

SMSF FACT SHEET



CAVENDISH

SMSF Death Benefits

Due to the Trustee/Member relationship of a SMSF, paying a death benefit involves more than just paying a benefit in accordance with a member's wishes. This fact sheet summarises the relevant issues that arise when a member passes away.

WHAT YOU NEED TO KNOW

When a member of a SMSF dies the Trustee of the Fund has certain obligations to fulfill with regards to paying a death benefit, as death is the only compulsory cashing requirement.

The nature of a SMSF, where all members must be Trustee, means when a member dies so does a Trustee! Where does that leave the Fund as it tries to fulfill its obligations?

The SIS Legislation provides the solution to this issue but there are a number of hurdles that must be overcome to satisfy all the requirements.

ALTERNATIVE TRUSTEES

The Legal Personal Representative (LPR) of a deceased person may act as Trustee of a SMSF in the event of the member's death. The LPR is defined as the Executor of the deceased's Estate or Administrator of their Will. Different requirements may apply based on whether a Fund has individual or corporate trustee. Following the removal of the LPR as Trustee a SMSF has 6 months to ensure it satisfies the definition of a SMSF in accordance with Section 17A of the SIS Act.

LPR appointment

It is important that SMSF Trustees review their Trust Deed to ensure the appointment of the LPR is possible:

- Most Deeds allow for the automatic appointment (Cavendish Deed does)
- LPR must accept and consent to the appointment
- LPR must sign a Trustee Declaration
- A Fund with a corporate Trustee must review the constitution of the company to determine what action needs to occur to appoint LPR as director of company

LPR removal

The LPR of a deceased member must be removed as Trustee of a SMSF at the point when the death benefit commences to be paid:

- Initial lump sum payment
- Pension commencement

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PAYING A DEATH BENEFIT

As death is the only compulsory cashing requirement the Trustees of a SMSF must pay a death benefit as soon as possible. Who to pay a death benefit to and in what format are decisions that can be made prior to death by the member or after death by the Trustee of the Fund.

A member may nominate who they want their superannuation benefits payable to. They can only nominate a SIS dependant or their Legal Personal Representative. A nomination can be:

- Binding Nomination in accordance with Legislative requirements (lapsing)
- Binding Nomination in accordance with the terms of their Trust Deed (non-lapsing)
- Non-binding nomination which gives ultimate discretion to Trustee of Fund

Binding nominations must be witnessed by two independent adult witnesses.

Members/Trustees should obtain appropriate advice from suitably qualified professionals prior to implementing an Estate Planning strategy.

WHO IS A SIS DEPENDANT

Superannuation law determines who a death benefit can be payable to and Income Tax law determines the tax treatment of the death benefit. A member can nominate to leave their benefit to a SIS dependant being any of the following:

- Spouse (including de facto and same sex but excluding former spouse)
- Child (any age)
- Personal who is financially dependent
- Person in an interdependent relationship with the member

Alternatively a member can nominate for their benefit to be payable to their Legal Personal Representative who will distribute their superannuation in accordance with their Will.

If you would like more in-depth information about contributions, you can visit www.cavendishsuper.com.au.

WHO IS A TAX DEPENDANT

Income Tax law determines how a death benefit is treated for taxation purposes. A member's benefit must be paid in accordance with the law and the requirements of the Trust Deed and will usually be in the form of:

- A lump sum
- A pension
- A combination of both

There are restrictions on who can receive a Death Benefit Pension. Adult Children can't receive a pension unless they are under 25 and financially dependent or permanently disabled. Only in the event of permanent disability can an adult child continue to receive a pension after age 25. In all other circumstances the pension must be taken as a lump sum on turning 25.

A superannuation dependant for taxation purposes includes:

- Spouse (including former spouse)
- Child under the age of 18
- Financial dependent
- Interdependent relationship

TAXATION OF DEATH BENEFITS

A superannuation death benefit will be tax according to whether it is taken as a lump sum or as a pension.

Lump Sum Death Benefit

A death benefit lump sum payment is tax free if paid to a taxation dependant, as outlined above.

A death benefit lump sum paid to a non-dependant for taxation purposes, such as an adult child will be taxed as follow:

Component	Applicable Rate	Via Estate
Tax Free	Nil	Nil
Taxable – Taxed element	17%	15%
Taxable – Untaxed element*	32%	30%

* Untaxed element is a result of a Fund claiming a deduction on insurance premiums

Pension Death Benefit

A death benefit pension is taxed according to the age of both the deceased and the beneficiary. Where tax is payable the recipient is entitled to a 15% tax offset (rebate).

Age	Tax Free Component	Taxable Component
Deceased 60+	Nil	Nil
Deceased under 60 Recipient 60+	Nil	Nil
Deceased under 60 Recipient under 60	Nil	Marginal tax (less 15%)

Members should obtain advice from an appropriately qualified professional prior to determining whether to pay benefits as a lump sum or a pension and whether to use binding or non-binding nominations.

Without appropriate planning with regards to nominations and who will act as a Legal Personal Representative a members benefit can become the subject of costly and length legal proceedings.

+ For further information please call us or visit our website.

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