



End of Life Superannuation Basics

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End of Life Superannuation Basics

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Overview

- Superannuation Death Benefits
- Taxation of Superannuation Death Benefits
- The Transfer Balance Cap
- Insurance
- Defined Benefit Funds
- Strategies for Effective Planning



Superannuation Death Benefits

- **Eligible Beneficiaries:**
 - R.6.22 *Superannuation Industry (Supervision) Regulations 1994*
 - Dependants
 - Spouse
 - Child
 - Interdependency Relationship
 - Legal Personal Representative (LPR)
- **Payment Options:**
 - Death Benefit Pension:
 - Spouse
 - Child (under 18, financially dependent and less than 25 or disabled)
 - Financial Dependent or Interdependent Relationship
 - Death Benefit Lump Sum:
 - Spouse
 - Child
 - LPR
 - Financial Dependent or Interdependent Relationship

Superannuation
Death Benefits

Death Benefit Dependant:

- S.302-195 *Income Tax Assessment Act 1997*
 - Spouse
 - Child aged less than 18
 - Interdependancy Relationship
 - Dependant

Superannuation Death Benefits

Interdependency Relationship

- ITAA 1997 302-200
- Two people with:
 - a close personal relationship who live together
 - One or both provide financial support
 - One or both provide domestic or personal care
- OR
- A close personal relationship who don't provide financial or domestic or personal care due to one or both suffering physical, intellectual or psychiatric disability.

Taxation Elements

- Tax Free Component
- Taxable Component
 - Taxable Untaxed Element
 - Taxable Taxed Element

Taxation of Superannuation Death Benefits

Pensions

Beneficiary	Tax Free Component	Taxable Component	
		Taxed Element	Untaxed Element
Deceased or Dependant are aged 60 or over at time of death	Tax Free	Tax Free	Marginal rates with 10% offset
Deceased and Dependant aged under 60 at time of death	Tax Free	Marginal rates with 15% offset	Marginal tax rate with no offset

Taxation of Superannuation Death Benefits

Lump Sums

Beneficiary	Tax Free Component	Taxable Component	
		Taxed Element	Untaxed Element
Tax Dependant	Tax Free	Tax Free	Tax Free
Non Tax Dependant	Tax Free	15%	30%

Taxation of Superannuation Death Benefits

Taxation Treatment of Lump Sums

Payment Direct to Beneficiary	Payment to Legal Personal Representative
<ul style="list-style-type: none">• Tax paid by Trustee• Beneficiary declares income in Tax Return• Taxation:<ul style="list-style-type: none">○ Tax Free Component – 0%○ Taxable Taxed – 17%○ Taxable Untaxed – 32%	<ul style="list-style-type: none">• Tax paid by LPR• No PAYG Statement provided to Beneficiary• Beneficiary does not declare income in in Tax Return• Taxation:<ul style="list-style-type: none">○ Tax Free Component – 0%○ Taxable Taxed – 15%○ Taxable Untaxed – 30%

The Transfer Balance Cap

- *ITAA 1997* Div 294
- Cap on tax free income stream
- Current cap \$1.9 million
- Excess Transfer Balance

The Transfer
Balance Cap

Defined Benefit Funds

- Special value
- Defined Benefit Cap
- Commonwealth Defined Benefit Schemes

Child Death Benefit Pension

- *ITAA 1997 s.294-175*
- Transfer Balance Cap =
Increment of parent's transfer
balance
- Can have two transfer balances
- Pension until 18 or 25 then
cashed out

