'.

DEPENDANTS

As mentioned earlier, the SIS Act defines dependants and limits who the Trustee can pay a benefit to, while the Tax Act outlines the tax to pay on the benefit.

As per SIS, dependants include a spouse, a child of any age, any person with whom the deceased had a interdependency relationship and any person who was financially dependent on the deceased.

HOW CAN THE BENEFIT BE PAID?

A death benefit can be paid as a lump sum and/or pension.

To be eligible for a pension, the recipient must be:

- A spouse
- A child under age 18
- A child between 18 – 25 who is financially dependent on the deceased
- A disabled child
- A person, excluding a child, who is financially dependent
- A person, excluding a child, with whom the member was in an interdependency relationship.

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HOW CAN THE BENEFIT BE PAID? Cont..

Generally, a death benefit paid to an adult child must be paid as a lump sum.

Lump sum payments can be paid as cash or the transfer of Fund assets.

No death benefit can remain in the superannuation system as an accumulation balance.

WHEN DOES THE DEATH BENEFIT HAVE TO BE PAID?

Under the super rules, the death benefit must be paid 'as soon as practicable'. There are no timeframes mentioned but the death benefit should be dealt with, without undue delay.

TAX ON A DEATH BENEFIT

This is where it is important to understand the slight difference to the definition of dependant under tax law. A lump sum death benefit paid to a dependant of a deceased is tax free.

A death benefit dependant is:

- A spouse or former spouse
- A child under 18
- A person with whom the member was in an interdependency relationship
- A person who was financially dependent.

DEATH BENEFIT PAYMENTS TO DEPENDANTS

AGE OF DECEASED	TYPE OF DEATH BENEFIT	AGE OF RECIPIENT	TAX TREATMENT
Any Age	Lump Sum	Any Age	Tax Free
60 and Over	Income Stream	Any Age	Tax Free
Below 60	Income Stream	Over 60	Tax Free
Below 60	Income Stream	Below 60	Taxed at marginal rates with 15% tax offset *

DEATH BENEFIT PAYMENTS TO NON-DEPENDANTS

AGE OF DECEASED	TYPE OF DEATH BENEFIT	AGE OF RECIPIENT	TAX TREATMENT
Any Age	Lump Sum	Any Age	Maximum Rate of 15% + Tax Levies *

*The tax is applied to the taxable component, based on a taxed element in the fund.

The tax is payable on the taxable component of the death benefit. A member's balance is made up of a tax free and taxable component.

With a pension account, the tax free and taxable components are set when the pension is established. Those percentages remain while the pension is in place.

With an accumulation account, the tax free and taxable components depend on the type of contributions received. Generally, the tax free component is made up of non-concessional contributions. These are contributions from after tax money where a deduction has not been claimed. The remainder of the balance forms the taxable component.

If the Fund pays directly to a non-dependant the Fund is liable to withhold the applicable tax. If the death benefit is paid to the estate then the estate is the one to withhold the tax.

FUND TAX

Depending on whether the pension is reversionary or not, dictates whether the fund is liable to pay tax on earnings after the death of a pensioner.

Where a reversionary pension is in place, the balance remains in pension phase, therefore the fund continues to be exempt from tax.

Where it is not a reversionary pension, the pension stops at death. Though the exemption remains post death it is only available until it is 'as soon as practicable' to pay a lump sum or a new pension is started. The tax concession is not available on amounts added after death, such as insurance proceeds.

TRANSFER BALANCE CAP (TBC)

The TBC imposes limits on how much can be paid as a pension. A death benefit pension counts towards the TBC of the recipient.

If the pension is started from accumulation money or from a previous non-reversionary pension, the transfer balance amount is the pension start balance and the credit date is the pension start date.

A previous reversionary pension is valued at date of death and is credited to the transfer balance account 12 months after the death of the previous pensioner. Insurance proceeds on a reversionary pension do not count towards the TBC.

MANAGING THE TBC

As mentioned earlier a death benefit must be in pension phase to remain in the superannuation environment. If the recipient has a pension account, there may be a possibility to maximise the amount of money remaining in super. The recipient's pension account can be commuted, partially or fully, to maximise the death benefit. Commuting the recipient's current pension reduces their transfer balance account, while the death benefit pension increases the transfer balance account. Special rules apply to child death benefit beneficiaries.

TRUST STRUCTURE

If the Fund has individual Trustees, the surviving Trustee has 6 months to appoint a new Trustee or change the structure to a Corporate Trustee. All Fund assets would need to be changed to the name of the new Trustees.

If the Fund has a Corporate Trustee, the deceased Director needs to be removed from the company details with ASIC.