LORREQUER
Wealth & Advisory

Superannuation death benefits

Nominating a beneficiary to receive your superannuation benefits upon your death gives you peace of mind knowing that the funds will be paid according to your wishes.

Benefits

- Upon your death, your superannuation can be paid faster and with fewer complications than if it has to go through your estate or wait for trustees of the fund to make a decision.
- Your superannuation is more likely to pass to your intended beneficiary.
- Family conflicts may be avoided.

How it works

The trustee of a superannuation fund has the discretion to decide who should receive the balance of your account upon your death. However, it can only be paid to someone who meets the definition of 'superannuation dependent' or to your estate. A superannuation dependent is defined as:

- your current spouse (legal or de-facto, including same-sex)
- your child (including step-children and adopted children)
- someone who was financially dependent on you at the time of your death
- someone who was in an interdependency relationship with you at the time of your death.

To provide more estate planning certainty, you may be able to make a nomination on your account to bind the trustee to follow your wishes or to give the trustee more guidance. The limitations on who can be a beneficiary remain the same.

Your beneficiary will receive the benefit as a lump sum but if they are a tax dependent (see definition below) they may be able to choose to take a pension instead. If a pension is paid to a child under age 25 it must cease when that child reaches age 25, unless they meet the disability requirements. The resulting lump sum is tax-free.

If your benefit is paid to your estate, it will be dealt with according to the terms of your Will.

Beneficiary nominations

There are a variety of nomination options which can be used so that your superannuation bypasses your estate and is paid directly to your nominated beneficiary. This can give you more confidence that the right person will receive your benefit.

- **Binding nomination** – this nomination is binding on the trustee of your superannuation fund providing it is valid at the date of your death. To be valid, the nomination must be in writing, signed by you and witnessed by someone over the age of 18 who is not a beneficiary. Most binding nominations only last for three years, however it is a good idea to review your nomination regularly (preferably annually) to ensure the nomination continues to be appropriate. If your superannuation is in a self-managed fund, the requirements to be a valid binding nomination will depend on the trust deed requirements. A binding nomination only binds the trustee as to who will receive the benefit; it may not bind the trustee as to whether the benefit should be paid as a lump sum or pension.

- **Non-binding nomination** – a non-binding nomination means that the trustee of your super fund will consider your nomination but retains discretion to override it. The trustee will attempt to identify all potential beneficiaries and make their own decision about who is the most appropriate beneficiary. This can take time to decide and to follow the correct processes.

- **Reversionary nomination** – this type of nomination is only available for superannuation pensions. The trustee will be bound to continue paying the pension to your nominated beneficiary after your death. Your beneficiary may have flexibility to stop the pension and convert it into a lump sum if desired, depending on the pension type. You can only nominate a reversionary when you start a pension and may not to stop and restart the pension to make changes.

Taxation of death benefits

The tax payable on a superannuation death benefit depends on whether or not the beneficiary meets the definition of 'tax-dependent' and whether the benefit is paid as a lump sum or pension. The tax on a pension paid from an untaxed (unfunded) superannuation scheme is higher than if paid from a taxed (funded) scheme.

The definition of a tax-dependent is slightly different to superannuation dependent, with a tax-dependent being:

- a spouse of the deceased (current or former spouse, including legal, de-facto or same-sex)
- a child of the deceased who is under age 18 or under age 25 and still dependent (including step-children and adopted children)
- someone who was financially dependent on you at the time of your death
- someone who was in an interdependency relationship with you at the time of your death.

A non-tax dependent will pay a higher rate of tax and can only receive the death benefit as a lump sum.

If your life insurance is held inside your superannuation account the claim proceeds will be paid into your account and will also form part of your superannuation death benefit. This can result in an untaxed element being created. The untaxed element attracts a higher rate of tax on lump sums paid to a non-tax dependent.

Tax rates on death benefits paid as a lump sum		
Tax component	**Paid to a dependent**	**Paid to a non-tax dependent**
Tax-free	Nil	Nil
Taxable (element taxed)	Nil	15%*
Taxable (element untaxed)	Nil	30%*

** Medicare and other levies may also apply*

Tax rates on death benefits paid as a pension		
Tax component	**Either deceased or beneficiary are age 60 or over**	**Both deceased and beneficiary are under age 60**
Tax-free	Nil	Nil
Taxable (from funded scheme)	Nil	Marginal rate less 15% offset*^
Taxable (from unfunded scheme)	Marginal rate* less 10% offset	Marginal rate*^

** Medicare and other levies may also apply.*
^ Once the beneficiary turns age 60, a pension from a funded scheme is tax-free while a 10% tax offset applies to a pension from an unfunded scheme.

Death benefit pension cap

From 1 July 2017, death benefit pensions will be capped at $1.6 million. Where the death benefit itself exceeds (or causes) the beneficiary to exceed their pension cap, part of the benefit will need to be cashed out of superannuation. Where potential death benefits are large, not all of the benefit may be able to be taken as a tax effective income stream.

A death benefit pension cannot be commuted back to an accumulation superannuation account and can never be combined with the beneficiary's own superannuation balance.

Consequences

- Not all superannuation funds offer the opportunity to make a binding death benefit nomination. You should check with your superannuation fund.
- If trustee discretion applies and disputes arise in relation to who is to be a beneficiary it can take a long period of time to resolve the dispute as the Superannuation Complaints Tribunal may need to mediate or decide.
- The validity of a binding nomination is only verified after the member's death. It is important to seek advice to ensure it is correctly completed and effective.
- You or your spouse may exceed your transfer balance cap.
- In certain circumstances, a binding nomination can be overruled by a court order. This risk can be minimised if your binding nomination is considered in conjunction with your Will.

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