Hypothetical

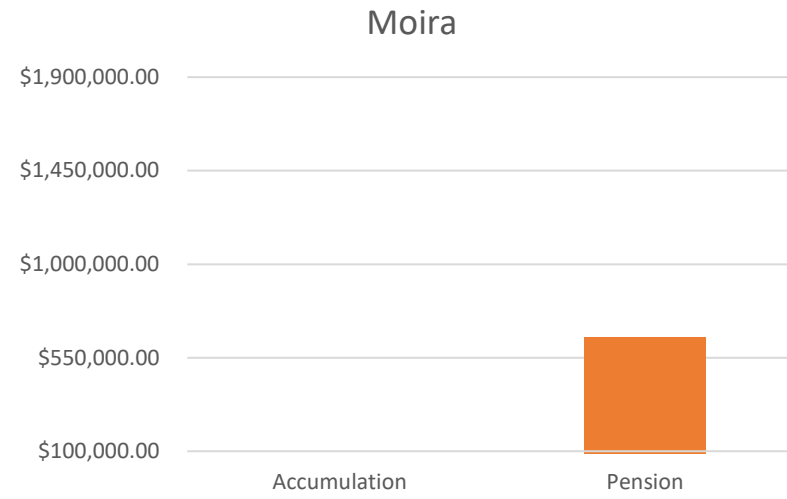
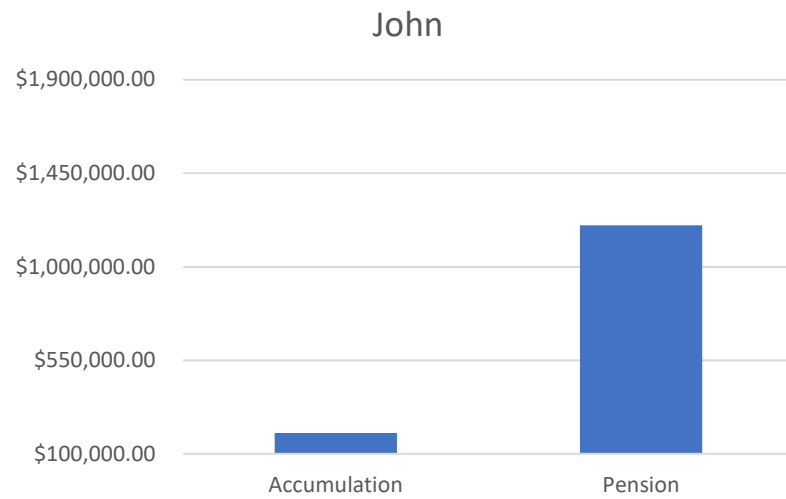
- John aged 62
 - SMSF Pension Account - \$1,200,000 (100% taxable taxed)
 - SMSF Accumulation Account - \$200,000
- Moira aged 60
 - Defined Benefit Pension Account - \$650,000 (50% taxable taxed 50% taxable untaxed)
- David aged 26
- Alexis aged 17

Taxation of Superannuation Death Benefits

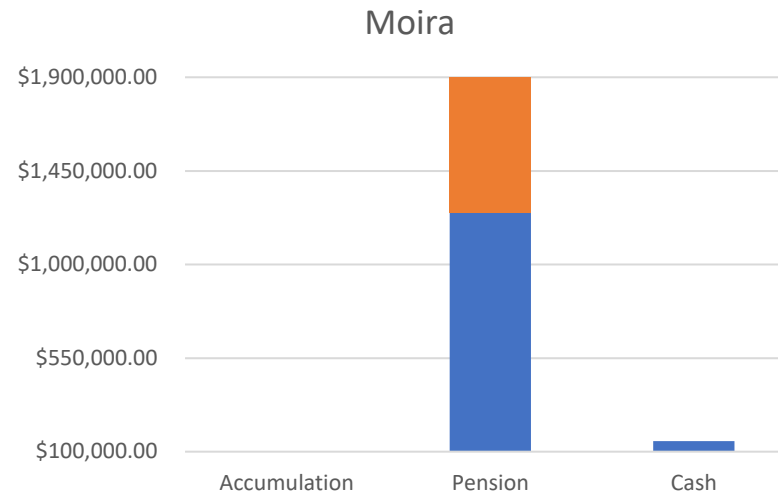
Hypothetical

- What are options if John dies?
 - Option 1 – Moira death benefit pension or lump sum – 0% tax
 - Option 2 – Alexis death benefit pension – 0% tax but has to be cashed out at 25 max
 - Option 3 – David lump sum – 17% tax
 - Option 4 – LPR lump sum

