

Deloitte Private

Estate planning issues and super.

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## What is a Superannuation Death Benefit?

- Benefits accumulated in a deceased member's account
- A member's benefit in a superannuation fund will not automatically form part of his estate on death
- Death benefits can be paid to SIS dependants and/ or the estate
- Death benefits can be paid as pensions, lump sums or a combination of either
- Decisions re payment of the death benefits will be determined by:
  - The trustee
  - A Binding death benefit nomination
  - The terms of the trust deed

## Who is a dependant for SIS purposes?

	SIS	TAX
Spouse ( including defacto and same sex)	Yes	Yes
Child ( Under the age of 18)	Yes	Yes
Child ( Over the age of 18)	Yes	?
Child ( over the age of 18 – suffering a disability)	Yes	Yes
Interdependant	Yes	Yes
Financial Dependant	Yes	Yes

# Who is a dependant for SIS Purposes?

- Spouse
  - Common law definition of spouse
  - Another person with whom the person has a registered relationship under state or territory law
  - Living together on a genuine domestic basis as a couple ( includes same sex couples and defacto partners) - no requirement to be married
  - Includes, married couples , defacto couples and same sex couples
- Child
  - Includes an adopted child or a step child
  - Will now include a child of a same sex relationship, including those conceived through artificial means
  - A child of a defacto partner
  - A child as defined under Family Law

# Who is a dependant for SIS Purposes?

- **Financial Dependant**

- The financial contribution is one on which the recipient has become dependent on the contribution – Malek's case
- ATO ID 2002/731- contribution is substantial support – difficulty in meeting expenses without support

- **Interdependent Relationship**

*A number of factors have to be considered:*

- Close personal relationship
- Living together/ unless separated due to disability
- One or each provide the other with financial support
- One or each provide the other with emotional support or care

- **Generally will not include children**

IT/ID 2005/43 - mother entitled to receive tax free benefits from son's superannuation fund

# How are Superannuation Death Benefits Taxed?

- Generally tax free if paid to a tax dependant
- Rates of tax will be vary depending on whether benefits are taken as lump sum or a pension
- Rates of tax will vary depending on the components of the benefit
- In some cases tax of up to 30% tax can be paid in relation to the untaxed component of a benefit – beware of insurance in this instance
- If pension benefits are paid the income tax paid will depend in part of the age of the deceased and age of the recipient

# Taxation of Lump Sum Death Benefits

Lump Sum Death Benefits	Tax Dependant	Non-tax Dependant Taxed Component	Non-tax Dependant Untaxed
Tax free	Non- Assessable Non-exempt	Non-Assessable Non-exempt	Non-Assessable Non- exempt
Taxable	Non-Assessable Non-exempt	15%	30%

## Taxation of Pension Death Benefits to Tax Dependants

Age of Deceased	Age of Recipient	Tax Free	Taxed Component	Untaxed Component
60+	Any Age	Non A Non Exempt	Non A Non Exempt	MTR ( 10% offset)
0 – 59	60+	Non A Non Exempt	Non A Non Exempt	MTR ( 10% offset)
0 – 59	0 – 59	Non A Non Exempt	MTR 15% offset	MTR ( No offset)

# Certainty re Benefit Payment

- Trustee Discretion - Katz v Grossman
- Discretionary Nomination
- Binding Death Benefit Nomination
- Reversionary pensions
- Control over the trustee – Corporate Trustee
- Superannuation Wills
- Enduring Power of Attorney

## Pensions - TR 2011/D3

- Released in Draft
- Pensions do not continue past the death of recipient except; reversionary pension or specified in a Binding death benefit nomination
- Ensure that pension payments meet specifications
- Cessation of pension may trigger CGT liability
- Tax and exempt pensions may blend on pension cessation

# Planning Issues

- Should the trustee pay:
  - A pension
  - A lump Sum
  - (combination)
- If the benefits are paid to the estate should there be:
  - a Testamentary Trust
  - a Superannuation Proceeds Trust
- If I have a dependant who is disabled, a drug addict or a spend thrift, should I use:
  - Superannuation pensions
  - Testamentary trusts

# Planning Issues

- Should the member retain benefits in the fund:
  - A pension – rate of withdrawal increases as member ages
  - Ensure member is utilising tax free thresholds
  - Dementia – is the member capable of managing fund
- Business Succession
  - Passing estate and super assets to beneficiaries before death
  - Fund can be used for 2<sup>nd</sup> generation benefits –Business Real Property
  - Borrowing to retain Business Real Property within the fund
- Terminal Illness benefits
  - Tax free lump sum withdrawals – pre age 60
  - Two medical practitioners ( one specialist ) assert death will occur within 12 months
  - Lump sum benefit received tax free

## Planning issues – other

- Estate protection:
  - Disputes
  - Bankruptcy
- How much has been borrowed by the superannuation fund
- Is there control over the fund through the trustee or through the use of Binding Death Benefit Nomination
- Does the Superannuation Plan gel with the Business Succession Plan

## Conclusion

# Questions?



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