Hypothetical



Hypothetical



Taxation of Superannuation Death Benefits

2nd Hypothetical

- John dies. Superannuation death benefits of \$1,400,000 are paid 40% to Moira, 30% to David and 30% to Alexis
- David's income in 2023-2024 FY is \$40,040
- Trustee of SMSF deducts tax before paying death benefit
- Moira – Pension \$560,000 (0% tax)
- Alexis – Pension \$420,000 (0% tax)
- David – Lump Sum \$348,600 (17% tax)
 - David is given PAYGW statement showing \$71,400 was withheld
 - Lump sum is included in Taxable income

Insurance

- ITAA 1997 s.307-290

$$\textit{Taxed element} = \textit{SLS} \times \frac{\textit{SD}}{\textit{SD} + \textit{DTR}} - \textit{TFC}$$

- SLS = Superannuation Lump Sum
- SD = Service Days
- DTR = Days to Retirement
- TFC = Tax Free Component

Insurance

3rd Hypothetical

- Moira has died
- John dies aged 62. Life insurance of \$600,000 paid out.
- Insurance commenced age 18

$$SLS \times \frac{SD}{SD + DTR} - TFC$$

- $\$2,000,000 \times \frac{16060}{16060+1095} - \0
- Taxable Taxed Component = \$1,872,340
- Taxable Untaxed Component = \$127,660

3rd Hypothetical (contd.)

- If split equally between David and Alexis:
 - David:
 - Tax payable on Taxable Taxed = \$159,149
 - Tax payable on Taxable Untaxed = \$20,426
 - Total Benefit for David = \$820,425
 - Alexis:
 - Tax payable on Taxable Taxed = \$0
 - Tax payable on Taxable Untaxed = \$0
 - Total Benefit for Alexis = \$1,000,000

Insurance

4th Hypothetical

- David dies with super of \$20,000 tax free and \$50,000 taxable taxed + \$500,000 insurance. He joined the fund aged 20

$$\$570,000 \times \frac{1825}{1825 + 14600} - \$20000$$

- Taxable Taxed Component = \$43,333
- Taxable Untaxed Component = \$506,667
- Tax Free = \$20,000
- The Untaxed Component is more than the insurance payout

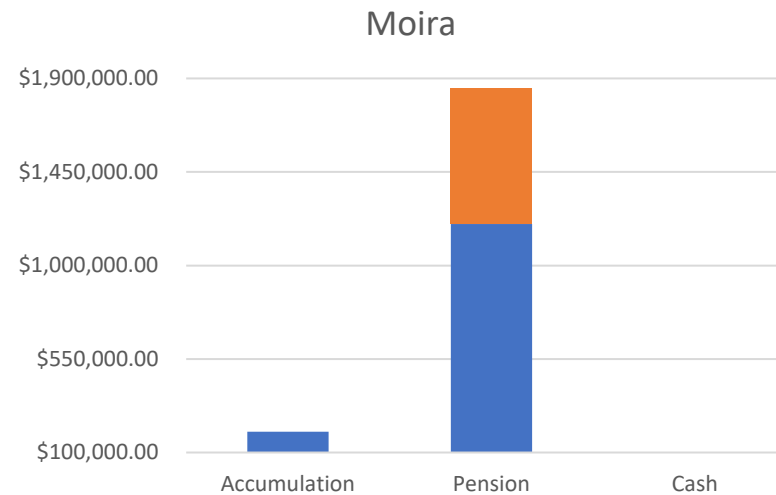
Strategies for Effective Planning

- Binding Death Benefit Nominations
- Contribution and Re-Contribution Strategies
- Separate Funds
- Death Benefit Proceeds Trust
- Death Bed Withdrawals
- Powers of Attorney

Strategies for Estate Planners

Contribution and Recontribution Strategies

- John withdraws \$200,000 from his SMSF
- Moira becomes a member of SMSF and \$200,000 is contributed to her member account
- John then dies – Moira's super now looks like this



Strategies for Effective Planning

Contribution and Recontribution Strategies (contd.)

- John withdraws \$200,000 from his SMSF
- John and contributes it to a second Accumulation fund without insurance. SMSF has insurance.
- Option 1 – Moira takes both super accounts. Commences pension in second fund. Cashes out part of the SMSF tax free.
- Option 2 – BDBN in favour of Moira and Alexis from the SMSF. BDBN in favour of David for 2nd fund. All tax free.

Strategies for
Effective
Planning

Binding Death Benefit Nominations

- *Hill v Zuda as trustee for The Holly Superannuation Fund* [2022] HCA 21
- Auto-reversionary Pensions
- NSW Notional Estate

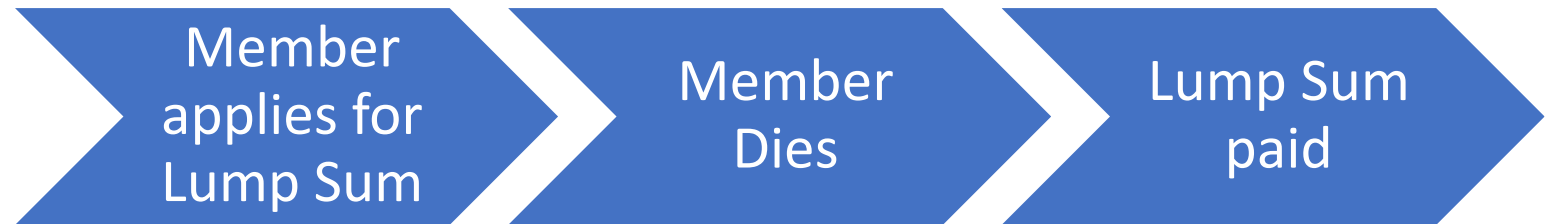
Strategies for Effective Planning

Superannuation Death Benefit Proceeds Trusts

- *ITAA 1997 302-10*
 - John and Moira have both died
 - Estate consists of
 - Super Death Benefit - \$2,000,000
 - Taxable Taxed - \$1,872,340
 - Taxable Untaxed - \$127,660
 - Non-Super Property - \$2,500,000
 - Without SPT:
 - Tax = \$179,574
 - Benefit for David and Alexis = \$2,160,213 each
 - With SPT for Alexis:
 - Tax = \$0
 - Benefit for David and Alexis = \$2,250,000 each

Strategies for Effective Planning

Death Benefit Withdrawals



- **Member Benefit** – A payment to you from a superannuation fund because you are a fund member.
- **Superannuation Death Benefit** – A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.

Strategies for Effective Planning

Death Benefit Withdrawals

- QC 45254 – February 2023
- Private Advice 1052090528673:

An amount that a member requested to be paid from their superannuation fund before their death, but was paid after their death, may be classified as a member benefit instead of a death benefit depending on the facts and circumstances of the payment.

A trustee of a regulated superannuation fund can only pay superannuation benefits according to the fund's governing rules, including the fund's trust deed and relevant legislation. These governing rules set out when benefits can be paid and who they can be paid to, including after a member's death. A superannuation fund's governing rules must be read carefully to determine a member's benefit entitlements in the event of death.

Strategies for Effective Planning

Death Benefit Withdrawals

The assessment of whether the amount that the member requested to be paid is a member benefit or a death benefit is based on the facts known at the time of the payment, including:

- The terms of the member's request;
- The terms of the trust deed and any other governing rules;
- The fund trustee's knowledge at the time that the payment is made (including whether they are aware that the member has died);
- The entity that the payment is being paid to;
- The circumstances and timing of the payment; and
- Whether the payment is made because of and consistent with the member's request.

Strategies for Effective Planning

Death Benefit Withdrawals

- A - 2 pension payments made before death, 3 pension payments after death – Member Benefit
- B - A further payment was made from pension account – Member Benefit
- C - A lump sum was paid from the accumulation account – Member Benefit
- D, E, F - 3 further lump sum payments from accumulation account to estate account after probate – Death Benefit

Strategies for Effective Planning

Powers of Attorney

- Enduring Powers of Attorney
 - Does document authorise BDBN?
 - Does document authorise conflict transactions?
 - Is it in best interest of the member to cash out superannuation?
 - What are requirements of the governing rules?
- Think very carefully about impact of a death bed withdrawal on estate plan?
- Loss of Insurance v tax benefit
- Liability

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